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# FIFTH EVALUATION ROUND

Preventing corruption and promoting integrity in  
central governments (top executive functions) and  
law enforcement agencies

## COMPLIANCE REPORT

# MALTA



Adopted by GRECO  
at its 88<sup>th</sup> Plenary Meeting (Strasbourg, 20-22 September 2021)



Group of States against Corruption  
Groupe d'États contre la corruption

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

## **I. INTRODUCTION**

1. GRECO's Fifth Evaluation Round deals with "Preventing corruption and promoting integrity in central governments (top executive functions, PTEF) and law enforcement agencies (LEA)".
2. This Compliance Report assesses the measures taken by the Maltese authorities to implement the recommendations issued in the Fifth Round Evaluation Report on Malta, which was adopted at GRECO's 82nd Plenary Meeting (22 March 2019) and made public on 3 April 2019, following authorisation by Malta ([GrecoEval5Rep\(2018\)6](#)).
3. As required by GRECO's Rules of Procedure<sup>1</sup>, the Maltese authorities submitted a Situation Report on measures taken to implement the recommendations contained in the Evaluation Report. This report was received on 22 December 2020 and served, together with additional information submitted by the authorities on 4 March, 31 May and 28 August 2021, as a basis for the Compliance Report.
4. GRECO selected Romania (with respect to top executive functions in central governments) and Portugal (with respect to law enforcement agencies) to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Anca-Luminita STROE, on behalf of Romania, and Mr Antonio DELICADO, on behalf of Portugal. They were assisted by GRECO's Secretariat in drawing up the Compliance Report.
5. The Compliance Report examines the implementation of each individual recommendation contained in the Evaluation Report and establishes an overall appraisal of the level of the member's compliance with these recommendations. The implementation of any pending recommendation (partially or not implemented) will be assessed on the basis of a further Situation Report to be submitted by the authorities 18 months after the adoption of the present Compliance Report.

## **II. ANALYSIS**

6. GRECO addressed 23 recommendations to Malta in its Evaluation Report. Compliance with these recommendations is dealt with below.

*Corruption prevention and promotion of integrity in respect of central governments (top executive functions)*

### **Recommendation i.**

7. *GRECO recommended i) that measures be taken to solve the legal situation of persons of trust and to limit the number of such discretionarily appointed officials to an absolute minimum, and ii) that those who would perform top executive functions be required to comply with the highest standards of integrity, including as regards rules of conduct, conflicts of*

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<sup>1</sup> The Compliance procedure of GRECO's Fifth Evaluation Round is governed by its Rules of Procedure, as amended: Rule 31 revised bis and Rule 32 revised.

*interest, declaratory obligations, and supervision by the Commissioner for standards in public life.*

8. The Maltese authorities inform GRECO that amendments to the Standards in Public Life Act and Public Administration Act related to appointment of persons of trust<sup>2</sup> have been adopted by Parliament and entered into force on 9 April 2021. The amendments, *inter alia*, introduce a more detailed definition of “persons of trust” to include any employee or person engaged from outside the public service sector to act as consultants and staff in the secretariat of a minister or parliamentary secretary, or those employed on posts that remained vacant following several public recruitment calls, if such employment contract is concluded in conformity with Article 6A of the Public Administration Act (PAA)<sup>3</sup> and its duration is less than one year. The adopted amendments also provide that the number of persons of trust who may be engaged, and the conditions of their employment, are specified in the Manual on persons of trust, published by the Cabinet Office. The Cabinet Manual reflects the contents of the Manual on Resourcing Policies and Procedures<sup>4</sup>, which forms part of the Public Service Management Code (PSMC). The authorities refer to section 7.7 of the Manual on Resourcing Policies and Procedures, which sets out the number of staff that can be recruited by Prime Ministers’ Secretariat, Ministers’ Secretariats and Parliamentary Secretaries’ / Other designated offices’ secretariats.

9. The authorities also inform GRECO that the PSMC was given legal status by virtue of Directive 1<sup>5</sup> under the Public Administration Act and has been public since June 2020<sup>6</sup>. The authorities state that this directive is legally binding in respect of all public officials and envisages disciplinary proceedings for employees failing to comply with its requirements. The PSMC is also said to limit roles and situations allowing recruitment of “persons of trust” to positions in the immediate *entourage* of a minister or a parliamentary secretary, or where recruitment needed to be made after unsuccessful advertising of a vacant post.

10. As to the integrity standards, the authorities reiterate that PTEFs (including ministers, parliamentary secretaries and parliamentary assistants) are subject to the Code of Ethics set out in the appendix to the Standards in Public Life Act and that “persons of trust” are subject to the Code of Ethics included in the Public Administration Act<sup>7</sup>. Reference is also made to the

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<sup>2</sup> Act XVI of 2021 entitled “Appointment (Persons of Trust) Act”, accessible via the following link: <https://www.parlament.mt/media/111548/act-16-of-2021-persons-of-trust.pdf>

<sup>3</sup> The current [Public Administration Act](#), in force as of 1 March 2019, replaced the previous one, which was in force at the time of the on-site visit by the GET.

<sup>4</sup> Available via the following link:

[https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual\\_on\\_Resourcing\\_Policies\\_and\\_Procedures.pdf](https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.pdf)

<sup>5</sup> <https://publicservice.gov.mt/en/people/Documents/Directives/Directive-1-1.pdf>

<sup>6</sup> [https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual\\_on\\_Resourcing\\_Policies\\_and\\_Procedures.pdf](https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC%20Manuals/Manual_on_Resourcing_Policies_and_Procedures.pdf)

<sup>7</sup> As stipulated in Article 3(1)(b) of the Standards in Public Life Act, which reads as follows: “3. (1) This Act applies to: ... (b) persons of trust only to the extent that it shall be within the power of the Commissioner, acting either of his own motion or after receiving a complaint, to investigate and report to the House of Representatives whether a person of trust shall have breached the provisions of the Code of Ethics included in the First Schedule to the Public Administration Act to which persons of trust shall by virtue of this Act and without any further requirement, be subject.”

provisions of the new PAA, setting out values<sup>8</sup> that public employees should abide by in the performance of their duties. It is added that the Commissioner for Standards in Public Life is empowered to investigate and report on breaches of the applicable codes of ethics by members of the House, or by persons of trust, upon the Commissioner's initiative, or following a complaint. Further, the amendments referred to in paragraph 8 above provide the Commissioner with the power to refer a case to the Attorney General if "it appears *prima facie* that a criminal offence or a corrupt practice has been committed" (Article 22(6) of the Standards in Public Life Act). Finally, the authorities report that as of 7 August 2020, the Commissioner for Standards of Public Life is granted the right to seek judicial review of decisions not to prosecute, in respect of cases submitted by the Commissioner to the Attorney General.

11. The authorities also report developments in respect of safeguards regarding "revolving doors". In particular, the new PAA prohibits employment in the private sector of public employees holding posts which involve regulatory or inspection functions for a period of up to two years from termination of public employment. This prohibition applies to employment with any private entity dealt with during the period of five years preceding termination of public employment. The breach of this prohibition carries a civil contractual penalty equivalent to three years' salary. The PAA also introduced the concept of "high risk posts", listed in the Sixth Schedule of PAA and considered as such due to the nature of their role and responsibilities, in respect of which the Principal Permanent Secretary may issue specific directives. In addition, the provisions of the PAA were complemented by Directive 14<sup>9</sup>, adopted on 18 June 2020 and updated on 22 March 2021, setting out the Framework for the Management of the Revolving Door Policy for Public Employees. Finally, on 2 November 2020, the Principal Permanent Secretary issued an internal circular to all Permanent Secretaries, specifying that Executive Heads and Executive Chairpersons of public entities should not undertake parallel occupations outside the public sector while in office.

12. GRECO takes note of the information provided. Several measures have been taken to address the present recommendation. Regarding the first part of the recommendation, GRECO notes that the amendments adopted on 9 April 2021 provide a more detailed definition of "persons of trust", which contributes to greater legal clarity regarding this category of employees. However, according to the new Article 6A, paragraph (1) of the PAA, "persons of trust shall not be deemed to be public officers or public employees", which may suggest that "persons of trust" are left outside of the scope of the integrity requirements, other than the Code of Ethics appended to the PAA, and reporting obligations applicable to public employees in general. Further, the amendments do not appear to fully address the recommendation to limit the number of appointments of persons of trust to an absolute minimum. The Manual on Resourcing Policies and Procedures does not demonstrate whether the overall number of "persons of trust" that can be recruited (some 700 employed at the

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<sup>8</sup> Article 4(1) of the PAA provides that "in the carrying out of their functions or duties public employees shall uphold and promote the following values (a) integrity, (b) respect (c) loyalty (d) trust (e) quality (f) accountability (g) impartiality and (h) non-discrimination". Article 4(2), failure to act in accordance with the said values triggers disciplinary proceedings

<sup>9</sup> Accessible via the following link:

<https://publicservice.gov.mt/en/people/Documents/Directives/Directive14.pdf>

time of the adoption of the Evaluation Report) has decreased. In this respect, GRECO concurs with the view of the European Commission for Democracy through Law (Venice Commission)<sup>10</sup> that “this key element of the regulation cannot simply be left to a government manual but it should be the core element of the legislative text”.

13. As to the second part of the recommendation, GRECO notes the new functions of the Commissioner for Standards of Public Life to investigate suspected violations of the integrity rules, to report on possible cases of corruption and to seek judicial review, should prosecutions not be initiated. Specific examples of investigations initiated by the Commissioner for Standards of Public Life into possible violations of integrity rules, or possible cases of corruption are regularly published on the Commissioner’s website<sup>11</sup>. So far, no cases have been transmitted to the Commissioner of Police, or the Attorney General by the Commissioner. GRECO also notes the new provisions addressing the issue of “revolving doors” (paragraph 11) by establishing a “cooling-off” period of a reasonable duration – up to two years - between public-to-private sector employments, and the guiding documents adopted with a view to facilitating their implementation. They appear relevant, but the effectiveness of this supervision can only be evaluated once the system has been operational for some time. While important progress has been made in the implementation of this recommendation, not all of the concerns expressed by GRECO have been dealt with, and the express exclusion of “persons of trust” from among public officers or public employees limits the reach of these standards in respect of “persons of trust”. Therefore, this recommendation cannot be considered to be fully complied with.

14. GRECO concludes that recommendation i has been partly implemented.

#### **Recommendation ii.**

15. *GRECO recommended that on the basis of proper risk assessments an integrity strategy be developed and implemented in respect of all pertinent categories of persons entrusted with top executive functions.*

16. The Maltese authorities report that an Inter-Ministerial Committee has been set up to develop and implement the National Anti-Corruption Integrity Strategy, which is to report to the Cabinet. The Committee is chaired by the Permanent Secretary for the Ministry for Justice and Governance and is composed of the Permanent Secretary for the People and Standards Division; the Permanent Secretary for the Ministry for the National Heritage, the Arts and Local Government / Ministry for Research, Innovation and the Co-ordination of Post Covid-19 Strategy; the Permanent Secretary for the Ministry for Education; the Permanent Secretary for Ministry for Home Affairs, National Security and Law Enforcement; and the Permanent Secretary for the Ministry for Transport, Infrastructure and Capital Projects.

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<sup>10</sup> For further details, see Opinion on ten acts and bills implementing legislative proposals subject of Opinion CDL-AD(2020)006 Adopted by the Venice Commission at its 124th Plenary Session (Online, 8-9 October 2020), accessible via the following link: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)019-e)

<sup>11</sup> Commissioner’s case reports are available via the following link: <https://standardscommissioner.com/case-reports/>

17. GRECO takes note of the information provided by the authorities. It would appear that, even though an inter-ministerial body has been set up to establish an integrity strategy, the actual work on the development of the national anti-corruption integrity strategy, which is to be built on a risk assessment, has not yet been initiated. As already underlined in the Evaluation Report, Malta needs an over-arching anti-corruption strategy, which would serve as key policy guidance towards improving action against corruption. GRECO urges the authorities to proceed with the development of such strategy based on proper risk assessments without any further delay.

18. GRECO concludes that recommendation ii has not been implemented.

### **Recommendation iii.**

19. *GRECO recommended that i) more robust and systematic awareness-raising measures (e.g. refresher training and workshops, guidance documents, written reminders) be provided to all persons entrusted with top executive functions, at the start of their term and at regular intervals throughout their term and ii) that information about the integrity requirements for public officials and their observance is made readily available, including by posting such information on the websites of public authorities.*

20. The Maltese authorities report that an Integrity and Ethics Awareness Learning Programme (IEAL) has been introduced and made mandatory by a Directive No. 15<sup>12</sup>, issued on 20 April 2021. This Directive applies to all public employees on posts within Public Administration listed in the Sixth Schedule of the Public Administration Act, as well as candidates for senior management positions, thus covering PTEFs. This Integrity Awareness Programme aims at up-scaling the integrity standards for government officials through a development programme enhancing their awareness of ethical standards; making public employees more knowledgeable of their responsibilities for their actions and decisions in situations of ethical dilemma; enhancing a spirit of integrity standards in day-to-day activities and marking the public sector as an example of positive risk management; and providing an opportunity for development and growth amongst public employees. The programme includes an integrity maturity assessment which must be passed every two years. Finally, the authorities report that an information and training session on “Promoting Integrity Maturity in the Maltese Public Administration - OECD Forum” was held on 25 March 2021, with some 220 participants. The authorities also inform GRECO of plans to establish a special Integrity Unit in the Directorate for Governance Action of the Office of the Prime Minister to support public office-holders in solving ethical dilemma in decision-making and provide coaching on ethics and integrity through the existing Employee Support Programme. It is also planned to carry out other awareness-raising measures, such as on-line ‘flyers’, webinars, dissemination of a compilation of integrity information pack, and in-service training in the Institute of Public Service<sup>13</sup>, which will also be accessible to public.

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<sup>12</sup> The text of this Directive is available via the following link:

<https://publicservice.gov.mt/en/people/Documents/Directives/Directive-15.pdf>

<sup>13</sup> More information on IEAL is available via the following link:

<https://publicservice.gov.mt/en/institute/prospectus/Pages/default.aspx>

21. GRECO takes note of the information provided. It welcomes the adoption of the IEAL and the initiation of its implementation. It would appear that the full scale of training is not yet in place. Some further measures to raise awareness on integrity appear to be at the stage of elaboration and should materialise in the course of 2021. However, it is recalled that this recommendation refers to all persons exercising executive power, while the new measures introduced by the authorities are limited only to those in “high-risk” positions and candidates for senior management positions, which is insufficient. Further efforts are needed to increase awareness of integrity and corruption prevention among all PTEFs, regardless their position. At present, the information provided does not allow to conclude that this recommendation has been implemented more than partly.

22. GRECO concludes that recommendation iii has been partly implemented.

#### **Recommendation iv.**

23. *GRECO recommended dissociating the functions of confidential advice and of enforcement by the Commissioner on Standards in Public Life, entrusting other persons or bodies with the former.*

24. The Maltese authorities report that work is in progress to implement this recommendation in relation to both members of parliament and persons of trust. The authorities envisage establishing a competent body to provide confidential advice to PTEFs through legal amendments and administrative measures, together with amending the Act on Standards in Public Life. According to the authorities, relevant amendments will be open to public consultation procedure and are planned to be submitted to Parliament by June 2021.

25. GRECO takes note of the information provided by the authorities. The preparation of the draft amendments to address the issue underlying the present recommendation is at an early stage. GRECO recalls that the main body responsible for enforcing rules of conduct and integrity requirements is placed in a difficult situation, if it is also to give advice on these matters (see paragraph 43 of the Fifth Evaluation Report on Malta). Therefore, GRECO encourages the Maltese authorities to step up their effort and proceed with the legislative and practical measures necessary to remove the functions of confidential advice on rules of conduct and integrity standards from the tasks of the Commissioner on Standards in Public Life and to entrust other persons or bodies with these functions.

26. GRECO concludes that recommendation iv has not been implemented.

#### **Recommendation v.**

27. *GRECO recommended i) that the implementation of the Freedom of Information Act of 2008 be subject to an independent and thorough analysis and ii) that in light of the findings, additional measures be taken so that exceptions to the rule of public disclosure are interpreted and applied more specifically and narrowly.*



28. The Maltese authorities report that an independent review of the Freedom of Information Act by an external consultant is underway. Following a call for tenders launched by the Ministry for Justice, Equality and Governance in November 2020, this task has been awarded to a successful bidder on 26 January 2021. The consultant has been tasked to: carry out a comparative study of the Freedom of Information Act and its Code of Practice; prepare a review of the effectiveness of this Act as to principles of transparency and accountability; and propose further amendments in light of the findings. The authorities report that the timelines specified in the tender have been extended, and that a final report is expected in the fourth quarter of 2021.

29. GRECO takes note of the information provided by the authorities, i.e. that an outside consultant for carrying out the analysis of the Freedom of Information Act has been selected and the work on the analysis itself seems to be underway. That said, the assessment has not yet been completed. GRECO looks forward to receiving the conclusions of the analysis (part i of the recommendation) and, in particular, proposals relating to how the exceptions to the rule of public disclosure can be applied more specifically and narrowly (part ii), as required by the recommendation. At present, GRECO cannot consider this recommendation to be implemented more than partly.

30. GRECO concludes that recommendation v has been partly implemented.

#### **Recommendation vi.**

31. *GRECO recommended to provide for the disclosure, as a rule, of governmental draft legislation and other texts of particular public interest, accompanied by an appropriate level of consultations and in that context (i) that only specific and limited exceptions to this rule are possible and clearly regulated and (ii) that the outcomes of public consultation procedures are published online in a timely and easily accessible manner.*

32. The Maltese authorities report that the government regularly conducts public consultations on proposals of new legislation. Further, it is said that in some areas, such as legislation affecting small and medium enterprises, planning and the environment, public consultations are mandated by law, but this is not the case for all draft legislation. In addition, the authorities report that in February 2021, the Office of the Principal Permanent Secretary issued a circular concerning the process for centralised online public consultations, setting out a procedure for such consultations through relevant ministries, the role of the lead entity, the various stages of the consultation process, publication of the outcomes and archiving. The authorities refer to a dedicated on-line consultation platform<sup>14</sup>, which also contains the outcomes of such consultations. Moreover, the authorities refer to amendments to the Small Business Act adopted on 21 May 2021<sup>15</sup>, whereby a mandatory impact assessment report, previously applicable for subsidiary legislation, has been extended to primary legislation. The Impact Assessment Form attached to the Small Business Act has also been updated and stipulates that the assessment must be carried out on the basis of the following five pillars:

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<sup>14</sup> Accessible via the following links: [www.konsultazzjoni.gov.mt](http://www.konsultazzjoni.gov.mt) or [https://meae.gov.mt/en/Public\\_Consultations/Pages/Home.aspx](https://meae.gov.mt/en/Public_Consultations/Pages/Home.aspx)

<sup>15</sup> Act No. XXII of 2021, accessible via the following link: <https://legislation.mt/eli/act/2021/22/eng>



rationale, consultation, processing of personal data, impact, and enforcement. Prior to enacting legislation, the ministry responsible for legislative initiative must present to the Cabinet Office an Impact Assessment Form, which *inter alia* should indicate whether a consultation has taken place in the course of preparation of the draft legislation.

33. In addition, the authorities express the view that conducting public consultation on all legislation could lead to undue delays in the legislative process. In this context, reference is made to the need to legislate, for example, in order to transpose relevant European Union legislation, or implement the country's obligations stemming from other international legal instruments, as well as and when legislating for corporate organisation of the administration. Also, the authorities stress that some types of legislation, such as laws on national security matters, may have to be absolved from public consultation.

34. Finally, the authorities refer to the Strategic Plan for the Digital Transformation of the Public Administration 2019 – 2021, which includes a project for eParticipation and introduces eDemocracy as one of its key elements. Under this Plan, the government envisages a study to determine how the implementation of an eParticipation platform could promote development of public policy, enhance public trust, etc. In addition, it is planned to redesign the public consultation website to include new templates and user-friendly forms in order to direct citizens to public consultations issued by various ministries, improve public's access to information and enable a more detailed information regarding the feedback received as a result of public consultations. However, for the time being, the Project, as outlined in the Strategic Plan for the Digital Transformation of the Public Administration, has been postponed owing to budgetary constraints.

35. GRECO takes note of the information provided. The underlying reason of the present recommendation was the need for Malta to enhance transparency of the legislative process, as an inherent feature of anti-corruption policy. In this context GRECO notes the amendments to the Small Business Act (adopted in May 2021), and welcomes the new Circular regarding online electronic public consultations, as well as the reports of such consultations accessible online. However, GRECO also notes that the Small Business Act is applicable to the objectives of this Act, which is "to enhance the operational environment for medium and small enterprises" and to "provide solutions that will benefit enterprises and make it easier for them to operate." Other areas, where legislating may be of particular public interest, remain beyond the provisions of the Small Business Act regarding consultations. In addition, these amendments have only recently been put in place (21 February and 21 May 2021) and their impact cannot be assessed at such a short notice. The remainder of the authorities' comments largely refer to the system as it was at the time of the adoption of the Evaluation Report, and stresses that public consultations cannot be applied in all situations, for example, in situations of particular urgency or national security. It is also not clear whether the exceptions to carry out public consultations have been limited – and clearly regulated. Furthermore, GRECO cannot disregard the accelerated adoption of constitutional amendments in July 2020, which represents a more recent illustration of the need for greater transparency in the legislative process in Malta. In this respect, GRECO fully concurs with the view expressed by the Venice

Commission in its Opinion No. 993/2020<sup>16</sup> on Malta regarding the importance of a transparent, inclusive and deliberative legislative process and the importance of involving citizens in the legislative process, with the aid of the media, non-governmental organisations, academia etc. Overall, even though some positive legislative and practical steps to facilitate public consultation, including through electronic access appear to be underway, as well as for certain categories of draft legislation, only a modest progress has been made as regards the overall implementation of this recommendation.

36. GRECO concludes that recommendation vi has been partly implemented.

**Recommendation vii.**

37. *GRECO recommended that rules be laid down to govern (i) contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process and (ii) the disclosure of such contacts and the subject-matters discussed.*

38. The Maltese authorities report that the government has examined a number of proposals for regulating PTEFs' contacts with third parties and lobbying. Further, the authorities indicate that the Commissioner for Standards in Public Life may issue guidelines and recommendations regarding the regulation of lobbying. Thus, the Commissioner has published a consultation paper entitled "Towards the Regulation of Lobbying in Malta - A Consultation Paper"<sup>17</sup>, in which it is proposed that a separate law on lobbying be prepared. The authorities indicate that the matter of regulation of lobbying will form part of the discussions at the forthcoming Constitutional Convention.

39. GRECO notes that the Commissioner on Standards in Public Life has proposed that lobbying be regulated through dedicated legislation. This is to be welcomed. However, at this stage, there are no rules or legislation to regulate contacts between the PTEFs and lobbyists/third parties in place, not even at the drafting level. It follows that GRECO cannot consider this recommendation to be implemented, even partly.

40. GRECO concludes that recommendation vii has not been implemented.

**Recommendation viii.**

41. *GRECO recommended that a strategy be developed and implemented in order to increase the capacity, authority and public accountability of State institutions entrusted with regulatory and control functions in relation to the management of public resources.*

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<sup>16</sup> Opinion No. 993/2020 of 8 September 2020 "On ten acts and bills implementing legislative proposals subject of opinion CDL-AD(2020)006", accessible via the following link:

[https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)019-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)019-e)

<sup>17</sup> Accessible via the following link: <https://standardscommissioner.com/wp-content/uploads/consultation-paper-lobbying.pdf>

42. The Maltese authorities report that the Government is committed to increasing the capacity, authority and public accountability of state institutions responsible for regulatory or control functions.<sup>18</sup> According to the authorities, the budget for these institutions has been progressively increased in 2015-2020 from 17% up to 44%. Further, the amendments of 7 August 2020 to the Permanent Commission Against Corruption Act, which broadened the definition of “corrupt practice”, established that the Chair of the Permanent Commission Against Corruption (PCAC) should be appointed by two-thirds’ parliamentary majority, and transferred the appointment and dismissal competences regarding members of the PCAC from the Prime Minister to the Cabinet of Ministers. In addition, the PCAC has also been provided with new premises. The authorities also submit that the constitutional amendments of 7 August 2020 have strengthened the constitutional status of the Ombudsman, the powers and security of tenure of the Ombudsman, who is now to be appointed and removed by two-thirds’ parliamentary majority. In addition, these two institutions have been granted the authority to refer results of their investigations to the Attorney General in cases of suspected corruption. Thus, in the beginning of March 2021, PCAC had referred a case relating to possible violations of procurement rules to the Office of the Attorney General. The updated National Anti-Fraud and Corruption Strategy<sup>19</sup> has been made public at the end of May 2021. It sets four main objectives: capacity building, communication, maximisation of national cooperation and maximisation of the EU and international cooperation. The Strategy also contains an Action Plan, with 23 concrete measures and the time-frame for their implementation.

43. GRECO takes note of the information provided. Some legislative and practical measures have been taken to address concerns underlying the present recommendation. In particular, the legislative changes regarding the appointment of PCAC members and the new capacity of PCAC and the Ombudsman to refer suspected cases of corruption directly to the Attorney General are encouraging developments. Nonetheless, the effectiveness of these reforms is yet to be tested in practice. GRECO welcomes the revision and publication of the national Anti-Fraud and Corruption Strategy and encourages the authorities to ensure its effective implementation by all relevant actors. Owing to the fact that not sufficient information is available at this stage regarding the implementation of this recommendation in practice, it can be regarded as dealt with no more than to some extent.

44. GRECO concludes that recommendation viii has been partly implemented.

#### **Recommendation ix.**

45. *GRECO recommended that the system for managing conflicts of interest be supplemented with clear provisions and guidance regarding i) a requirement upon persons exercising top executive functions to disclose conflicts ad hoc and ii) clear procedures, responsibilities and deadlines for solving situations of conflict of interest, including following complaints by the public or other institutions.*

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<sup>18</sup> Office of the Auditor General, the Internal Audit and Investigations Department, the Office of the Ombudsman, the Permanent Commission Against Corruption and the Office of the Commissioner for Standards in Public Life.

<sup>19</sup> Accessible via the following link: <https://parlament.mt/en/paper-laid/?id=34616>

46. The Maltese authorities report that Article 4 of the Public Administration Act, setting out the values of the public service, as well as the Code of Ethics of public employees and board members, contained in its First Schedule, are relevant for managing conflicts of interest. The Public Service Management Code<sup>20</sup> has become legally binding, making it mandatory for the PTEFs to disclose conflicts of interest *ad hoc*. Thus, Article 6.2 of the PSMC entitled “Professional Standards: Avoiding Conflicts Of Interest” states that “In many cases, only the individual employee is aware of the actual or potential conflict. Therefore, it is the responsibility of the employee to inform one’s Permanent Secretary, in writing, and within a week from assuming office or upon a change in duties/circumstances.” Further, the authorities inform GRECO that on 18 June 2020 the Principal Permanent Secretary adopted Directive no. 14, setting out a “Governing Framework for the Management of Revolving Door Policy for Public Employees”. This Directive applies to public employees in posts/positions within the public administration having regulatory or inspectorate functions, identified by the Revolving Door Policy Governance Board. A public employee at such a position may request a ruling from the Board to determine whether entering into a particular relationship would constitute a breach. The authorities add that members of selection boards, interviewing candidates for public employment, must declare whether they have any conflict of interest. The authorities also refer to the Public Procurement Regulations, which include a definition of a “conflict of interest”. Finally, the authorities inform GRECO that discussions are under way regarding the drafting of a policy on the management of conflict of interest in the public sector<sup>21</sup>.

47. GRECO takes note of the information provided. Neither Article 4 of the Public Administration Act, nor the Code of Ethics contained in the First Schedule of this Act, as referred to by the authorities, establish an obligation for PTEFs to disclose conflicts of interest *ad hoc*. What is more, apart from the initial declaration by applicants for headship positions, no procedures and deadlines have been put in place for solving situations of conflict of interest. The wording of Article 6.2 of the PSMC does mention “the responsibility of the employee to inform one’s Permanent Secretary” of a conflict of interests, but a policy on the management of conflict of interest in the public sector, yet to be established, could be a step in the right direction. In the absence of any guidance on the matter, as well as a consistent management of situations of conflict of interests, public employees are left to their own devices in determining whether there is a potential or actual conflict of interests, and whether they should report it. This is clearly insufficient.

48. In view of the above, GRECO concludes that recommendation ix has not been implemented.

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<sup>20</sup> Accessible via the following link:

<https://publicservice.gov.mt/en/Documents/Public%20Service%20Management%20Code/PSMC.pdf>

<sup>21</sup> The Maltese Government envisages developing the Conflict of Interest Resolution Policy, currently in the second phase, by October 2021. The authorities report that an Inter-Ministerial Steering Committee has been set up for this purpose, chaired by the Permanent Secretary for the Ministry for the National Heritage, the Arts and Local Government and for the Ministry for Research, Innovation and the Co-ordination of Post Covid-19 Strategy. Its composition also includes the Permanent Secretary for the Ministry for Justice and Governance; the Permanent Secretary for the People and Standards Division; the Permanent Secretary for the Ministry for Transport, Infrastructure and Capital Projects; two additional members from broader public sector; and an academic.

## **Recommendation x.**

49. *GRECO recommended (i) that the current provisions on incompatibilities and side-activities applicable to persons with top executive functions be made more coherent and robust for all categories of such persons, with clearer and stricter limits on permissible parallel activities, and (ii) that specific procedures, responsibilities and deadlines for solving such situations, upon ad-hoc disclosures and/or complaints by the public or other institutions be introduced.*

50. The Maltese authorities report that on 2 November 2020, the Principal Permanent Secretary issued a circular to all Permanent Secretaries prohibiting Executive Heads and Executive Chairpersons of public entities to undertake parallel occupations outside the public sector while in office. The authorities further report that the subject of whether members of the House of Representatives should be allowed to pursue other professional activities is to be discussed by the forthcoming Constitutional Convention. Currently this issue is being examined at the Parliamentary Committee on Standards of Public Life.

51. GRECO takes note of the information provided. As regards the first part of the recommendation, the recent circular of the Principal Permanent Secretary prohibiting parallel occupations of Executive Heads and Executive Chairpersons demonstrates the intention of the authorities to address the matter of secondary occupation; however, the circular covers only a limited part of PTEFs. For this reason, the adoption of yet another normative act regarding incompatibilities for a limited category of PTEFs, departs from the objective of achieving greater coherence of the already existing provisions on incompatibilities and side-activities. As to the second part of the recommendation, no tangible progress has been reported by the authorities, even though a discussion appears to be planned in the course of the Constitutional Convention. Overall, little has been done and this recommendation cannot be considered complied with, even partly.

52. GRECO concludes that recommendation x has not been implemented.

## **Recommendations xi and xii.**

53. *GRECO recommended that the current regime of asset and interest declaration be further developed by (i) extending to persons entrusted with top executive functions, including persons of trust who are associated with a minister's decision-making, the duty to file a detailed declaration with the Commissioner for Standards in Public Life, and considering including information on the spouses (it being understood that the latter information would not necessarily be made public), and (ii) ensuring that all declarations are made systematically, easily and publicly accessible on-line. (recommendation xi)*

54. *GRECO recommended to ensure (i) that asset and interest declarations of persons entrusted with top executive functions are subject to effective and proactive checks by the Commissioner for Standards in Public Life and that the institution is therefore provided with adequate legal, human and other means and required to report publicly and regularly about its work (ii) that clear consequences and effective, proportionate and dissuasive sanctions are*

*applicable to guarantee the accuracy and correctness of information declared as well as the actual filing of a declaration, including the possibility to refer a matter to criminal investigation. (recommendation xii)*

55. The Maltese authorities report that members of the House of Representatives, including ministers, parliamentary secretaries, and parliamentary assistants, as well as “persons of trust”, are subject to supervision by the Commissioner for Standards in Public Life. On 1 March 2021, the Parliamentary Committee on Standards of Public Life discussed Recommendations issued by the Commissioner on Standards in Public Life regarding revised Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries<sup>22</sup>, which cover the issues addressed by the present recommendations, including relevant sanctions. Discussions regarding Commissioner’s recommendations are also on-going at Committee level in the House of Representatives. As to the top executive functions within the public administration, the authorities point out that these public office-holders are regulated by the Public Administration Act (PAA). In this respect, the Government intends to put forward amendments to the PAA, establishing the seventh schedule that shall specify the holders of top executive functions and a Board that would examine their asset and interest declarations. The future procedure is said to require all appointees falling under this category to provide a declaration of assets and interests. Following the examination of declarations, should the Board consider that declarations submitted are inaccurate or incomplete, it is to refer such declarations and findings to the Principal Permanent Secretary. Should the findings indicate possible criminal offences, they are to be transmitted to the Commissioner of Police for further investigation. It is also intended for the Board to operate an online register of declarations. The Board is to report to the Prime Minister on its activities and may make relevant recommendations.

56. GRECO takes note of the information provided by the authorities. In relation to the first part of recommendation xi, no information has been provided as regards the extension of the persons obliged to file declarations, nor to cover assets and interests of spouses in the declarations. As to the second part of this recommendation, no steps have been reported to make declarations systematically accessible on-line.

57. As to recommendation xii, no information has been provided on review and supervisory functions of the Commissioner for Standards in Public Life regarding checks into the declarations of assets and interest of the PTEFs under its purview. It is noted that some legal amendments are envisaged regarding checks of declarations of public office-holders in top executive functions, but these are not formally initiated as yet. In addition, proposals of the Commissioner regarding the revised Codes of Ethics do not apply to all PTEFs and they have not yet materialised. Overall, the information provided is insufficient for GRECO to conclude that recommendations xi and xii have been implemented, even partly.

58. GRECO concludes that recommendations xi and xii have not been implemented.

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<sup>22</sup> This document, dated 29 July 2020, is accessible via the following link: <https://cdn.newsbook.com.mt/wp-content/uploads/2020/07/29215726/report-revised-codes-of-ethics.pdf>

### **Recommendation xiii.**

59. *GRECO recommended (i) that the criminal investigation and prosecution system in relation to persons entrusted with top executive functions be reformed along the lines identified by the Venice Commission in its assessment from December 2018, giving a central active role to the prosecutors and without retaining the parallel jurisdiction of the Permanent Commission against Corruption and (ii) that it be made clear for criminal investigative bodies that the launching of an inquest or investigation can be based on a reasonable suspicion and does not require that evidence is readily submitted to them.*

60. The Maltese authorities refer to the State Advocate Act of 19 July 2019, which led to separating the advisory and prosecution roles previously performed by the Attorney General. Following the setting up of the Office of the State Advocate in December 2019, the advisory function has been transferred to this newly established office, while the functions of public prosecutions were retained by the Attorney General. The Act also enables the Attorney General to prosecute crimes before the inferior courts, previously done by the Police. Further, following amendments introduced in the Attorney General Ordinance in 2019, the Office of the Attorney General assumed, through a phased approach, responsibility for prosecuting offences carrying more than two years' imprisonment, while the police maintain responsibility for investigative work during the transitional period. According to the authorities, these provisions are being implemented as of early 2020 over a three-year period to allow for the smooth transition of responsibilities from one body to another. In this context, 20 new lawyers have been recruited by the Office of the Attorney General allowing the setting up of a total of four units to manage the increased workload. One of the units is exclusively in charge of prosecution. It is also specified that the Attorney General's Office has already taken over the prosecution of corruption offences. The most recent amendments to the Criminal Code, promulgated on 4 June 2021<sup>23</sup>, introduce the procedural role and powers of the Attorney General in criminal proceedings. The authorities also refer to new safeguards put in place, triggered by the move of a prosecutor from the Attorney General's Office to the defence team of one of the primary suspects in the assassination of the investigative journalist Daphne Caruana Galizia<sup>24</sup>. Following a recommendation of the Board of Inquiry, these safeguards, in particular, prohibit prosecutors from entering any negotiations on their terms of retention as lawyers by a private client and any preparations to act on behalf of any private client, prior to tendering their resignation.

61. In addition, the authorities report that starting from 1 October 2020<sup>25</sup>, the Attorney General undertook the task of prosecuting serious criminal offences, including homicide, terrorism, money-laundering, bribery, corruption, fraud and misappropriation (with a loss of at least €50 000), evasion of customs duty (with a loss of at least €500 000) etc. The authorities add that as of the same date<sup>26</sup>, decisions of the Attorney General not to prosecute, and other

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<sup>23</sup> The text of the Act xxviii of 2021 amending the Criminal Code is accessible via the following link: <https://parlament.mt/en/13th-leg/acts/act-xxviii-of-2021/>

<sup>24</sup> See, for instance, the following article in the media: <https://timesofmalta.com/articles/view/state-prosecutor-joins-yorgen-fenech-defence-team.790394>

<sup>25</sup> Pursuant to the "Prosecution of Offences (Transitory Provisions) Regulations".

<sup>26</sup> Following the entry into force on 1 October 2020 of the Act No. XLI of 7 August 2020, which introduced amendments to the Constitution, the Criminal Code and the Code of Organisation and Civil Procedure.



decisions, may be subject to judicial review. The authorities indicate that when reporting a corrupt practice, the Ombudsman, the Commissioner for Standards in Public Life and the Auditor General have the status of an injured party in criminal proceedings, allowing them also to seek judicial review regarding decisions of the Attorney General.

62. Furthermore, the authorities report that the Permanent Commission Against Corruption (PCAC) retains its role of investigating complaints of corruption, and, following amendments to the Permanent Commission Against Corruption Act of 7 August 2020, is entitled to transmit reports of its investigations to the Attorney General, “if in the Opinion of the Commission, the conduct investigated is corrupt or connected with or conducive to corrupt practices.” Moreover, the PCAC may also seek judicial review in case the Attorney General refuses to initiate prosecution.

63. As to the grounds for opening an investigation or inquiry, the authorities point out that according to the general rule in the Maltese legal system, the exercise of investigative powers needs to be based on a reasonable suspicion that an offence may have been committed. This requires existence of information or proof, reasonably indicating that the offence may have taken place. The authorities refer to the statement of the Commissioner of Police that the Police would launch investigations when allegations would give rise to reasonable suspicion of a corruption offence, without waiting for a formal request to investigate.

64. GRECO takes note of the information provided. With regard to the first part of the recommendation, GRECO notes with satisfaction that important steps to reform the criminal justice system have been taken, notably, by initiating a gradual transfer of the prosecuting function from the Police to the Attorney General’s Office, disconnecting the prosecuting and advisory functions of the latter by establishing a separate advisory body, and introducing judicial review for non-prosecution decisions of the Attorney General.<sup>27</sup> However, through the latest amendments to the Criminal Code (see paragraph 60) the Police continues having considerable prosecutorial functions in criminal proceedings, in parallel to the Attorney General’s Office. GRECO notes that this state of play, for the time being, is in contrast with one of the two recommendations of the Venice Commission, reflected in the present recommendation, that the office of an independent public prosecutor would be responsible for all public prosecutions (institution, suspension or termination of criminal proceedings). The recently introduced possibility of seeking judicial review against decisions not to prosecute could bring an important contribution in ensuring that corruption offences do not go unpunished. However, this promising legal avenue is cut short by limiting it, in respect of several institutions, only to cases where a corruption report has been submitted by these institutions<sup>28</sup>. GRECO also notes that, even though the new procedure of appointment of the Attorney General is a clear improvement of the previous system, the executive branch may still exert considerable influence on the Attorney General through this procedure.<sup>29</sup> Such

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<sup>27</sup> These measures were commended by the Venice Commission in its Opinion No. 993/2020 of 8 September 2020 “On ten acts and bills implementing legislative proposals subject of opinion CDL-AD(2020)006.”

<sup>28</sup> As noted by the Venice Commission in its Opinion No. 993/2020 (paragraph 96), the Commissioner for Standards in Public Life, the Ombudsman and the Auditor General should be able to appeal against non-prosecution decisions in all cases, not only those where they reported these acts to the Attorney General.

<sup>29</sup> Reference is made to the Report on follow-up to Parliamentary Assembly Resolution 2293(2019) presented to the Committee on Legal Affairs and Human Rights on 30 November 2020. Paragraph 18 of this Report describes

arrangements continue carrying inherent risk to the necessary autonomy of the prosecution<sup>30</sup>, instrumental for effective prosecution of possible corruption cases involving PTEFs. Further, contrary to this recommendation, the PCAC has maintained jurisdiction regarding investigations into possible corruption cases, and while the PCAC and the Ombudsman were enabled to report possible corruption cases to the Attorney General, only the PCAC is obliged to do so, provided that in its own assessment “the conduct investigated is corrupt or connected with or conducive to corrupt practices”. In addition, the magisterial inquest function has not been absorbed by the Attorney General’s Office.

65. As to the second part of the recommendation, GRECO notes that according to the authorities’ clarifications, in the Maltese legal system, the exercise of investigative powers needs to be based on a reasonable suspicion that an offence may have been committed, which requires existence of such information or proof, reasonably indicating that the offence may have taken place. This represents a crucial first step in ensuring that corruption cases are duly investigated. The authorities have provided a few examples of specific cases relating to corruption, where investigations have been initiated upon receiving information raising “reasonable suspicion”.

66. To conclude, promising legal amendments have been adopted by Malta to reform and streamline the criminal justice system. While noting some progress in the investigations of some of the high-profile corruption cases in Malta, GRECO cannot disregard information concerning persisting challenges faced by the criminal justice system, as reflected in a recent report of the Parliamentary Assembly of the Council of Europe (PACE) on “Daphne Caruana Galizia’s assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges.”<sup>31</sup> GRECO also notes the preliminary findings of the independent public inquiry into Ms Caruana Galizia’s assassination, initiated in December 2019, which suggest that “the assassination was intrinsically, if not exclusively linked to [Ms Caruana Galizia’s] investigative work, which included allegations of administrative irregularities or abuse in major development projects which involved elements of big business.” It is also reported that the evidence revealed an “extended culture of impunity” not only among high officials in public administration, including persons of trust, but also to a restricted circle of politicians, businessmen and criminals. One of the recommendations of the inquiry is that “every regulatory authority involved and the police must continue with their investigation to identify all the people who were in some way involved in the assassination of the journalist and assure that they all answer for their actions in court.”<sup>32</sup> The examples of new prosecutions into

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the appointment procedure of the Attorney General, which appears to give a predominant role to the Prime Minister, whose recommendation on appointment should be followed by the President. On the other hand, the Prime Minister is only required to “give due consideration” to the advice from an appointment panel, established by the Minister of Justice (subordinate to Prime Minister).

<sup>30</sup> GRECO recalls the two following recommendations of the Venice Commission in this respect: 1. An office of an independent Director of Public Prosecutions or Prosecutor General or Public Prosecutor should be established in Malta; 2. The office of the independent DPP would be responsible for all public prosecutions (institution, suspension or termination of criminal proceedings, including corruption).

<sup>31</sup> The latest follow-up report to the PACE Resolution 2293 (2019) is accessible via the following link: <https://pace.coe.int/en/news/8131/malta-s-response-to-assembly-demands-on-daphne-s-assassination-and-the-rule-of-law-unsatisfactory>

<sup>32</sup> Official report of the inquiry in the Maltese language is accessible via the following link: <https://www.gov.mt/en/Government/DOI/Press%20Releases/Documents/pr211432a.pdf>

corruption cases initiated by the Attorney General's Office are encouraging. With many investigations into high-profile corruption cases pending over a few years in Malta by now, the urgency for making the necessary systemic changes is at its peak. Therefore, GRECO calls upon the Maltese authorities to take further steps to address this recommendation in its entirety without any further delay.

67. GRECO concludes that recommendation xiii has been partly implemented.

**Recommendation xiv.**

68. *GRECO recommended that i) legislation be issued giving criminal investigation bodies the authority to seek and use special investigative techniques (such as wiretaps and other similar measures) in the investigation of corruption offences, empowering the judicial authority to authorise their use, and making the evidence obtained thereby admissible in court, while respecting the case law of the European Court of Human Rights and that ii) it be made clear to all authorities involved in the investigation of corruption that the evidence lawfully obtained by such means is admissible evidence in court.*

69. The Maltese authorities describe the existing procedures, authorised bodies and modalities regarding the application of special investigation techniques, which were in place at the time of the adoption of the Fifth Round Evaluation Report. In particular, they maintain that the Security Service is a well organised entity and remains one of the bodies responsible for preventing and detecting serious crime (Article 3(3)(b)) and the disclosure of information by the Service for the purpose of criminal proceedings is also envisaged in the Security Service Act (Articles 4(2)(a) and 16(2)(a)).

70. GRECO notes that no steps – not even a legal analysis of what would be a possible way forward – have been taken by the authorities in respect of the present recommendation. It is recalled that the influence of the executive on law enforcement authorities (see paragraph 108 of the Fifth Round Evaluation Report), in particular the ones deciding upon the use of special investigation techniques *inter alia* for possible corruption offences, was one of the main factors for the inefficiency of the Maltese criminal justice system to effectively investigate allegations of possible involvement of PTEFs in corruption offences. GRECO once again stresses the importance of the effective use of special investigative techniques when prosecuting corruption owing to the complexity of obtaining evidence regarding this type of crime.

71. GRECO considers that recommendation xiv has not been implemented.

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For selected news articles in English please consult the following links:

<https://www.independent.com.mt/articles/2021-07-29/local-news/Public-Inquiry-holds-state-responsible-for-Caruana-Galizia-s-death-6736235558>

<https://rsf.org/en/news/landmark-public-inquiry-report-finds-maltese-state-must-shoulder-responsibility-assassination-daphne>

## Recommendation xv.

72. GRECO recommended (i) that all persons with top executive functions be subjected, as a rule, to the supervision of the Commissioner for Standards in Public Life, who should be equipped with the appropriate means and possibilities to conduct inquiries and to propose effective, proportionate and dissuasive sanctions, and (ii) that the jurisdiction of the commissioner extends to on-going situations even where these result from actions which predate the enactment of the standards in Public Life Act.

73. The Maltese authorities report that since the appointment of the first Commissioner for Standards in Public Life in October 2018, this institution assumed a central role in the enforcement of standards in public life. It is considered that the Commissioner has not been hampered by not having a competence to impose sanctions and has become an institution of “high moral authority”. The authorities express the view that a violation found by the Commissioner, even if not accompanied by a fine or another sanction, still grants just satisfaction to society and to the complainant and asserts the authority of the Code of Ethics. The authorities also underline the gravity of the reputational damage in case of a breach of ethical and integrity rules, established by the Commissioner. In addition, the authorities suggest that the Commissioner’s power to refer cases of suspected corruption for further investigation and prosecution, and to challenge decisions not to prosecute such cases (as of 1 October 2020) further elevates its role in proceedings under the Standards in Public Life Act.

74. As to the second part of the recommendation to cover “on-going situations even where these result from actions which predate the enactment of the Standards of Public Life Act,” the authorities point out that such a possibility is already provided for under current legislation, referring to Article 14(1) of the Standards of Public Life Act<sup>33</sup>.

75. GRECO takes note of the information provided. As regards the first part of the recommendation, it is to be noted that the Commissioner has competence to scrutinise conformity with the integrity rules of some PTEFs, including ministers, parliamentary secretaries and, due to special arrangements, “persons of trust”, but not any further than that. However, the legal amendments made to the PAA on 9 April 2021 state that “persons of trust shall not be deemed to be public officers or public employees.” This provision limits even further the transparency and accountability of “persons of trust”, effectively placing them outside of the Commissioner’s supervision as regards observance of the integrity rules. In addition, information provided by the authorities is insufficient to assess whether the Commissioner’s Office has been given appropriate means and possibilities to conduct inquiries and to impose effective, proportionate and dissuasive sanctions. Finally, GRECO notes that apart from the reputational damage in case of a breach of ethical and integrity rules established by the Commissioner, there are still no other sanctions at the Commissioner’s disposal. Reference is made to several cases<sup>34</sup>, whereby, having established significant violations by senior officials (abuse of power, acceptance of expensive gifts, publication on

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<sup>33</sup> This Article provides, in particular, that “Nothing in this Act shall permit the Commissioner to investigate an allegation on an act which occurred prior to the date on which this Act comes into force”.

<sup>34</sup> The reports regarding cases examined by the Commissioner and their outcomes are accessible via the following link: <https://standardscommissioner.com/case-reports/>

Facebook of identity card numbers etc.), the Commissioner closed cases either following resignation of the officials in question, after publication of the Commissioner's report by the Parliamentary Committee on Standards in Public Life, or as a result of an apology issued by those found in violation. The situation remains the same as at the time of the adoption of the Evaluation Report.

76. As to the second part of the recommendation, GRECO notes that the Standards of Public Life Act explicitly limits the Commissioner's jurisdiction to acts having occurred after the entry into force of this Act. Contrary to what the authorities indicate in this respect, GRECO cannot interpret Article 14(1) of the SPLA so as to allowing the Commissioner to inquire on-going situations where these result from cases that occurred prior to the entry into force of the Standards of Public Life Act. The text of Article 14(1) is worded in an exhaustive manner, allowing no such exceptions. Thus, the second part of the recommendation has not been complied with.

77. GRECO concludes that recommendation xv has not been implemented.

*Corruption prevention and promotion of integrity in respect of law enforcement agencies*

**Recommendation xvi.**

78. *GRECO recommended that the Maltese Police Force establish a policy to communicate at regular interval and through authorised channels about its work including on steps taken with regard to concrete cases which are of particular interest to the public or to victims of crime and closely related persons.*

79. The Maltese authorities refer to the Maltese Police Force Transformation Strategy, which is said to include increasing trust and confidence of the public, legitimacy and responsiveness among its objectives. In November 2019, the Malta Police Force published on its intranet its Standard Operating Procedures (SOP) for communications with the media and the general public through different types of media, binding for all employees of the Police Force. The SOP provide that "in cases of a serious accident or crime, the Media Officer will proceed on site to gather information from the investigating officers. The information approved by the investigating officers shall only be handed out to the journalists on site as part of the crime conference." The SOP prohibit any employee of the Police Force to divulge directly to the press or any associates information about any investigation or internal information, without prior authorisation. In most cases, the Media Officer acts as Police Spokesperson. In serious cases, including those of national interest, press conferences are held by the Police Commissioner. Following the appointment of the new Commissioner of Police in June 2020, a number of press conferences on major crimes have been held with participation of the Police Commissioner, other senior Police officials or the Police Spokesperson. For example, on 24 February 2021, a press conference was held by the Police Commissioner regarding arrests of suspects in the case of the murder of the investigative

journalist Daphne Caruana Galizia<sup>35</sup>. In addition, dissemination of information on social media (e.g. Facebook page of The Malta Police Force) has been formalised.

80. Further, the authorities inform GRECO that the Victim Support Agency (VSA) has become operational, as officially inaugurated in April 2021. The VSA consists of a multidisciplinary team composed of members of the Police Victim Support Unit, Department of Probation & Parole, Hate Speech & Crime Unit, legal professionals and public officers. The tasks of the Agency include providing support and assistance to victims, including information and follow up regarding their cases; assisting in preparation of a Victim Personal Statement, reflecting victim's views as to how the crime affected them, and providing guidance on what to expect in court. The Agency may also accompany victims in court and provide information about the release of perpetrators from prison. The VSA collects statistics on a monthly basis, which can be disaggregated by the number of beneficiaries of its support services, age groups, nationality, type of services, type of criminal offence, referrals from and to the VSA, including social media reports regarding hate crimes and other crimes reported either by victims themselves, or by witnesses. Prior to the merger with the VSA, the Police Victim Support Unit assisted victims in 371 cases in 2017, 545 in 2018, 465 in 2019, 464 in 2020 and 183 from January to March 2021. Following the merger, victims in 286 cases were assisted by the VSA from April to June 2021. The VSA maintains contacts with other entities to provide for specialised services, such as free-of-charge legal aid for those who have not sufficient means to cover such costs. Further, it is reported that the VSA increased promotion of its services on local television broadcast and newspapers with the purpose of raising awareness and strengthening advocacy for victims' rights, thus encouraging other victims to seek support.

81. GRECO takes note of the information provided. The adoption of the Standard Operating Procedures for communications with the media, the designation of the Media officer as the spokesperson of the police and the holding of press conferences on important cases are welcomed measures providing more transparency of the police and its activities to the public. GRECO also notes that one of the objectives of the Maltese Police Force Transformation Strategy is enhancing public trust in the Police through, *inter alia*, consulting public interest bodies, holding periodic press briefings, setting up an anonymous reporting system, establishing an internal audit unit and intensified drug and alcohol screening procedures in respect of police officers. Finally, the setting in motion of the Victim Support Agency, proposing different types of assistance, is a tangible step towards improving assistance available to victims of crime, which is to be welcomed. However, this measure is only very recent, and it is still unclear to what extent it covers communication with victims and closely related persons, and who are considered to be "closely related persons". The effectiveness of communication with victims of crimes and closely related persons needs to be evaluated in light of concrete examples emerging from the Agency's functioning in practice.

82. GRECO concludes that recommendation xvi has been partly implemented.

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<sup>35</sup> <https://timesofmalta.com/articles/view/watch-police-commissioner-addressing-conference-ahead-of-major.853897>  
[https://www.maltatoday.com.mt/news/national/107935/live\\_police\\_give\\_briefing\\_on\\_murder\\_arraignments\\_angelo\\_gafa#.YEYBr7DdaQ](https://www.maltatoday.com.mt/news/national/107935/live_police_give_briefing_on_murder_arraignments_angelo_gafa#.YEYBr7DdaQ)

## **Recommendation xvii.**

83. *GRECO recommended that a dedicated anti-corruption strategy be adopted and implemented for the Maltese Police Force, based on proper risk assessments, so as to promote a culture of integrity and to restore public trust in the Force through a robust set of rules, effective compliance, merit-based career systems, sufficient operational independence and political neutrality, as well as increased awareness and gender balance at all levels.*

84. The Maltese authorities report that a number of policies have been developed and are currently being implemented by the Police Force, including the Horizontal Movement Policy and the Anti-Fraud and Corruption Policy, both published on 15 November 2020. The latter defines corruption and fraud in the context of policing, provides a framework for identifying and preventing corruption and sets out possible actions to be taken, should a police officer suspect corruption and/or fraud committed by a colleague. Breach of policy requirements by members of the Police Force carries disciplinary responsibility for gross misconduct. The Anti-Fraud and Corruption Policy also includes rules and guidance on gratuities, gifts and hospitality, and envisages maintaining a register for recording all offers of gifts and other services, accepted, or declined. According to the additional information provided by the authorities, by mid-March 2021, some 138 entries were recorded in the register since its setting up in mid-November 2020. Further, the Anti-Fraud and Corruption Policy sets up a position of an Integrity Officer, who *inter alia* should be approached in cases of doubts regarding gifts, hospitalities and is also the addressee of internal reports of suspected violations of integrity rules and corruption, which can also be submitted anonymously. Officers may also directly report to the Internal Audit and Investigations Unit. Cases where internal investigation may reveal corruption offences must be notified to the Police Commissioner. The authorities also refer to training provided by the Police Force, as reflected under recommendation xix below.

85. Furthermore, the authorities report that an Internal Audit Office (IAO) has been set up within the Police Force and the Internal Auditor assumed his/her duties as of 3 May 2021. According to the action plan for the setting up of the IAO, its entry into full operation is expected by February 2022. The IAO is part of the Internal Audit and Investigations Department of the Police Force, has the main task of routine audit activity, operates autonomously and reports directly to the Police Commissioner. In the course of its audit activity, should the IAO come across fraud and/or other illicit activity, criminal in nature, or should it have grounded suspicions of as much, the case will be referred to the Professional Standards Office for internal investigation. Currently the officials are being recruited by the IAO, premises are being set up, and the concept, roles, responsibilities and *modus operandi* of the IAO are being discussed with the Commissioner of Police and other senior officials. Several specific objectives are simultaneously being pursued by the IAO through dedicated work-streams in light of its becoming fully operational, including the setting up of the Internal Audit Committee (IAC, formed in June 2021 to oversee operations of the IAO); formulating mechanisms for accountability and transparency within the Police Force (Internal Audit Charter already approved by the IAO and endorsed by the IAC; Internal Audit Manual in preparation); reaching out to Malta Police Force Executive (presentations on the operation of the IAO given in the course of June 2021 to senior management of the Police Force



Governance Board and Senior Executive Team); and carrying out a preliminary risk-assessment of operations within the Police Force. The IAO also started gathering various information regarding the functioning of different structures in the Police force, with a view to devising a detailed database of perceived risks and setting up the annual auditing plan on that basis. Information gathered through media and other intelligence-gathering activity will also be considered when determining risks. The Internal Auditor envisages holding one-to-one meetings with heads of Police sections, including the Assistant Commissioners and the civilian officials managing departments of the Police Force. It is planned, initially, to conduct preliminary audits on the top-rated risk elements and, based on the outcome of these audits, to draw up an annual audit plan. The IAO will then be operationally deployed. According to the authorities, the ultimate objective for the IAO is to become a multi-disciplinary body, adequately equipped to conduct performance, compliance and financial-based audits, investigations, and provide consultancy and support to the Police Force Management.

86. As regards promoting “better gender balance” within the Police Force, a working group entitled “Equality and Diversity Working Group” has been set up in 2017 to address issues relating to gender balance. The Malta Police Force’s recent strategy also includes “achieving better gender balance” among its aims. This includes the revision of existing human resources policies to provide equal recruitment opportunities for men and women. The authorities report that during internal calls for vacant positions, emphasis is put on the vacancies being open to both male and female candidates. As a result, police sections<sup>36</sup> that were male-only over the last decade, recruited a number of female officers. The authorities also make references to Maltese legislation aiming to promote gender equality.<sup>37</sup>

87. GRECO takes note with satisfaction of the adoption of the Horizontal Movement Policy and the Anti-Fraud and Corruption Policy and of the setting up of the IAO, expected to be fully operational by February 2022. This goes in the right direction. The Anti-Fraud and Corruption Policy contains rules and useful guidance on gifts and hospitality. It now clarifies that “minor courtesy gifts”, which can exceptionally be accepted and do not require accounting in the gifts and gratuities register, are gifts with the economic value of less than €100<sup>38</sup>. These developments are to be welcomed. However, whether such detailed rules should be covered in a policy document or in the Code of Ethics (see below), requires some consideration by the Maltese authorities. GRECO takes the view that the various policies need to be well adjusted to each other, as well as with the Code of Ethics, in order to avoid that ethical conduct and integrity principles are scattered in different documents. Above all, the strategies have been adopted only recently, and even though some initial examples have been provided by the authorities, it is too early to assess their consistent implementation in practice. GRECO has come across reports in the Maltese and international media of corruption cases involving the

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<sup>36</sup> Notably, Major Crimes, Traffic and K9 Sections.

<sup>37</sup> In particular, they refer to the Equality for Men and Women Act (Chapter 456 of the Laws of Malta), the Gender Identity, Gender Expression and Sex Characteristics Act (Ch. 540), the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (Ch. 567) and the Gender Based Violence and Domestic Violence Act (Ch.581). This legal framework is in the process of being further strengthened through three new laws which are currently Bills at an advanced stage of discussion in parliament. These are the Equality Bill (Bill 96), The Human Rights and Equality Commission Bill (Bill 97) and the Bill to Amend the Constitution and Various Laws to ensure de facto Equality between Men and Women in Politics (Bill 119).

<sup>38</sup> Separately or jointly, adding up different gifts or courtesies extended / received within one year.

Police Force<sup>39</sup>, which highlights the timeliness of the adoption of the anti-fraud and anti-corruption policy document. GRECO also notes that this recommendation covers a wide range of other issues, including a risk-assessment-based strategy, merit-based career systems, sufficient operational independence and political neutrality, as well as increased awareness and gender balance in the Police. While the latter has been addressed to some extent, some of these aspects have been reflected elsewhere, e.g. in the Code of Ethics (see below). GRECO calls upon the authorities to further pursue the efforts to address the remaining issues and ensure the effective implementation of the anti-corruption policy in practice.

88. GRECO concludes that recommendation xvii has been partly implemented.

#### **Recommendation xviii.**

89. *GRECO recommended i) that the standards of conduct and ethics applicable to law enforcement officers be consolidated and updated in respect of gifts, conflicts of interest, third party relations and other topical subject-matters and (ii) that these be complemented with appropriate guidance and possibilities to seek confidential advice in case of ethical dilemmas.*

90. The Maltese authorities report that the new Police Code of Ethics<sup>40</sup> has been published on 26 November 2020 and updated on 10 May 2021. It specifically provides that all Police Officers are to remain unbiased and act consistently in a manner independent of any pressure that might be exerted. Officers cannot take any active part in politics and they cannot discriminate in the execution of their duty. Breaches of the Code of Ethics are said to be dealt with in a manner proportionate to the gravity of the breach. Serious misconduct may require formal action in line with established disciplinary procedures. The authorities also refer to recent policies mentioned above, as well as Business Interests and Additional Occupations Policy. Following amendments introduced to the Police Code of Ethics on 10 May 2021, the provisions regarding the Integrity Officer have been inserted in the text of the Code of Ethics, stipulating that the Integrity Officer will be responsible for ensuring that integrity is cultivated, institutionalised and implemented across the board within the Police Force. Among other duties, the Integrity Officer will provide advice, including confidentially, to all employees of the Police Force in respect of the Anti-Fraud and Corruption Policy and the Code of Ethics. The Assistant Police Commissioner for Corporate Services and Governance has been appointed as the Integrity Officer.

91. In addition, the Police Code of Ethics has been supplemented by specific provisions regarding sanctions for breaches of various gravity. In particular, Article 6.4.1 specifies that disciplinary proceedings before the Commissioner may lead to the following penalties:

- a fine not exceeding seven days' pay;
- stoppage of weekly rest days, not exceeding seven days;

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<sup>39</sup> See, in particular, the following: [https://timesofmalta.com/articles/view/traffic-police-racket-money-laundering-probe-opened-into-officers.793220.amp?twitter\\_impression=true](https://timesofmalta.com/articles/view/traffic-police-racket-money-laundering-probe-opened-into-officers.793220.amp?twitter_impression=true) and <https://www.reuters.com/article/us-malta-fraud-idUSKBN2060ZD>

<sup>40</sup> The text of the Code of Ethics in English is available via the following link: <https://pulizija.gov.mt/en/police-force/PublishingImages/CODE%20OF%20ETHICS%20DIGITAL.PDF>

- severe reprimand;
- reprimand;
- caution.

92. A newly introduced Article 6.4.2 of the Code of Ethics stipulates that in cases of serious violations, the following penalties may be imposed:

- dismissal;
- requirement to resign, either forthwith or on such date as may be specified in the decision as an alternative to dismissal;
- reduction in rank or seniority;
- deferment of an increment or the reduction in the offender’s rate of pay.

93. These penalties shall only be recommended by the Public Service Commission in terms of article 110 of the Constitution (regulating the power of appointments and dismissals to public offices and disciplinary control of persons appointed to these positions). However, the Public Service Commission may also choose to impose a penalty listed in Article 6.4.1.

94. GRECO takes note of the information provided by the authorities. The adoption of a new Code of Ethics, eighteen years after the previous Code of Ethics, is to be welcomed. The new Code contains, *inter alia*, provisions concerning integrity<sup>41</sup>, ancillary activities<sup>42</sup>, conflict of interest<sup>43</sup> and prohibition of taking advantage of their powers for personal benefit<sup>44</sup>. Nonetheless, GRECO takes the view that these provisions would benefit from further consolidation as regards their relevance in respect of other rules of conduct, contained in several documents, as well as clarification and guidance on matters they cover. Moreover, the Code entirely omits any norms of conduct and guidance regarding gifts and hospitalities, which instead are included in the recently adopted Anti-Fraud and Corruption Policy. GRECO notes that, as per the Foreword to the Code of Ethics by the current Police Commissioner, it is intended that the Code be subject to review every five years. Overall, it can be considered that the measures taken meet the requirements of the recommendation. GRECO encourages the authorities to ensure rigorous implementation of the new Code of Ethics by the Police Force and continue consolidating relevant provisions on the basis of practical experience.

95. GRECO concludes that recommendation xviii has been dealt with in a satisfactory manner.

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<sup>41</sup> Article 2.1.4 of the Code, entitled “Integrity” states that “Police officers are obliged to consistently act in a rightful manner, independent of any pressure that might be exerted on them.”

<sup>42</sup> Article 3.3.7 of the Code states that “Police officers shall not hold a business interest or partake in an additional occupation, unless in line with the Force’s Business Interests & Additional Occupations Policy.”

<sup>43</sup> Article 3.3.8 of the Code states that “Police officers shall not create an actual or apparent conflict of interest with police work and responsibilities, or adversely affect their ability to discharge policing duties effectively and impartially, through their membership of groups or societies, or associations with groups or individuals.

<sup>44</sup> Article 4.2.2 of the Code states that “Police officers shall not take any advantage of their powers with the purpose of personal benefit or otherwise and shall always act in compliance with the Force’s Anti-Fraud & Corruption Policy.”

### **Recommendation xix.**

96. *GRECO recommended strengthening the training programmes and awareness raising measures on integrity and professional ethics (covering conflicts of interest and other corruption prevention-related matters) for law enforcement bodies, taking into consideration their specificity, the variety of duties and their vulnerabilities.*

97. The Maltese authorities report that the Police Force gives priority to topics of police ethics and Human Rights in all induction and in-service training. Thus, the induction training allocates 12 hours to the topic of fundamental rights and further 12 hours to ethics. The Police Ethics curriculum is said to have been modelled on the Common Curriculum on Ethics and Integrity of the European Union Agency for Law Enforcement Training (CEPOL). Further, once in two weeks around 20 officers are said to attend in-service training, which dedicates three hours to the newly-established policies and the Code of Ethics (see paragraph 83) and refresher session on fundamental rights. According to the authorities, since November 2020, a total of six training sessions have been held, with a total of 102 attendees. In addition, the authorities also refer to an on-line communication project entitled “Did You Know?” , also using social media as one of the dissemination platforms, which has a purpose of updating members of the Police Force on internal policies and is also used as an exchange platform for clarifying issues raised by officers through official replies from the Police Administration.

98. GRECO takes note of the information provided by the authorities. It welcomes that regular in-service training now has been included in addition to the induction training sessions on ethics and integrity. Obviously, training on the provisions of the new Code of Ethics and the recently adopted policies would contribute to increasing awareness of ethical standards expected of members of the Police Force, including on conflicts of interest and other matters relevant to corruption prevention. GRECO encourages the Maltese authorities to further pursue their efforts in providing regular training to the Police Force in this respect.

99. GRECO concludes that recommendation xix has been dealt with in a satisfactory manner.

### **Recommendation xx.**

100. *GRECO recommended (i) that objective, fair and transparent criteria, based on merit and adequate open competitions, be clearly provided for, and effectively used for all recruitments and promotions in the Maltese Police Force, including at the lower and higher ranks; (ii) that mobility and transfers involve the co-decision of a body.*

101. The Maltese authorities report that the recently adopted Horizontal Movement Policy provides for merit-based horizontal movements. It states that all internal vacancies are to be filled following calls for applications, followed by a fair and transparent selection process. Members of the Police Force following graduation from the Basic Training Course are to begin their work at District Policing, in accordance with their relevant specialisations. During the two-year probationary period, officers are to follow a mandatory Mentorship Programme. Once in office for at least three years, officers become eligible for horizontal transfers to

specialist branches, following the completion of the Mentorship Programme. In particular, the Horizontal Movement Policy is said to provide that calls for applications are to be advertised to all members of the Police Force and shall not be discriminatory.; if the pre-requisites relating to length of service and discipline are fulfilled, the officer will be admitted to a selection process comprising an interview, performance review, skill level review, experience review, physical efficiency test (where applicable) and firearms proficiency test (where applicable).

102. As to the modalities of mobility and transfers, the authorities refer to the setting up of an *ad hoc* Selection Board, composed of the Assistant Commissioner for Human Resources (or a delegated officer) and two officers in charge of the vacant position. The Horizontal Movement Policy requires that the process is fair, impartial and non-discriminatory. Since the adoption of the Horizontal Movement Policy, selection boards were set up with regard to 28 calls for applications. In addition, the authorities underline that as the Police Force forms part of public service, promotions within the Police Force are regulated by the Public Service Commission Appointments Regulations as well as the Manual on Resourcing and Procedures (last updated on 30 June 2021). The latter provides for electronic dissemination of vacancy notices, processing of applications through a dedicated recruitment portal and documenting outcomes of different tests and exams taken in the process. According to the authorities, candidates wishing to contest the results of competitive promotion procedures may do so with the Public Service Commission.

103. Finally, the authorities submit that, through relevant amendments to the Police Act and the Constitution<sup>45</sup>, the procedure of appointment of the Police Commissioner has been amended considerably with a view to bringing it in line with the recommendations contained in the Venice Commission Opinion No. 940/2018<sup>46</sup>. According to these amendments, to fill the vacant post of the Police Commissioner, the Public Service Commission is to issue a public call for applications, indicating the necessary qualifications, experience and eligibility requirements. Once applications are received, the Public Service Commission is to draw up a shortlist, indicating two most suitable candidates, which it refers to the Cabinet. The Cabinet is to nominate the most suitable candidate for a hearing before the Parliamentary Public Appointments Committee. Should the Committee advise in favour of the appointment of the selected candidate, the Prime Minister is to finalise the appointment, after a consultation with the Public Service Commission. The current Police Commissioner, as well as the Deputy Police Commissioner have been appointed in accordance with this new procedure<sup>47</sup>.

104. GRECO takes note of the information provided by the authorities. The reform of the procedure for selection and appointment of the Police Commissioner, as well as the Deputy Police Commissioner is to be welcomed. Moreover, GRECO also notes that the Horizontal Movement Policy establishes that filling vacant positions in the Police Force are to be

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<sup>45</sup> These amendments were carried out through the Act No. XIX, available via the following link:

<https://parlament.mt/13th-leg/acts/act-xix-of-2020/>

<sup>46</sup> Opinion No. 940/2018 of the Venice Commission, adopted at its 117th Plenary Session on 14-15 September 2018.

<sup>47</sup>[https://www.maltatoday.com.mt/news/national/103140/malta\\_has\\_a\\_new\\_police\\_commissioner\\_angelo\\_gaf\\_formally\\_appointed#.YB1vT9jdtaQ](https://www.maltatoday.com.mt/news/national/103140/malta_has_a_new_police_commissioner_angelo_gaf_formally_appointed#.YB1vT9jdtaQ)

conducted through a fair, impartial and non-discriminatory process, specifies the criteria to be applied (see paragraph 96), and involves a co-decision of a body (*ad hoc* Selection Board) in accordance with the second part of the recommendation. GRECO welcomes these new procedures. However, they appear to be limited to initial recruitment and horizontal transfers. No new measures seem to have been put in place to ensure that similar requirements are clearly provided for, and effectively used for all promotions in the Police Force, including lower and higher ranks. The Public Service Commission Appointments Regulations and the Manual on Resourcing and Procedures, referred to by the authorities, were already in force at the time of the adoption of the Evaluation Report. Besides, the Appointments Regulations only contain provisions on withholding of promotions, but not on the promotions *per se*. Thus, the first part of this recommendation has not been fully addressed, as Malta still needs to demonstrate a consistent application of the procedures as regards promotions in the Police Force as a whole, as required by the present recommendation.

105. GRECO concludes that recommendation xx has been partly implemented.

#### **Recommendation xxi.**

106. *GRECO recommended that the exercise of parallel activities is regulated by more explicit and strict criteria and that additional measures be taken to promote such rules and to ensure effective compliance with these.*

107. The Maltese authorities report that on 15 November 2020 the Police Force published a policy and procedure document regulating Business Interests and Additional Occupations<sup>48</sup>, which introduced an Evaluation Board appointed by the Police Commissioner with the task to determine whether a business interest or employment outside the Police Force may be authorised. This Policy provides a definition of a business interest, as well as the procedure to be followed to apply for authorisation to pursue such business interest. It also includes guidance in respect of businesses that may be allowed and provides a non-exhaustive list of occupations that may be authorised<sup>49</sup>. Further, Article 6.2 of the policy document lists business interests and activities, which would be likely to be viewed as incompatible<sup>50</sup> with

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<sup>48</sup> As previously mentioned, the new Code of Ethics foresees that a Police officer shall “not hold a business interest or partake in an additional occupation, unless in line with the Force’s Business Interests & Additional Occupations Policy (POL-BIO)” (3.3.7).

<sup>49</sup> The examples of business interests and activities which may be compatible with the police work include working in a retail outlet; working in a garage; working for a construction company or electrical contractor; working for a catering company; working at a garden centre; working as a real estate agent; letting an accommodation, providing that the letting is not to a subordinate or superior; writing books or articles not related to policing activities for publication for which payment will be received, without referring to the author as a member of the Police Force; directorship of a company, unless the company is involved in incompatible business activities.

<sup>50</sup> Such activities include as follows: holding a licence or permit granted in pursuance of the law relating to wines and spirit shops, including within political party, football and band clubs, or betting outlets; working in licensed premises where there would be a conflict of interest with policing duties; the activity of a legal profession that would present a conflict of interest in the administration of justice (e.g. legal practice, legal consultancy, public notary); an activity that involves investigation for other than police purposes (e.g. private investigator); an activity that mirrors police responsibilities, or is an extension of police functions (e.g. close protection, stewarding at a sporting event, club doorman, private security, surveillance, crime prevention, personal safety, enforcement

membership of the Police Force. According to the authorities, this policy document is based on similar guidelines on management of business interests and additional occupations for Police Forces in England, Wales and Northern Ireland. The authorities emphasise that engagement of a police officer in parallel business activities and occupations, even those expressly mentioned in the policy document, remains subject to vetting. The authorities add that the holder of a business interest may be subject to a review at any time, and a policy breach would carry disciplinary action. In addition, the authorities refer to the Standing Order 40/2020 issued on 16 November 2020 and applicable from 1 February 2021, which discontinued all previously accepted parallel activities of police officers, making it mandatory to submit new written notifications of such activities, in accordance with the Business Interests and Additional Occupations Policy. Finally, following amendments to the Police Act, in force as of 27 August 2021, the new wording of Article 11 of the Act now stipulates that “(1) Every police officer shall be deemed to be a police officer at all times and shall devote all his time to the service of the Force and shall not perform any other work, unless an authorization has been obtained in advance and in writing. (2) Every police officer shall in the case of a business or occupation outside his official duties, request in writing the Permanent Secretary of the Ministry responsible for the Force and after such request the Permanent Secretary shall inform the Commissioner whether such request has been accepted or rejected.” Assessing police officers’ compliance with the new Policy is the responsibility of the Assistant Commissioners and Superintendents of respective units. Failure by a police officer to obtain permission for parallel activities entails disciplinary action for gross misconduct.

108. GRECO takes note of the information provided. The adoption of the new policy regarding parallel activities is a welcome development. It sets out a procedure to apply for pursuing a side activity or business interest through a dedicated form, provides examples of possibly compatible/incompatible activities and establishes disciplinary action for gross misconduct in respect of officers found in breach of the Policy. Nonetheless, the range of activities which a police officer would possibly be allowed to undertake appears rather broad. In the context of the shortcomings identified in the Evaluation Report in this respect (see paragraph 166 of the Evaluation Report), GRECO is not convinced that the requirement to regulate parallel activities of police officers by “more explicit and strict criteria” has been fully met. Further, GRECO also notes with satisfaction the recent amendments to Article 11 of the Police Act, which brought it in line with similar provisions of the policy on Business Interests and Additional Occupations. That said, the new wording of Article 11 does not appear to apply to police officers already in service<sup>51</sup>, which would mean that they may engage in new side

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officer); an activity connected with the lending of money or recovery of debts for others, or an activity involving “hard selling” to colleagues, or members of the public by placing undue pressure upon them to buy or rent, including recruiting others to sell on his or her behalf; an activity using specialist skills or knowledge obtained through the Police Force; appearing in any filming production, portrayed as a police officer, or a member of the legal or justice system, or else as someone undertaking any criminal activity; writing and publication of books, articles or other material for gain by serving police officers about their policing or work experiences or that of others; the provision of products or services to the Police Force; an activity entailing possible risk to the personal health and wellbeing of the police officer (risk of injury and/or increased stress and/or tiredness that may adversely impact upon the ability to perform police duties safely and/or to a satisfactory standard).

<sup>51</sup> Paragraph 4 of the ACT No. LVI of 2021, amending the Police Act, stipulates that “This Act shall not apply with regard to a member of the Force who was part of the Force prior to the enactment of the Police (Amendment) Act, 2021.” Thus, for those that were already members of the Force before the entry into force of the Police (Amendment) Act, 2021, the provisions of the Policy appear to continue to contradict Article 11 of the Police Act



activities, bypassing most of the recently stipulated requirements. This generates two parallel authorisation regimes for side activities for the police officers, which may compromise the requirement of this recommendation to regulate the exercise of side activities on the basis of explicit and strict criteria. In addition, no information has been provided on any measures taken to promote these new rules and increase awareness and enforcement thereof among the Police Force. It follows that the present recommendation cannot be regarded as implemented more than partly.

109. GRECO concludes that recommendation xxi has been partly implemented.

#### **Recommendation xxii.**

110. *GRECO recommended i) that the Independent Police Complaints Board be properly equipped, resourced and given adequate guarantees of independence for it to become an effective supervisory mechanism entirely dedicated to such tasks (disciplinary appeals should be excluded from its jurisdiction) and ii) that its activity be documented in a meaningful manner in a public and easily accessible annual activity report.*

111. The Maltese authorities report that following the amendments of the Police Act, adopted on 15 May 2020, disciplinary appeals have been excluded from the jurisdiction of the Independent Police Complaints Board (IPCB). The authorities state that the IPCB is a fully autonomous body, which was set up to receive complaints from the general public, as well as from police officers, and to investigate such complaints. The IPCB is currently chaired by a judge appointed by the President of Malta, acting upon the advice of the Minister for Home Affairs, Security and Enforcement, for a term of three years. Members of the Board are eligible for reappointment. Further, the task of examining disciplinary appeals in the Police Force has been assigned to the Police Disciplinary Appeals Board, introduced by amendments to the Police Act promulgated on 3 August 2021<sup>52</sup>. According to these amendments, the Police Disciplinary Appeals Board is composed of three members appointed by the President of Malta, upon advice of the Cabinet of Ministers. The Chairperson of the Police Disciplinary Appeals Board is to be selected from among persons who practiced as an advocate in Malta for a total of at least seven years. The other members of the Board shall be retired public officers. The President of Malta may, upon advice of the Cabinet of Ministers, also appoint a substitute chairperson and substitute members of the Disciplinary Appeals Board. Members of the Board may be removed from office by the President, upon advice of the Cabinet of Ministers, on the grounds of inability to discharge the functions of the office, whether arising from infirmity of mind or body, or any other cause, or for misbehaviour.

112. GRECO takes note of the information submitted by the authorities. It welcomes that IPCB is no longer to deal with disciplinary appeals, as recommended, and notes the introduction in law of the Police Disciplinary Appeals Board, which is a step in the right direction. However, the Police Disciplinary Appeals Board is not yet operational. Further, no

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in its previous version, which gave the authority to issue permissions on secondary activities to the Commissioner of Police

<sup>52</sup> The English text of the Act LVII, amending the Police Act, may be consulted via the following link: <https://legislation.mt/eli/act/2021/57/eng>

new information has been provided as to the guarantees of independence of the IPCB, nor about its resources and no measures have been reported to ensure that the activity of the IPCB is properly documented and accessible to the general public through annual reports, as required by the recommendation. It follows that the present recommendation has been implemented to some extent.

113. GRECO concludes that recommendation xxii has been partly implemented.

**Recommendation xxiii.**

114. *GRECO recommended to foster the mechanism for the reporting of suspicions of corruption and other malpractice within the Maltese Police Force and to ensure adequate protection measures are in place for members of the Force when they report such instances.*

115. According to the Maltese authorities, since the adoption of amendments to the Police Act on 14 July 2020, members of the Police Force may report any abuse within the Force not only by disclosing their identity, but also anonymously. The authorities point out that the revised (as of 25 May 2021) Anti-Fraud and Corruption Policy Document no longer refers to the Protection of the Whistle-blower Act. They reiterate the three possible options of reporting alleged violations of integrity rules and corruption: open reporting (to direct supervisors, or direct contact with the Integrity Officer, or to the Internal Audit and Investigations Unit); confidential reporting (to the Integrity Officer, on a confidential basis) and anonymous reporting (via the *Break the Silence* section of the Police Force's intranet system). This system allows preserving the anonymity of the sender, while enabling the Integrity Officer to communicate with the sender. An anonymously submitted report is to be followed up within 48 hours. Following a report received through any of the above channels, the Internal Audit and Investigations Unit and/or any other unit designated by the Commissioner have exclusive responsibility to deploy covert measures as necessary. The authorities submit that eleven reports have been received so far through confidential reporting and none openly nor anonymously. Of these, six cases have been acted upon and in one of them disciplinary action has been taken. On a further five cases additional information is being gathered.

116. GRECO takes note of the information submitted by the authorities. It welcomes the new framework for reporting wrongdoings within the Police Force, also anonymously<sup>53</sup>. That said, it would appear that the provisions of the Protection of Whistle-blowers Act do not apply to police officers<sup>54</sup>. It follows that the reporting possibilities have improved, while the protection measures (e.g. retaliation against police officers) remain insufficient.

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<sup>53</sup> Annex 2, point 6.f) of the Police Act states that it is an offence against discipline the breach of confidence, namely, "if a member of the Force makes any anonymous communication to the Commissioner or to any other Police officer, unless the anonymous communication is made in accordance with the procedure indicated in the prevalent anti-fraud and corruption policy of the Force, or to any government department or officer".

<sup>54</sup> The Protection of the Whistle-Blower Act states as follows: "This Act shall not apply to members of a disciplined force, to members of the Security Service or to persons employed in the foreign, consular or diplomatic service of the Government until the Minister makes regulations regulating the manner in which the provisions of this Act will apply in their regard, and in so doing, the Minister may make not applicable or modify the provisions of

117. In view of the above, GRECO concludes that recommendation xxiii has been partly implemented.

### III. CONCLUSIONS

118. **In view of the foregoing, GRECO concludes that Malta has implemented satisfactorily or dealt with in a satisfactory manner two of the twenty-three recommendations contained in the Fifth Round Evaluation Report.** Twelve recommendations have been partly implemented and nine have not been implemented. More specifically, recommendations xviii and xix have been dealt with in a satisfactory manner, recommendations i, iii, v, vi, viii, xiii, xvi, xvii, xx, xxi, xxii and xxiii have been partly implemented and recommendations ii, iv, vii, ix, x, xi, xii, xiv and xv have not been implemented.

119. As regards persons entrusted with top executive functions (PTEFs), substantial reforms have been initiated by the authorities. New functions have been given to the Commissioner for Standards of Public Life regarding investigation of suspected violations of the integrity rules, reporting on possible corruption cases and seeking judicial review in respect of decisions not to prosecute. Promising legal amendments have been adopted to streamline the criminal justice system to combat corruption, notably, by gradually transferring the prosecuting function from the Police to the Attorney General, disconnecting the prosecuting and advisory functions of the latter, etc. A “cooling-off” period of up to two years has also been put in place between public-to-private sector employments. However, most of these measures and initiatives are still to be implemented in practice and several significant shortcomings are yet to be addressed.

120. The development of an over-arching anti-corruption strategy, built on a risk assessment in respect of the Government and its top executive officials has not yet been initiated. The Commissioner for Standards in Public Life has not been vested with any power to impose additional sanctions for violations discovered, and the function of confidential advice has still not been dissociated from the Commissioner’s competences. Transparency of the legislative process at the government level requires further improvement: some measures to facilitate public consultation through electronic access are underway, but they have not led to tangible progress so far. The accelerated adoption of constitutional amendments in July 2020 represents a more recent illustration of the need for greater transparency in the legislative process, including meaningful public consultations. Further, safeguards should be put in place to limit the number of appointments of “persons of trust” in the Government to an absolute minimum, and these positions should be subject to the same integrity requirements and supervision as other PTEFs. No measures have been taken to introduce *ad hoc* disclosure when conflicts of interest occur in respect of top executive officials and there are no procedures to manage such situations. In addition, regulation of lobbying and the disclosure of contacts between top executives and third parties is yet to be accomplished, and plans to establish an Integrity Unit to support public office-holders in solving ethical dilemmas have not materialised. Important challenges remain in the investigations of some of the high-

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this Act as necessary for the purpose of the protection of national security, defence, intelligence, public order and the international relations of the State”.

profile corruption cases. The lack of special investigation techniques for revealing corruption offences also remains a serious drawback.

121. As regards law enforcement authorities, several important policy documents have been adopted, such as the Anti-Fraud and Corruption Policy, the Police Code of Ethics, the Police Force Transformation Strategy, the Horizontal Movement Policy and the Policy on Business Interests and Additional Occupations. The need for coordination of these policies and their implementation is acknowledged by the law enforcement authorities as a priority. Further, a new procedure for the appointment of the Police Commissioner has been introduced and the new Police Commissioner, as well as his Deputy, have been appointed in accordance with this new procedure. In addition, new provisions regarding guidance on gifts have been reflected in the updated Anti-Fraud and Corruption Policy. It has also been made clear that breaches of the Code of Ethics may trigger sanctions commensurate to the gravity of such breaches, and the role of the newly introduced Integrity Officer has been specified, including as regards confidential counselling on ethics and integrity. Further, recent legislative amendments also introduced the Police Disciplinary Appeals Board, which took over the task of examining disciplinary appeals from the Independent Police Complaints Board. Finally, police officers have been enabled to report possible corruption offences anonymously. These are clearly positive steps. Nonetheless, additional measures must be taken to fully meet the demands of all the recommendations. Thus, greater coherence is needed among the rules on police ethics and integrity, which are still contained in several documents. Even though the Horizontal Movement Policy is said to contain provisions regarding filling of vacant posts, their application to transfers of police officers is yet to be asserted through practice, and promotions are not covered by this policy. The same holds true for the new rules on restriction of business interests and parallel activities of the police officers. In addition, it remains uncertain whether sufficient resources are provided to the Independent Police Complaints Board to clearly establish it as an efficient and independent complaints mechanism. Finally, police officers reporting possible corruption from within the Police Force are covered by the *ad hoc* protection mechanism in the Anti-Fraud and Corruption Policy. It is, however, regrettable that they do not benefit from the protection measures as set out in the Protection of Whistle-Blowers Act.

122. In view of the above, GRECO notes that further progress is necessary to demonstrate an acceptable level of compliance with the recommendations within the next 18 months. Pursuant to Rule 31 revised bis, paragraph 8.2 of its Rules of Procedure, GRECO invites the Head of delegation of Malta to submit a second Situation Report containing additional information regarding action taken to implement recommendations i-xvii and xx-xxiii by 31 March 2023.

123. Finally, GRECO invites the Maltese authorities to authorise, as soon as possible, the publication of the report, to translate it into the national language and to make the translation public.