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# FIFTH EVALUATION ROUND

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

## EVALUATION REPORT

# MALTA

Adopted by GRECO  
at its 82<sup>nd</sup> Plenary Meeting (Strasbourg, 18-22 March 2019)



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



# TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>I. EXECUTIVE SUMMARY .....</b>   | <b>4</b>  |
| <b>II. INTRODUCTION AND METHODOLOGY .....</b>   | <b>5</b>  |
| <b>III. CONTEXT.....</b>  | <b>6</b>  |
| SYSTEM OF GOVERNMENT AND TOP EXECUTIVE FUNCTIONS.....                                       | 9         |
| <i>System of government.....</i>  | 9         |
| <i>Persons exercising top executive functions .....</i>                                     | 10        |
| <i>Status and remuneration of persons with top executive functions .....</i>                | 12        |
| ANTICORRUPTION AND INTEGRITY POLICY, REGULATORY AND INSTITUTIONAL FRAMEWORK .....           | 13        |
| <i>Dedicated policy for prevention of corruption and promotion of integrity .....</i>       | 13        |
| <i>Legal and institutional framework .....</i>  | 13        |
| <i>Ethical principles and rules of conduct .....</i>  | 15        |
| <i>Awareness .....</i>  | 16        |
| TRANSPARENCY AND OVERSIGHT OF EXECUTIVE ACTIVITIES OF CENTRAL GOVERNMENT .....              | 16        |
| <i>Access to information .....</i>  | 16        |
| <i>Transparency of the law-making process and of financial management.....</i>              | 17        |
| <i>Third parties and lobbyists.....</i>   | 18        |
| <i>Control mechanisms .....</i>   | 19        |
| CONFLICTS OF INTEREST .....   | 21        |
| PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES .....                                      | 23        |
| <i>Incompatibilities, outside activities and financial interest .....</i>                   | 23        |
| <i>Contracts with state authorities .....</i>   | 25        |
| <i>Gifts .....</i>  | 25        |
| <i>Misuse of public resources.....</i>  | 26        |
| <i>Misuse of confidential information .....</i>   | 26        |
| <i>Post-employment restrictions.....</i>  | 27        |
| DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS .....                              | 27        |
| <i>Declaration requirements .....</i>   | 27        |
| <i>Review mechanisms.....</i>   | 29        |
| ACCOUNTABILITY AND ENFORCEMENT MECHANISMS .....   | 30        |
| <i>Criminal proceedings and immunities .....</i>  | 30        |
| <i>Non-criminal enforcement mechanisms.....</i>   | 34        |
| <b>V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES.....</b>                            | <b>37</b> |
| ORGANISATION AND ACCOUNTABILITY OF SELECTED LAW ENFORCEMENT AUTHORITIES.....                | 37        |
| <i>Overview of the main law enforcement authority – the Malta Police Force.....</i>         | 37        |
| <i>Access to information, confidential information and data protection .....</i>            | 38        |
| <i>Public trust in law enforcement authorities .....</i>                                    | 39        |
| <i>Gender equality .....</i>  | 39        |
| <i>Trade unions and professional organisations.....</i>                                     | 39        |
| ANTI-CORRUPTION AND INTEGRITY POLICY.....   | 39        |
| <i>Anti-corruption and integrity policy, mission statements and ethical principles.....</i> | 39        |
| <i>Codes of Ethics.....</i>   | 40        |
| <i>Risk management measures for corruption prone areas .....</i>                            | 41        |
| <i>Multiple eyes principle and other internal measures .....</i>                            | 42        |
| <i>Handling undercover operations and contacts with informants and witnesses.....</i>       | 42        |
| <i>Advice, training and awareness.....</i>  | 42        |
| RECRUITMENT AND CAREER.....   | 43        |
| <i>Recruitment and appointment .....</i>  | 43        |
| <i>Performance evaluation and promotion to a higher rank, mobility, rotation .....</i>      | 44        |
| <i>Suspension and dismissal from office .....</i>   | 45        |
| <i>Salaries and benefits.....</i>   | 45        |
| CONFLICTS OF INTEREST .....   | 45        |
| PROHIBITION OR RESTRICTION OF CERTAIN ACTIVITIES .....                                      | 46        |

|   |           |
|---|-----------|
| <i>Gifts and hospitality</i> .....  | 46        |
| <i>Incompatibilities, outside activities and post-employment restrictions</i> ..... | 46        |
| <i>Misuse of public resources</i> .....   | 47        |
| <i>Misuse of confidential information</i> .....                                     | 47        |
| <i>Third party contacts</i> .....   | 47        |
| DECLARATION OF ASSETS, INCOME, LIABILITIES AND INTERESTS .....                      | 47        |
| SUPERVISION AND ENFORCEMENT.....  | 48        |
| <i>Internal oversight and control; External oversight and control</i> .....         | 48        |
| <i>Complaints system</i> .....  | 50        |
| <i>Immunities or other procedural privileges</i> .....                              | 50        |
| <i>Reporting misconduct or crime, whistleblower protection</i> .....                | 50        |
| <i>Statistics</i> .....   | 51        |
| <b>VI. RECOMMENDATIONS AND FOLLOW-UP</b> .....                                      | <b>53</b> |

## **I. EXECUTIVE SUMMARY**

1. This report evaluates the effectiveness of the framework in place in Malta to prevent corruption amongst persons with top executive functions (ministers and senior government officials) and members of law enforcement agency, presently the Maltese Police Force. For a country of that size, Malta has on paper an impressive arsenal of public institutions involved in checks and balance. However, their effectiveness is being questioned as the country was confronted in recent years with an unprecedented wave of controversies concerning the integrity of senior government officials up to the highest level. These included allegations of (mis)use of State resources and nepotism/conflicts of interest in relation to privatisations, tenders, energy supply, the sale of land, measures to attract foreign investments (including through the sale of passports), the award of contracts and public positions. The capacity of its criminal justice system and preventive mechanisms to deal with allegations of corruption and money laundering in the above context was largely questioned.

2. Opinion polls reveal, overall, a high level of perception of corruption and to date, there was no visible disciplinary or criminal justice response to a number of the above allegations, even when some of them have been confirmed by subsequent audits, for instance, of the National Audit Office.. The senior officials who have been suspected of criminal or ethical misbehaviour are still in function. The most sophisticated mechanisms and the many specialist and collegial supervisory bodies are of little use if they are themselves unaccountable and/or ineffective, or if they depend heavily on the government's authority (appointments, validation of findings etc.). State institutions and the public administration must work in an impartial manner in the furtherance of the common good, and not be a tool at the service of the ruling majority of the moment. A number of European institutions, both at a Council of Europe and EU level, have expressed concerns even with regard to the state of the rule of law in Malta, especially after a journalist who covered comprehensively the many "stories", was killed.

3. Malta clearly lacks an overall strategy and coherent risk-based approach when it comes to integrity standards for government officials. Especially in the above context, stricter rules are needed on ancillary activities of top officials including their involvement in legal constructions and off-shore operations, conflicts of interest, declarations of assets and interests (which should not be limited to Ministers and States secretaries), and the general verification and enforcement regarding such rules. A system of sanctions is also clearly lacking. This report also found that the capacity of the criminal justice system to respond to serious allegations is affected by a series of anomalies regarding the distribution of responsibilities between the Attorney General's Office, the Police and the inquiring magistrates. A redistribution of responsibilities is necessary to avoid a risk of paralysis. Certain institutions have also turned out to have no real added value after 30 years of existence, such as the Permanent Commission against Corruption: it has handled over 400 cases and the limited data available suggests that it has not achieved concrete results to date. The Commissioner for Standards in Public Life, established in 2018 to enforce the integrity standards, certainly deserves a better fate.

4. As for the police, and mirroring the above desirable improvements, there is a clear need to take a comprehensive set of measures to streamline integrity policies in the management of the Force. A Chief Executive Officer was appointed in 2017 to modernise the management of the human resource and to implement the necessary policies needed to restore trust in the police. This can only be welcome. The present report lists a number of desirable improvements, including more robust ethical standards, a clear merit-based approach for career decisions and promotions, the introduction of a communication policy (to limit risks of leaks and to develop a reporting and police accountability culture), a more robust training system must be developed (to promote the new integrity standards and reforms) and so on. The Independent Police Complaints Board should be strengthened and become an effective control body. And to counter corruption and other possible issues (codes of silence, external influences), a clear policy on reporting and disclosures, combined with protective measures for those who blow the whistle is needed in the Force.

## II. INTRODUCTION AND METHODOLOGY

5. Malta joined GRECO in 2001 and has been evaluated in the framework of GRECO's First (in March 2002), Second (in January 2005), Third (in November 2009) and Fourth (in June 2015) Evaluation Rounds. The relevant Evaluation Reports, as well as the subsequent Compliance Reports, are available on GRECO's website ([www.coe.int/greco](http://www.coe.int/greco)). This Fifth Evaluation Round was launched on 1 January 2017.<sup>1</sup>

6. The objective of this report is to evaluate the effectiveness of the measures adopted by the authorities of Malta to prevent corruption and promote integrity in central governments (top executive functions) and law enforcement agencies. The report contains a critical analysis of the situation, reflecting on the efforts made by the actors concerned and the results achieved. It identifies possible shortcomings and makes recommendations for improvement. In keeping with the practice of GRECO, the recommendations are addressed, via the Head of delegation in GRECO, to the authorities of Malta, which determine the national institutions/bodies that are to be responsible for taking the requisite action. Within 18 months following the adoption of this report, Malta shall report back on the action taken in response to GRECO's recommendations.

7. To prepare this report, a GRECO evaluation team (hereafter referred to as the "GET"), carried out an on-site visit to Malta from 2 to 6 October 2018, and reference was made to the responses by Malta to the Evaluation Questionnaire, as well as other information received from governmental institutions, civil society etc.

8. The GET was composed of Mr Andrei FURDUI, Director, Department for Crime Prevention, Ministry of Justice (Romania), Ms Herma KUPERUS, Strategic Advisor HR & Organisation, Labour market, Ministry of the Interior and Kingdom Relations (Netherlands), Ms Mona RANSEDOKKEN, Senior Adviser, Ministry of Justice and Public Security, Police Department (Norway), Mr Robert ŠUMI, Head of Research and Social Skills Centre, Police Academy, General Police Directorate, President of the Integrity and Ethics Committee in the Police (Slovenia). The GET was supported by Mr Christophe SPECKBACHER from GRECO's Secretariat.

9. The GET held interviews with the Office of the President, the Office of the Prime Minister, The Minister for Justice, Culture and Local Government, the Minister for Home Affairs and National Security, the Office of the Internal Audit and Investigative Department (OIAID), the Permanent Secretaries at the Office of the Prime Minister (People and Standards; Strategy and Implementation), the Principal Permanent Secretary, the Office of the Ombudsman, the Office of the Auditor general, the office of the Permanent Commission against Corruption, representatives of the Police, including the Commissioner and the Chief Executive Officer and Deputy / Assistant Commissioners, the Independent Police Complaints Board - IPCB, the Internal Audit and Investigative Unit of the Police – IAIU, the Central Whistle-blower Protection Unit, the Academy for Disciplined Forces. The GET had also interviews with academics, representatives of Police Unions, the media / journalists, representatives of the House of Representatives including of the two main political parties, the Attorney General's Office, the Public Service Commission. The GET also met with representatives of the media, civil society, police unions and other interlocutors relevant in Malta's context (such as the family of Daphne CARUANA GALIZIA, the former Head of the FIU).

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<sup>1</sup> More information on the methodology is contained in the Evaluation Questionnaire which is available on GRECO's [website](http://www.coe.int/greco).

### III. CONTEXT

10. Malta became a member of GRECO in 2001 and it has been subject to four evaluation rounds focusing on different topics related to the prevention and fight against corruption.<sup>2</sup> Malta has the following track record in implementing GRECO recommendations: 67% of recommendations of the first evaluation round has been fully implemented (with one recommendation partly implemented out of three), 50% of recommendations of the second evaluation round (with three recommendations partly implemented out of six), 73% of recommendations of the third evaluation round (with four recommendations partly implemented out of fifteen) and 50% of recommendations of the fourth evaluation round (with three recommendations partly implemented and two not implemented out of ten).<sup>3</sup> The Fourth round compliance procedure is still on-going.<sup>4</sup>

11. Malta ranks in 51<sup>st</sup> position (out of 180) according to the TI perception Index 2018 (46th position in 2017). According to the special Eurobarometer 470 on corruption published in December 2017<sup>5</sup>, a large proportion of Maltese respondents consider that bribes, gifts and favours are not acceptable. However, 79% see corruption as widespread in Malta (EU average: 68%). Political parties, politicians, officials awarding public tenders and issuing business permits, and the police / Customs – in addition to the courts – are the institutions perceived as mostly affected by bribes and abuse of power (cited by more than 40% of respondents). As regards perceived corruption in the police / Customs, the proportion (44%) is significantly higher than the EU average (31%). The proportion of respondents who consider that there is no protection for those who report corruption and of those who believe that reporting would be pointless have significantly increased. The perception that political connections are necessary to do business has also significantly increased in recent years (54% of respondents). The Eurobarometer 457 on business attitudes towards corruption (also published in December 2017) provides a similar picture: 58% of business respondents (one of the highest rates among the EU 28) consider that corruption is a problem for doing business, whilst 84% perceive corruption as widespread and 90% see excessively closed links between business and politics as one of the main causes of corruption. On various specific variables, the above study refers to negative trends since 2015, for instance as regards the forms of corrupt behaviour, links with political financing, tax fraud / VAT avoidance, manipulation of tenders, impartiality of anti-corruption efforts etc.

12. For several years now, there have been recurring controversies regarding the (lack of) transparency of certain senior officials' financial interests – see the so-called Swiss Leaks of February 2015<sup>6</sup> and the so-called Panama Papers more recently, and a number of other allegations in a particularly sensitive context<sup>7</sup>. As a Freedom House report from 2018 (for the year 2017) has put it<sup>8</sup>: *“[t]he Panama Papers have led to a series of corruption allegations against Maltese officials since 2016 (...). The most important cases centered on the revelation that a government minister and the prime minister’s chief of staff had set up trusts in New Zealand and secret accounts in Panama shortly*

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<sup>2</sup> Evaluation round I: Independence, specialisation and means available to national bodies engaged in the prevention and fight against corruption / Extent and scope of immunities; Evaluation round II: Identification, seizure and confiscation of corruption proceeds / Public administration and corruption / Prevention of legal persons being used as shields for corruption / Tax and financial legislation to counter corruption / Links between corruption, organised crime and money laundering; Evaluation round III: Criminalisation of corruption / Transparency of party funding; Evaluation round IV: Prevention of corruption in respect of members of parliament, judges and prosecutors.

<sup>3</sup> These figures provide a snapshot of the situation regarding the implementation of GRECO's recommendations at the time of formal closure of the compliance procedures. The country may therefore have implemented the remaining recommendations after the formal closure of the compliance procedure.

<sup>4</sup> These figures provide a snapshot of the situation regarding the implementation of GRECO's recommendations at the time of formal closure of the compliance procedures. The country may therefore have implemented all or part of the remaining recommendations after the formal closure of the compliance procedure. For update please check the GRECO website: <https://www.coe.int/en/web/greco/evaluations/malta>

<sup>5</sup> [Link](#) to the various Barometer polls on Corruption

<sup>6</sup> See for instance <https://daphnecaruanagalizia.com/2016/05/ninu-zammit-set-secret-bvi-company-conceal-ownership-swiss-millions-2005/>. After a series of tax amnesties in 2002, 2003, 2005, 2007 and 2014, the government decided to put an end to this practice because of fears that repatriated funds could have an illegal origin.

<sup>7</sup> See for instance <https://www.politico.eu/article/corruption-allegations-tarnish-maltas-eu-presidency/>

<sup>8</sup> <https://freedomhouse.org/report/freedom-world/2018/malta>

*after taking office in 2013. Caruana Galizia later alleged that the beneficial owner of a third Panama company was the prime minister's wife. Another inquiry involves claims of kickbacks to Muscat's chief of staff from a program that issues Maltese passports to foreign investors. A key whistle-blower in these cases (...) fled the country in 2017, saying she feared for her life (...). Critics from the opposition and civil society warned of possible political influence over the corruption investigations. (...)"*

13. Between 2013 and 2018 the police was managed by five different Chief Commissioners and it was confronted with a wave of controversial promotions<sup>9</sup>. Malta's Financial Intelligence Unit was itself confronted in the period of 2013-2017 with the resignation of half of its staff<sup>10</sup>, in a context where the specificities and size of Malta's financial centre are not matched by commensurate policies and safeguards as regards the prevention and repression of financial crimes, according to specialists<sup>11</sup>. The police received in April 2016 via the official channel the reports from the Unit on suspicious financial activities involving government officials already cited in the Panama Papers. Shortly after, the police commissioner went on leave and he subsequently resigned for health reasons<sup>12</sup>, before being subsequently re-hired by the government, as the GET was told. The inaction of the police led to the subsequent leaking to the press of three FIU reports concerning the said government officials. Despite these incidents, especially in the year 2016, the official communication reportedly embellished the situation. The Prime Minister also decided after a government reshuffling to retain the officials concerned (instead of dismissing them) and in 2017 early elections were held, which turned into a plebiscite for the ruling majority. The crisis culminated in October 2017 with the assassination of the Maltese journalist and blogger Daphne Caruana Galizia, who had been reporting extensively about a number of anomalies in the conduct of public affairs in recent years: overpriced deals for the supply of energy, privatisation of the hospitals tendered to a company without experience in the health sector, sale of land at prices below the market value to party sponsors, sale of passports through foreign investment schemes and possibly involving kickbacks for members / collaborators of the government, nepotism in public appointments, misuse of public resources etc. The investigation into the murder of Daphne Caruana Galizia was conducted with massive foreign support. It led to the arrest of three suspects considered by many as mere executants acting at the request of influential persons. Public calls were made later on by civil society organisations for the Police Commissioner and the Attorney General to resign due a perceived lack of action.

14. A magisterial enquiry, initiated at the request of the Prime Minister and under the terms defined by his lawyers, was concluded in July 2018. Up until now, only a 50 page summary (actually, the main conclusions) has been made available and published by the Attorney General immediately after the magistrate had informed him of the conclusion of his work, stressing that there was no evidence of criminal activities by the Prime Minister and his wife. At the same time the ultimate beneficial ownership of the suspected structures (especially the company called Egrant Inc.) could reportedly not be determined either. The investigation also reportedly confirmed the existence of suspicious elements against other government officials (including payments from the company managing the Maltese investment passport scheme), the banking sector etc.). Still, no step was taken by the head of government in respect of the officials concerned and it remains unclear whether further investigations were opened against them.

15. In November 2018, the media reported about new information corroborating the suspicion that one of the current ministers and the Prime Minister's chief of staff had established off-shore entities with the purpose of receiving regular amounts of money, including payments for unspecified services from the director and co-owner of a business group that won the energy concession and the right to build a gas power station in 2013.<sup>13</sup> The minister involved in those allegations was the energy minister from 2013 to 2016, i.e. at a time when another controversial and overpriced deal was

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<sup>9</sup> See for instance [http://www.independent.com.mt/articles/2017-05-21/local-news/Police-officers-twice-denied--6736174505\\_promotion](http://www.independent.com.mt/articles/2017-05-21/local-news/Police-officers-twice-denied--6736174505_promotion)

<sup>10</sup> [https://www.maltatoday.com.mt/news/national/78849/fiau\\_resignations\\_since\\_2013\\_total\\_15\\_minister](https://www.maltatoday.com.mt/news/national/78849/fiau_resignations_since_2013_total_15_minister)

<sup>11</sup> <https://www.timesofmalta.com/articles/view/20180220/local/malta-sending-message-that-serious-financial-crimes-go-unpunished.671253>

<sup>12</sup> <https://daphnecaruagalizia.com/2016/08/breaking-financial-intelligence-analysis-unit-chief-resigns/>

<sup>13</sup> <https://www.reuters.com/article/us-malta-daphne-offshore-exclusive/exclusive-mystery-company-named-by-murdered-maltese-journalist-is-linked-to-power-station-developer-idUSKCN1NE18M>

negotiated and concluded for the supply of gas to Malta, and accepted by the European Commission in January 2017<sup>14</sup>. In November 2018, the National Audit Office completed its inquiry into the deal (after three years and four months) and confirmed a series of irregularities in the tendering process, which had been supervised by the same company and persons who had assisted in the establishment of off-shore arrangements in Panama for the said minister and the said Chief of Staff<sup>15</sup>.

16. Concerns as regards the overall situation of checks and balance and the Rule of Law have been expressed both domestically<sup>16</sup> and abroad, by the World Bank and the European Parliament, for instance. At the Council of Europe level, it has prompted the Parliamentary Assembly to launch an inquiry – the introductory memorandum of which was released in June 2018<sup>17</sup> – and the Venice Commission released in December 2018 a report on the separation of powers, the judiciary and the police<sup>18</sup> calling for certain structural reforms concerning the reduction of the powers of the head of government and reforming the system of prosecution.

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<sup>14</sup> <https://www.theguardian.com/world/2018/apr/25/malta-azerbaijan-energy-deal-losing-money-claim-experts>

See also [http://ec.europa.eu/competition/state\\_aid/cases/264986/264986\\_1870314\\_62\\_2.pdf](http://ec.europa.eu/competition/state_aid/cases/264986/264986_1870314_62_2.pdf)

<sup>15</sup>The full and an abridged version of the report are available at <http://nao.gov.mt/en/recent-publications>

<sup>16</sup> See for instance a report done for the Family of the murdered journalist [https://theshiftnews.com/wp-content/uploads/2018/04/The-Rule-of-Law-in-Malta\\_release14Apr2018.pdf](https://theshiftnews.com/wp-content/uploads/2018/04/The-Rule-of-Law-in-Malta_release14Apr2018.pdf) and such studies as Professor Aquilina's publication on "The rule of law à la maltaise"

<sup>17</sup> <http://assembly.coe.int/nw/xml/News/News-View-en.asp?newsid=7131&lang=2>

<sup>18</sup> [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2018\)028-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2018)028-e)

#### **IV. CORRUPTION PREVENTION IN CENTRAL GOVERNMENTS (TOP EXECUTIVE FUNCTIONS)**

##### **System of government and top executive functions**

###### *System of government*

17. Malta is a unitary State and one of the world's smallest and most densely populated countries, at over 316 km<sup>2</sup>, with a population of about 475,000. The form of government is that of a parliamentary republic. According to the [Constitution](#) (art. 78), the executive authority of Malta is vested in the President (see below), who is the Head of State, and it shall be exercised by him/her directly or through subordinated officers. The President, with advice from the Prime Minister, may, by orders issued in writing, assign to the Prime Minister or any other Minister responsibility for any business including the administration of any department of government.

18. As agreed by GRECO, a Head of State would be covered in the 5<sup>th</sup> evaluation round under “central governments (top executive functions)” when s/he actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. These may include determining and implementing policies, enforcing laws, proposing and/or implementing legislation, adopting and implementing by-laws/normative decrees, taking decisions on government expenditure, taking decisions on the appointment of individuals to top executive functions.

19. The [President of Malta](#) is appointed for a five-year term by a resolution of the House of Representatives carried by a simple majority (in 2009, a member of the opposition was thus appointed Head of State with the support of the ruling majority). By the Constitution (art. 78 et seq.), the executive power is vested in the President. But it is the Cabinet, composed of the Prime Minister and ministers, which has “the general direction and control of the Government of Malta and shall be collectively responsible therefor to Parliament”.

20. The role of the President as the Head of State is often referred to as largely ceremonial, in official and academic papers. Most of his / her powers are limited by the prerogatives of the Prime Minister and Cabinet, or those of the Parliament. The Head of State is bound – as a rule – to follow the advice or recommendation given to him / her by the body concerned (art. 85, 86). The President : a) promulgates laws and s/he has no veto right (in accordance with art. 72(2) of the Constitution, s/he “shall without delay signify that [s]he assents”); b) may dissolve the House of Representatives, but on the basis of the advice of the Prime Minister (art. 76(5) or following a motion of no-confidence in the Government; c) names the Prime Minister (based on the balance of political forces in Parliament) and the members of Government and further parliamentary secretaries (often designated in other countries as State secretaries) on the proposal or advice of the Prime Minister; d) names most members of constitutional bodies (with the advice of the Prime Minister): Attorney General, judges and magistrates, members of the Electoral Commission, members of the Public Service Commission, members of the Broadcasting Authority, members of the Employment Commission; e) accredits the foreign ambassadors; f) may grant a pardon (but not an amnesty); the President can also lessen or suppress criminal sentences, acting on the advice of Cabinet or the Minister delegated by Cabinet with such responsibility (art. 93 of the Constitution); g) is also ex officio Chairperson of the Commission for the Administration of Justice of Malta, the Maltese Honours, the Malta Community Chest Fund (a charitable non-governmental institution).

21. The Constitution does not state that the President may convene or preside meetings of the Cabinet, which consists of the Prime Minister and 14 ministers. Overall, it is clear from the above that the general conduct of the government is thus determined by the Prime Minister and the President is kept informed (article 87 of the Constitution). For the purposes of the present report, it should also be pointed out that the “power to make appointments to public offices and to remove and to exercise disciplinary control over persons holding or acting in any such offices shall vest in the Prime

Minister, acting on the recommendation of the Public Service Commission”, thus entrusting the Prime Minister with significant powers over the Maltese State apparatus.

22. In practice, a favourable political context can allow the Prime Minister to also select the Head of State (with the Parliament merely confirming the choice), and to define the President’s role and the scope of his/her activities. For instance, the current President was entrusted with chairing events – but as a mere figurehead – such as the upcoming constitutional convention and Malta’s EU Presidency, and dealing with the National Strategy against Poverty and Social Exclusion which her (previous) ministry has drafted, along with the EU food aid programme, the National Family Commission, the National Commission on the abuse of Drugs, Alcohol and other Dependencies, the Commission on Domestic Violence and an anti-poverty project. The Prime Minister also referred to her as a moral guide of the Government and the House of Representatives. On the whole, the President appears to have residual and symbolic competencies in Malta – all the more so if s/he is confined to such a role by the ruling party. These competencies do not allow him/her to actively participate on a regular basis in the development and/or the execution of governmental functions, or to advise the government on such functions. Moreover, the presidential office is not structured in such a way as to support the President’s active involvement in general policy-making. It is composed of about 40 staff according to the on-site discussions (the homepage of the institution lists less than twenty collaborators<sup>19</sup>).

23. Therefore, it cannot be said that the Maltese Head of State actively participates on a regular basis in the development and/or the execution of governmental functions, or advises the government on such functions. It follows that the functions of the President of Malta do not fall within the category of “persons entrusted with top executive functions” (PTEFs) as spelt out in paragraph 18.

#### *Persons exercising top executive functions*

24. The Maltese authorities have listed the following categories of officials as those exercising top executive functions:

a) Prime Minister and **ministers**: the ministers (currently 14, but only two are women in the current government) are chosen by the Prime Minister – formally, they are appointed by the President with the assent of the PM. They remain in office as long as they enjoy his/her confidence. They are responsible and accountable for their actions to the Prime Minister, to Parliament and to the public in general and, eventually to the electorate at a general election. They have broad discretion in a wide range of decisions that can affect individuals or the community in general. Hence Ministers are to act and behave according to standards of the highest level both on a personal basis and in the performance of their constitutional duties. The Prime Minister’s Office is responsible for the overall coordination and supervision; it is under the responsibility of the Principal Permanent Secretary, who also acts as the Cabinet Secretary.

b) **Parliamentary Secretaries** (currently 10) are appointed by the President upon the proposal (Maltese law usually says “with the advice”) of the Prime Minister from among the members of the House of Representatives to assist Ministers in the performance of their duties.

c) **Permanent Secretaries (PSs) and Principal Permanent Secretary (PPS)**<sup>20</sup>: their functions are detailed in art. 13 et seq. of the [Public Administration Act \(PAA\)](#)<sup>21</sup>. **Permanent Secretaries** are

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<sup>19</sup> This does not include those possibly hired specifically to work on specific initiatives run by the President, for instance the [President’s Foundation for the Wellbeing of Society](#) (dedicated to research, via a network of six sub-structures) and the [President’s Trust](#) (to help address poverty and social exclusion in Maltese society)

<sup>20</sup> <https://publicservice.gov.mt/en/Pages/Leadership/PermanentSecretaries.aspx>

appointed and removed by the President upon the proposal of the Prime Minister (who shall consult the Public Service Commission). The Prime Minister assigns the departments of government to Permanent Secretaries. PSs ensure the daily supervision of the work of one or more department(s) of government which fall within the portfolio of a Minister, their compliance with the government policies and orientations/decisions, their management according to law / the public service values / the Code of Ethics, and applicable policies and directives governing staff conduct etc. (art. 17 PAA). PSs also advise their Minister on all matters under their supervision and they may instruct a head of department on any matter (except on matters where the head is required by any law to act independently or in accordance with the direction of a person or authority other than a Minister). A PS shall be answerable to the Minister and through the Principal Permanent Secretary, to the Prime Minister for the performance of the departments under his/her supervision. The **Principal Permanent Secretary** is appointed from amongst persons having the qualifications to be appointed Permanent Secretaries in terms of the Constitution. The PPS assumes the headship and supervisory functions of a Permanent Secretary in relation to the Office of the Prime Minister and the departments, agencies and government entities under the PM's responsibility. The PPS advises the PM on matters relating to the public service and the wider public sector, including the appointment and termination of appointment of Permanent Secretaries and heads of department. S/he is also the head of the public service and all public officers must comply with all applicable directives issued by the PPS (failure to comply attracts disciplinary liability). One or more additional PSs may be appointed to assist the PPS. The PPS also chairs the Committee of Permanent Secretaries.

d) **Heads of Department:** other than those whose manner of appointment is specifically provided for in the Constitution, they shall be appointed from amongst senior public officers (Director General or Director) by the Prime Minister after consulting the Public Service Commission (article 92 of the Constitution). They deal with the management of activities and programmes on a daily basis, they also advise the respective Minister (through the Permanent Secretary) and other authorities. The designation of posts and definition of titles of heads of department are determined by the PM and published in the Government Gazette.

e) **“Senior Executive Service”** is a category of officials provided for by the PAA<sup>22</sup> and which comprises, in addition to the above-mentioned Permanent Secretaries and heads of departments: a) the senior public officers within each ministry who have been entrusted with responsibility for the management of corporate services, policy development, the co-ordination of EU affairs and information management; b) the holders of such other senior public offices as the PM may designate for this purpose. Offices within the Senior Executive Service may be established, abolished or retitled only by the PM, who may prescribe the terms on which appointments to such offices shall be made. The PM can however delegate this responsibility to the PPS or other senior officials.

f) **Consultants and advisors to a minister** are addressed in article 6 (3) of the PAA. They occupy positions of special trust and they shall, even if they are public officers assigned on transfer, be appointed thereto on the basis of a definite contract. Under the Standards in Public Life Act – SPLA enacted on 30 October 2018, a "person of trust" is defined as *“any employee or person engaged in the private secretariat of a Minister or of a Parliamentary Secretary wherein the person acts as an adviser or consultant to a Minister or to a Parliamentary Secretary or acts in an executive role in a Ministry or Parliamentary Secretariat, and where the person has not been engaged according to the procedure established under article 110 of the Constitution”*. This article grants the PM – upon a recommendation of the Public Service Commission – the power to appoint, to remove and to exercise disciplinary control over such persons.

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<sup>21</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

<sup>22</sup> Ibid. The authorities indicate that this category was renamed “Higher Executive Service” and redefined.

25. As a matter of illustration, the structure of the PM's Office ([link to the organisational chart](#)) involves, in addition to the PPS/Cabinet Secretary, three permanent secretaries who are under the PPS's responsibility for part of the PM's core administrative functions, whilst others are directly under the PPS's responsibility (this is for instance the case of the management support and of the Internal Audit and Investigations Department - IAID – which is also supervised by a specific board). Certain services are at the same time under the direct authority of the PM, e.g. the Secretariat services, but also two groups of activities each supervised by a parliamentary secretary: one concerns the information technologies and communications (and two academic structures involved in this area), the financial supervision, the Gambling supervision, Responsible Gaming Foundation, Malta Gaming Foundation. The other one deals with the Malta Individual Investors Programme Agency, Identity Malta, Office of the Regulator of Individual Investors' Programme, Malta Residency Visa Agency, Commissioner for Simplification.

26. The GET heard frequent criticism with regard to the significant increase of the number of persons of trust, although many have pointed out that there is no constitutional basis for appointing persons in positions of trust. Currently, there would be some 700 persons on such positions, performing both senior functions (chief of staff, special advisor etc.) and more common functions which would normally be hired under the general public service rules. The Report of the Venice Commission from December 2018 on the separation of powers, the judiciary and the police mentioned earlier calls for improvements in this respect, e.g. limiting their number to an absolute minimum and restricting these to specific functions at central level. The GET supports these proposals. **GRECO recommends 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 interest, declaratory obligations, and supervision by the Commissioner for standards in public life.**

*Status and remuneration of persons with top executive functions*

27. The Maltese authorities have provided the following information concerning the wages of certain categories senior officials.

| Post   | Basic remuneration (annual)                        | Other benefits  |
|--|--|---|
| Prime Minister (125% of the civil service salary scale 1 which is € 44,782)                                  | € 55,997   | - Tax-free allowance of € 5,823<br>- Official car and drivers   |
| Other ministers (110% of the above scale)  | € 49,260   | - car allowance of € 7,000 (if the second car is personal)  |
| Parliamentary secretaries (105% of the above scale)  | € 46,021   | - one landline and one mobile phone line uncapped<br>- internet and e-mail services at the residence  |
| Principal permanent secretaries and permanent Secretaries (civil service salary scale 1 and 2, respectively) | € 44,782<br>€ 41,352                               | - performance bonus of max. 15% of the basic salary<br>- special projects allowance of max. 30 % of the basic salary<br>- expense allowance of € 9,000 per annum<br>- responsibility allowance of 27% and 20% respectively of basic salary<br>- full expensed service vehicle<br>- uncapped mobile phone and internet |
| Heads of Department (civil service salary scale 3 and 4 respectively)  | € 37,920 (Director General)<br>€ 34,504 (Director) | -performance bonus of up to 15% of basic salary<br>- expense allowance: €2,096 or 1,630 respectively<br>- service vehicle or transport allowance of € 4,659 per year<br>- telecommunication allowance of €1,600 per year  |

28. For comparison purposes, the average gross annual salary in Malta is approximately € 17,900 (general statistical data available for the last quarter of 2017).

## **Anticorruption and integrity policy, regulatory and institutional framework**

### *Dedicated policy for prevention of corruption and promotion of integrity*

29. The GET recalls that back in 2008, Malta had adopted a National Anti-Fraud and Corruption Strategy and that six years later – in December 2014, when GRECO adopted the Fourth Evaluation round Report, the Ministry of Finance was reportedly updating this strategy. During the present Fifth Round on-site discussions, interlocutors were not aware of any specific overarching policy (strategy, action plan, dedicated policy etc.) with regard to the preservation of integrity in governmental action. This is clearly disappointing, all the more so since the Permanent Anti-Corruption Commission (PCAC) – see below – is meant to advise the Government on those issues: its representatives indicated that they were not even involved by the Government or Prime Minister’s Office in the definition or implementation of any dedicated policy or draft legislation and that although the PCAC had repeatedly pointed to certain needs (for instance training on integrity-related matters), these suggestions had been ignored. Malta clearly needs to put in place a dedicated strategy or policy for the prevention of corruption and promotion of integrity, and for the continuous development of a framework that would allow to implement background checks, post-employment restrictions, on-going education, and to evaluate and manage risks of corruption in relation to PTEFs, or persons appointed to aid in decision-making, such as political advisors and experts.

30. Moreover, as mentioned in the introductory background paragraphs (see paragraphs 10 to 16) and throughout this report, members of the central governmental institutions have been regularly targeted by public criticism for their improper behaviour, including allegations of conflicts of interest, kickbacks, favours, nepotism, cronyism, misuse of public resources and so on. They are still in office. Positions of trust have been used to hire some of the persons involved in such controversies. It has even happened that former officials who have been embroiled in dubious dealings or actions are given prominent governmental functions, in the absence of any policy requiring a clean reputation to be appointed at the highest levels. For instance, a former Maltese Health Commissioner of the European Commission, who was forced to resign by president Barroso following allegations of bribery from the tobacco industry, was appointed special adviser for health matters in the Maltese Government in 2013. Other similarly controversial appointments of political allies, MPs given jobs on the boards of public entities or in government, hiring of relatives and partners, have been reported in the media<sup>23</sup>.

31. This calls for an energetic response, less tolerant to lack of integrity issues, from the Maltese State. It is important to strengthen compliance with the integrity requirements in place and to address various issues which have been identified in the present report (for instance improving awareness, tightening compliance measures, filling gaps in respect of certain groups of officials). As pointed out in this report, there is no clear view at the moment as to which categories of persons are to be considered as performing top executive functions and there is no consistent approach as to which integrity rules apply or prevail in case of divergence. For instance, the authorities have pointed out that the Code of Conduct for members of parliament is also applicable to ministers and parliamentary secretaries. In light of the above, **GRECO recommends 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.**

### *Legal and institutional framework*

32. In 1988, Malta adopted the [Permanent Commission against Corruption Act](#) (hereinafter the PCACA), which established the said Commission with the following tasks a) to advise ministerial bodies on anti-corruption matters and b) to investigate alleged or suspected corrupt practices

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<sup>23</sup> Just to give one example: <https://www.timesofmalta.com/articles/view/20180516/local/labours-richest-mp-put-on-opm-payroll.679169>

committed by or with the participation of any public officer, including any Minister or Parliamentary Secretary, or any person who is or has been entrusted with functions relating to the administration of a public/private partnership. The Commission shall a) at the earliest opportunity make a report of the results of every investigation to the Justice Minister; and b) not later than the end of December of each year, or as frequently as deemed necessary, report about its activities to the President of Malta and formulate recommendations on this occasion. Limited information is published on the [PCAC's webpage](#).

33. In March 2017, the [Standards in Public Life Act](#) (hereinafter the SPLA) was approved by the President. Its promulgation and entering into force was still pending at the time of the on-site visit<sup>24</sup>: a) the law leaves it to the Minister responsible for relations with Parliament to decide by a decree when and to what extent the provisions enter into force (a legislative technique commonly used in Malta); b) the designation of the Commissioner for Standards in Public Life took place only on 15 September 2018).

34. The SPLA applies to Members of the House of Representatives, including Ministers, Parliamentary Secretaries and parliamentary assistants, as well as to any other officials as determined by the Government by a special decision. It establishes a Commissioner, appointed for a non-renewable term of 5 years by the President upon a parliamentary proposal (decided by a two thirds majority) and his/her office, whose tasks are : a) to check declarations of interests and assets, b) to investigate (ex officio or following a written or oral notification) breaches of the ethical and other pertinent rules , and to report to Parliament about its findings, c) to issue recommendations to persons seeking advice / clearance in a potentially problematic situation , d) to monitor the evolution of lobbying activities and to make general proposals for the management of risks connected thereto, e) to monitor parliamentary absenteeism and to manage the system of financial penalties applicable thereto, f) to advise the government and to issue general recommendations concerning the above matters, g) reporting at least annually to the House about the office's activities.

35. The SPLA determines the procedures to be applied by the Commissioner including his/her investigative powers. It also provides for the establishment of a parliamentary (standing) Committee for Standards in Public Life (hereinafter the CSPL), composed of the Speaker of the House, two members appointed by the Prime Minister and two members appointed by the Leader of the opposition) responsible for a) overseeing the work of the Commissioner and ensuring that s/he is fulfilling his/her duties and operating efficiently, b) receiving and examining any reports sent by the Commissioner and deciding on subsequent action and possible sanctions against an official based on the Commissioner's recommendations.

36. The SPLA contains in annex, the text of the code of ethics for MPs, and the specific code for Ministers and parliamentary Secretaries – which date back to 1994 and 1995 respectively (the GET noted that the website of Parliament<sup>25</sup> refers to the Code for ministers with a comment of February 2015 saying that the Code was updated at that date).

37. The [Protection of the Whistleblower Act](#), which was adopted in July 2013 and made applicable by a ministerial decision of 15 September 2013, establishes a system of internal and external reporting channels to be used by persons disclosing in good faith corrupt practices and other suspicious behaviour. As regards PTEFs, all ministries should thus appoint an official responsible to receive reports from informers, while the Cabinet Office performs the tasks of the external whistleblowing unit in accordance with the terms of the above Act. The Act allows various forms of protection for the whistle-blower, including immunity from criminal proceedings, in which case the Attorney-General acting in consultation with a Judge of the superior Courts and the Commissioner of

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<sup>24</sup> "This Act shall come into force on such date as the Minister responsible for Parliamentary affairs shall by order in the Gazette establish and different dates may be established in respect of different provisions and purposes of this Act"

<sup>25</sup> For both codes, see <https://parliament.mt/en/menues/about-parliament/code-of-ethics/>

Police may grant such immunity where the reporting person was him/herself involved in criminal acts.

### *Ethical principles and rules of conduct*

38. A Code of conduct for Ministers and Parliamentary Secretaries was originally adopted by the Cabinet in 1994. A new version replaced it in 2015 according to the parliament's website where it appeared as a stand-alone text until recently<sup>26</sup>. In June 2015, media reported controversies in relation to the redrafting of the Code<sup>27</sup> (lack of transparency, softer clauses which would have legalised certain breaches, and so on). The text aims to promote transparency in Government dealings, to strengthen existing values as well as to set an example to others engaged in public life, and to increase the public's confidence in the integrity of the Government. The authorities point out that the Code of Conduct for members of parliament, which is also appended to the SPLA, and was adopted in 1995 as an annex to the internal rules of the House, is also applicable to ministers and parliamentary secretaries. The specific code for ministers and parliamentary secretaries covers the following subject-matters: chapter 1 and 2 preamble and purpose; chapter 3: enforcement of the code, chapter 4: general principles e.g. management quality and openness, conflicts of interest, gifts or other benefits, preserving the political impartiality of the public service; chapter 5: general values including sense of service, integrity, diligence, objectivity, accountability, transparency, honesty (conflicts of interest), justice and respect, leadership; chapter 6: collective responsibility and decision-making; chapter 7: ministerial duties: additional payments, accessory activity, statement of interests and assets, impartiality of the public service, recording of decisions, treatment of staff, merit and objectivity in appointments, cost of official trips, confidentiality; chapter 8: private interests of ministers and conflicts of interest: management of conflicts of interest in general and in the allocation of office and posts, gifts/donations/hospitality/services, decorations from foreign countries, decisions affecting one's family members and close persons, favouring persons to the detriment of others; chapter 9: relations with parliament: attendance of sessions, providing information etc.; chapter 10: public communication.

39. The code of ethics for public employees, which appears in annex to the [Public Administration Act](#)<sup>28</sup> applies to all public employees – including “persons of trust” (i.e. advisors and other persons appointed by way of derogation to art. 110 of the Constitution) – in accordance with the SPLA which extends also the control function of the Commissioner for standards in public life to the enforcement of the above code with regards to persons of trust. It was prepared by an ad hoc committee and approved by the Government in 1994. This document of approximately four pages addresses the following subjects: general principles, conflicts of interest, acceptance of gifts and benefits, personal and professional behaviour, fairness and equity, use of official information, use of official facilities and equipment, political participation and public comments, and sanctions.

40. The GET was pleased that pertinent codes of conduct are available and that these provide for enforceable integrity standards and the texts contain explicit provisions to sanction non-compliance with those standards. That said, it has misgivings about the regulation of certain aspects such as conflicts of interest and third party relations, for instance, which are addressed specifically hereinafter. Moreover, no information is available on how concrete cases have been handled up until now concerning breaches of the above rules by PTEFs, and what their outcome was. The only information available concerns an audit report by the National Audit Office claiming irregularities in the transfer of government land in 2015, which has led to the resignation of a top civil servant and of

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<sup>26</sup> Both codes could be found at <https://parlament.mt/en/menues/about-parliament/code-of-ethics/> and in annex of the SPLA, as mentioned earlier.

<sup>27</sup> See for instance <http://www.independent.com.mt/articles/2015-06-04/local-news/The-Malta-Independent-editorial-Publish-new-Cabinet-Code-of-Ethics-or-revert-to-1994-edition-6736136697>

<sup>28</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019 with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

a parliamentary secretary. As pointed out in this report, Malta clearly needs to strengthen the effectiveness of its rules and to ensure they are properly enforced. Recommendations have been addressed to this end (see paragraphs 31 and 98 et seq.).

#### *Awareness*

41. No particular measures / policy are in place to inform the public of the conduct expected from PTEFs, other than making the above-mentioned rules of conduct available on the general government portal ([www.gov.mt](http://www.gov.mt)). As regards awareness measures for PTEFs themselves, those who have a background as a public officer have, in principle, benefited in that context from initial and in-service training actions during which the rules and obligations which are specific to them, including integrity standards, are presented and discussed. Some ministers and parliamentary secretaries have also usually benefited from awareness-raising actions organised in parliament and the Maltese authorities have pointed out that once they are appointed as a minister or parliamentary secretary, they are given copies of the specific texts applicable to them (including the specific code of conduct of 2015). Under the code of ethics for public employees, the latter can obtain counselling on subject-matters addressed in the code (paragraph 37). For Ministers, Parliamentary Secretaries and the like, the Commissioner on Standards in Public Life – rule 13a of the SPL Act – is expected to give advice in future.

42. In the opinion of the GET, there is a clear need to introduce a set of robust measures to increase the level of awareness, and thus compliance with the integrity principles discussed in this report. The integrity standards and mechanisms have evolved in recent years, and they continue to do so, and awareness-raising measures must be part of a continuous effort. To increase the overall effectiveness of integrity standards, it is equally important that the public is informed about the conduct expected from public officials including PTEFs (so that, for instance, their interlocutors can adapt their own conduct), and how the standards are enforced in practice. The current context of Malta requires urgent action. **GRECO recommends 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.**

43. As regards confidential counselling, the GET considers that it was not appropriate to attribute this function to the main body responsible for enforcing the rules of conduct and other integrity requirements, and for verifying the declarations of assets. This may place the Commissioner on Standards in Public Life in a difficult situation, for instance where the advice requested concerns a matter which would normally require his/her intervention as an enforcement body. It may also prevent the delivery of adequate advice and guidance. It is preferable that one or more other persons/bodies be designated or established to provide such advice to PTEFs, it being understood that the content of the latter would not be binding for the Commissioner. **GRECO recommends 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.**

#### **Transparency and oversight of executive activities of central government**

##### *Access to information*

44. The [Freedom of information Act](#) of 2008 (as amended last in 2012) provides that all government documents are accessible to the public upon request by any Maltese national or – under certain conditions – a foreign citizen. Every Public Authority to which the Act applies (are excluded for instance the Public Service Commission, the Office of the Ombudsman, the Attorney General's Office, the Security Service) has appointed an FOI Officer who shall handle such requests within 20

working days. A Fee amounting to € 40 at most can be applied to cover the administrative costs. Any refusal must be motivated and a decision can be appealed with the Information and Data Protection Commissioner. His/her decision can then be challenged in first and second instance courts. Destroying and altering documents in order to prevent their communication attracts criminal liability.

45. Part V of the Act enumerates a series of exemptions (grounds for refusal), for instance in relation to national security, defence or international relations, and Cabinet documents; in relation to Documents affecting the enforcement of the law and the protection of public safety; documents subject to legal professional privilege or containing material obtained in confidence, documents relating to business affairs, the economy and research (for instance where it refers to trade secrets). Part VI enumerates a series of circumstances where access can be denied if the public interest that is served by non-disclosure outweighs the public interest in disclosure. This concerns: internal working documents, documents affecting financial or property interests of public authorities, documents concerning certain operations of public authorities, e.g. audit activities, documents which would have substantial adverse effect on the proper and efficient conduct of the operations of a public authority etc.

46. Official portals, linked for instance to the [Office of the Prime Minister](#) have been put in place to guide the public through the rules and mechanisms to apply for information, and the dedicated [Freedom of Information Website](#) allows to send requests on-line.

47. The GET noted that access to information is a problematic issue in Malta. Many interlocutors referred during the visit to bad practices, systematic obstruction etc. which required too often to challenge a negative decision. The GET also noted that similar observations were made, concerning the negotiation / conclusion of large public contracts in particular, in the energy sector, for instance as regards the lack of a public tender, the absence of public information etc. Similar controversies arose in relation to the recent reform of Identity Malta (a company which handles citizenship matters and the sale of passports) including the appointment of the management without public calls<sup>29</sup>. The GET noted also that the Freedom of Information Act itself provides for ample exceptions to the communication of information, which are drafted in broad terms, for instance in relation to “ internal working documents”, “documents affecting financial or property interests of public authorities” etc. This could prevent the disclosure of important information of public interest if the exceptions are not interpreted and applied in a restrictive manner, in line with the spirit and overall objectives of the freedom of information legislation. Given the above, **GRECO recommends 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.**

#### *Transparency of the law-making process and of financial management*

48. Bills are published in the government gazette prior to their consideration by Parliament. When a bill goes through all its stages and becomes an Act of Parliament, it is again published in the government gazette with the indication of the date of entering into force. There are instances when the text of the proposed bill is published at an earlier stage as a white paper, including on the internet, and civil society is invited to provide feedback. In the spirit of openness and transparency, the Government is promoting, inviting and encouraging the general public, civil society organisations, trade unions, business organisations, political parties, governmental institutions and all others that would like to contribute, to participate in the public online consultation process (where a draft law is open for consultation and made accessible online). A dedicated [platform for public consultations](#) has been established.

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<sup>29</sup> <https://www.timesofmalta.com/articles/view/20180424/local/identity-malta-reform-government-skirts-concerns-over-conflicts-of.677183>

49. As regards the level of transparency of the central government's budget for executive functions and of the accounts of those ministries overseen by PTEFs, the Maltese authorities indicate that all ministries are allocated their own budget in accordance with the financial estimates for the annual exercise. These resources are subject to periodic scrutiny from the Auditor General or the National Audit Office or any other competent authority.

50. The GET noted that the above arrangements leave discretion to decide if and when a large public consultation would be initiated. In its opinion, it would be preferable that for the sake of predictability, criteria are in place and applied effectively to ensure the existence of consultations and the transparency of the process, with information being available on the results of such consultations. Sufficient time should be awarded for such processes to collect the adequate level of input. The GET also noted that although there are measures and regulations in place inter alia to regulate public procurement, more needs to be done to ensure transparency in the preparation of, and possible consultations concerning concessions, tenders and government contracts of a significant public interest.

51. The GET recalls that transparency of the legislative process is an important feature of an anti-corruption policy. Information on the elaboration of a government initiative should be available whether or not formal consultations are held, and the holding of such consultations should be clearly ensured to the widest possible extent. **GRECO recommends 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.**

#### *Third parties and lobbyists*

52. According to the authorities, no specific measures are in place regarding a) the disclosure of third party contacts / involvement in activities of the executive, such as preparation of draft legislation and decision-making; b) contacts of PTEFs with third parties who may try to influence their decisions, including discussions outside the official processes with parties such as lobbyists, interest groups, unions and NGOs; c) rules on the PTEFs' relations with lobbyists, e.g. in the form of rules of conduct for PTEF and lobbyists, oversight and enforcement of the rules.

53. One of the functions of the Commissioner for Standards in Public Life, who was appointed recently, will be to identify those activities which are to be considered as lobbying activities, to issue guidelines for those activities and to recommend measures/regulations in respect of such activities. Prior to coming to a decision, the Maltese authorities explained that Ministers have a general duty to give appropriate consideration to the widest range possible of advice, including by giving weight to the informed and impartial advice of public officials or employees, including to keep open communication channels with the social partners, non-governmental organisations, professional associations, the broadcasting media and the public in general. (this is one of the requirements of their code of conduct).

54. The authorities nonetheless pointed out that under the Code of Ethics for MPs, Ministers (and parliamentary secretaries) are expected to report to the Speaker and to the competent authorities any attempt at corruption, pressure or undue influence by third persons, aimed at influencing their conduct as a member (clause 5(2)). The GET noted that the authorities failed to refer to similar provisions contained in the Code of conduct for ministers and parliamentary secretaries (clause 5(2): "Ministers shall not put themselves in a position of being influenced by a financial obligation or otherwise of persons or organisations that try to do so, or make improper use of information that comes to their knowledge because of their office in order to give undue advantage to someone whilst disadvantaging others."

55. The GET considers that the above is a further illustration of risks of confusions if there is no clarification made as to which rules apply to which category of PTEF – a recommendation supporting an overarching strategy was issued in this respect (see paragraph 31). In any event, the above rules are not specific enough to regulate contacts with lobbyists and other third parties and the GET is pleased to see that the Commissioner for Standards in Public Life, who was appointed on the last day of the on-site visit (but could not be interviewed), is expected to elaborate a set of standards to fill the gaps. The GET supports such plans and it recalls that the Committee of Ministers has called on its 47 member states to ensure that they have in force a strong legal framework promoting transparency of lobbying activities – see [Recommendation Rec\(2017\)2 on the legal regulation of lobbying activities in the context of public decision making](#), from which Malta could draw inspiration for the design of new rules. In the light of the above, **GRECO recommends 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.**

#### *Control mechanisms*

56. The internal audit and control over the use of public funds and the functioning of government administrations are organised by the [Internal Audit and Financial Investigations Act](#), which establishes the [Internal Audit and Investigations Department](#) (IAID). The IAID has 34 staff members (who are all civil servants), it is headed by a Director, and it comprises four Directorates: the Internal Audit & Risk Management Directorate; Central Harmonisation Directorate; Financial Investigations Directorate; and EU Funds Audits Directorate. The primary objective of the IAID is to assist Permanent Secretaries in the effective discharge of their duties. The IAID provides them with analyses, recommendations, counsel and information concerning the activities reviewed. The IAID has the power to access any premises and documents of the auditee it deems necessary. The independence of the IAID is guaranteed by the above Act and the body to which it is answerable, namely the Internal Audit and Investigations Board, (IAIB) which consists of a) the Secretary to Cabinet as Chairperson; b) the Director of the IAID ; c) the Permanent Secretary in the Ministry of Finance; d) a person of a recognised standing in the accounting and, or, auditing profession, who is not a public officer; and e) one other member, provided that at least two members shall have expertise in disciplines related to public sector financial management. The Director of the IAID submits every year to the Board an annual activity report. According to the above Act, it is up to the board to decide to whom the report is communicated “as and when required”.

57. The Board is appointed by the Prime Minister for such period as s/he may determine, and it is directly responsible to him; the Board members and the management of the IAID (who must be selected from among senior public officers) are thus appointed and dismissed at the PM’s discretion (after consulting the Public Service Commission). The Board meets at least quarterly and its decisions are taken by a majority of votes (the Chairperson shall have both an original and a casting vote in case of an equality of votes). The Board a) monitors the public internal financial control function in Malta; b) oversees the work of the IAID; c) safeguards the continued independence of the Director and officers of the IAID; d) endorses or otherwise plans, budgets and schedules as proposed by the Director for the proper administration of the Directorate; e) requires the IAID to carry out specific tasks as and when necessary; f) sets policies, procedures and methods for the proper functioning of public internal audit and for the carrying out of financial investigations.

58. The parliamentary control over government action is taking place mainly through questions and answers. The Parliament makes large use of this mechanism and in the last legislature alone, almost 30,000 Parliamentary Questions (PQs) have already been made. The problem lies not only with its bulk, but also with its indiscernible format. While the Maltese parliament does provide access to collections of documents through different media, including its online portal and the recently launched TV station, the data’s format and its sheer size makes it difficult for it to be used effectively. In an effort to make parliamentary data more open, the Department of Artificial

Intelligence (Faculty of ICT, University of Malta) is working with the Office of the Speaker on a project called *apps4Parliament* to facilitate queries and the retrieval of specific information.

59. As regards the general public audit, this is the competence of the National Audit Office (NAO) which extends a) at central level to the accounts of government departments and offices, b) at local level, to the audit of local government in accordance with the legislation regulating local authorities; c) to public authorities and corporations, and other public entities administering, holding, or financed from State funds or where the State holds at least 51 % of shares; d) to State funds allocated to non-governmental organisations. The Auditor General and National Audit Office Act of 1997 and the Standing Order No. 120 of the House of Representatives of 1995 extended the initial mandate to cover independent advisory and investigative powers; examination of any financial matter concerning the use of public funds; as well as Performance/Value for Money evaluation audits of Government Offices and public entities and companies where Government is a majority shareholder. The audits are conducted on the NAO's own initiative, or upon a request from the Parliament's Public Accounts Committee (see below) or from the Minister of Finance. The NAO reports to Parliament.

60. The Auditor General is an officer of the House of Representatives (art. 108 Constitution). The appointment is made by the President for a term of 5 years renewable once, upon a proposal of the House adopted with a majority of two-thirds. The NAO, if necessary, can conduct searches and decide that extracts be taken from any books, documents or records existing in any premises of government departments or offices, or of bodies subject to audit. At the time of the visit, the NAO had a staff of 63 and it produced an average of 15 reports per year (regular reports and special investigation reports).

61. The Public Accounts Committee (PAC), consists of up to seven members, four from the Government side and three from the Opposition side. The Committee is chaired by a senior Opposition Member of Parliament nominated by the Leader of the Opposition. It meets periodically when Parliament is in session. The main functions of the Committee are to scrutinise and assess the financial administration of the public sector and to promote improvements, where necessary; encourage the economic, efficient and effective utilisation of public sector resources; and enhance the accountability of the executive government to Parliament and the public. Reports submitted to the Speaker of the House may be taken up by the PAC, which is empowered to examine the Reports and discuss their contents. In fact, most of the Committee meetings are focused on issues raised in the Annual Report by the Auditor General or Performance Audit Reports.

62. The Committee, through at least three of its members, may also request the Auditor General to enquire and report upon matters within his mandate. The Committee is also empowered to take evidence from senior officials of ministries and departments or other government related bodies. Moreover, the PAC can also review the activities of non-governmental organisations which are required to present their accounts to Parliament.

63. The GET took note of many controversies in relation to the use of public resources, tenders, privatisations, State contracts (energy supply, privatisation of hospitals etc.), sale of land, hiring of persons etc. Many of these concern operations which were blatantly made to the detriment of the State. It is important that the various control mechanisms in place in the various ministries as well as at State level such as those dealing with audit and financial control, recruitment of officials, procurement etc., be reinvigorated. During the interviews, the GET heard repeatedly that there was often a lack of courage, accountability and real means for control bodies to accomplish their duties. The IAID is one such example and during the interviews, due to the strict confidentiality requirements laid upon the institution, the GET could only be provided with general information on its audit and inspection work which did not allow to possibly infirm the negative perception. The same goes for the Permanent Commission against Corruption, discussed in this report (see paragraphs 29 and 100 et seq.), whose absence of results and impact are questioning its very existence. Even the National Audit Office, which is a respected, independent institution whose

recommendations are reportedly largely complied with and implemented, is affected by a lack of means: as indicated in paragraph 15, for instance, it took more than three years to audit – at the request of the Public Accounts Committee mentioned above – the controversial and overpriced deal concluded for the supply of gas to Malta. There is also a clear perception in Malta that political support often prevails over the enforcement of the law and the general interest. This is of course facilitated by the current institutional overweight of the government and especially the Prime Minister, in particular when it comes to appointments (and dismissals) in many essential State bodies<sup>30</sup>. This is not compatible with an effective system of checks and balance. This situation calls for rapid and wide-ranging changes. In light of the above, **GRECO recommends 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.**

### **Conflicts of interest**

64. In the light of the replies to the questionnaire, it would appear that there is no systematic approach and policy as regards the management of conflicts of interest. It remains unclear why and how a conflict of interest would arise in respect of a Maltese PTEF and basically how a conflict would be managed. Only the Code of ethics for public employees (item 8), appended to the [Public Administration Act](#), contains a definition of a conflict of interest<sup>31</sup>: “8. A conflict of interest may be defined as a situation in which a public employee has a private or personal interest sufficient to influence or appear to influence the objective exercise of his or her official duties.” Apart from that, the Code deals with conflicts of interest in the following way:

#### ***Code of ethics for public employees***

##### ***B. Conflicts of Interest***

*(...)*

*9. Public employees shall avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties.*

*10. In many cases only the individual employee will be aware of the potential for conflict. Therefore, the onus is on the employee to disclose to his [or her] senior [manager] if a potential or actual conflict of interest arises.*

*11. This includes the notification of all relevant personal, financial, business or other interests, in particular:*

*(a) any directorship, partnership, agency or any shareholding;*

*(b) any interest in any activity or business in which or with which the organisation is engaged;*

*(c) any interest in goods or services recommended or supplied to the organisation.*

*12. Public employees shall notify the head of the organisation in writing within a week whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances.*

65. On the other side, the Code of ethics for Ministers and Parliamentary Secretaries contains a variety of provisions where the expression “conflicts of interest” appears:

#### ***Code of ethics for ministers and parliamentary secretaries***

*4.7 Ministers shall ensure that there is no conflict of interest between their public duties and personal interests.*

<sup>30</sup>The Maltese authorities stress that even when the Prime Minister enjoys broad powers as regards appointments and dismissals in certain institutions, these powers are not unlimited, for instance s/he can exercise the veto right only once.

<sup>31</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

*Ministers shall avoid entering into conflicts of interest between the public interest and their private interest and shall provide complete and correct information to Parliament, to the Cabinet and the public in general (para. 5.7)*

*7.3 When a Minister is appointed to office, [s/]he shall immediately provide a statement of his[/her] assets and interests to the Cabinet Secretary on the relative form. Any interest that may otherwise give rise to a perception of conflict of interest and any actual conflict of interest shall also be indicated to the Cabinet Secretary. This statement shall be provided every year in the manner indicated from time to time.*

*Ministers shall ensure that there is no conflict between their public duties and private interests, financial or otherwise, and it is the personal responsibility of every individual Minister to decide whether steps have to be taken and what needs to be done in order for there not to be such conflict of interest. Provided that if direction is needed from the Prime Minister with regard to the existence of a conflict of interest, that decision shall be final. The general principle is that a Minister may either dispose of this interest or take alternative measures to prevent it. (para 8.1)*

*Any person who is approached in order to be offered ministerial office, shall, if a doubt exists as to whether there is a possibility of conflict of interest, before accepting such office, inform the Prime Minister of this fact and of other relevant circumstances. Provided that if during the legislature there is a change in the personal circumstances of the Minister which may give rise to conflict of interest, the Minister shall be obliged to immediately inform the Prime Minister (para. 8.2)*

*In the same manner, any person who is approached by a Minister in order to be offered a post in the secretariat, shall, if a doubt exists as to whether there is a possibility of a conflict of interest, before accepting such post, inform the Minister concerned of this fact and of other relevant circumstances (para. 8.3)*

*No Minister shall take part in decisions that affect his family members, or other persons close to him and no Minister shall be improperly conditioned in his decisions by a conflict of interest of a financial nature or otherwise, whether involving him or persons close to him, or make improper use of information received because of his office and during the carrying out of his duties, particularly if this is done in order to unfairly favour any person or persons to the detriment of others (para. 8.6)*

*When a Minister is involved in legal proceedings in his private capacity, these may have implications on the ministerial role. The Cabinet Secretary shall be informed of these proceedings and, in the case when proceedings are instituted by the Minister, the Cabinet Secretary shall be informed before such proceedings are instituted (para.8.7)*

66. There is a clear need to clarify the provisions on conflicts of interest, especially bearing in mind the risks of abuses, including with respect to the use of public resources (see paragraph 84). Those which concern ministers and parliamentary secretaries lack a proper general definition and a systematic approach in the rules (which sometimes refer to a personal interest, sometimes to a private interest). All other PTEFs are presumably covered by the rules contained in the Code of ethics for public employees. This one has a definition but it does not draw many consequences, apart from the declaration of side activities. Above all, both sets of rules also lack an appropriate general mechanism on how to manage conflicts of interest arising ad hoc. Guidance documents providing examples and explanations of situations and how to deal with these appear to be missing as well. **GRECO recommends 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.**

## **Prohibition or restriction of certain activities**

### *Incompatibilities, outside activities and financial interest*

67. As for ministers and parliamentary secretaries, their specific Code of ethics – as updated in 2015 – provides that “Upon appointment, a Minister is expected not to continue with his [/her] private work and shall dedicate all his [/her] time to Government work. This applies in so far as the Cabinet does not decide otherwise in exceptional cases where the national interest so requires.” (para. 7.2).

68. Moreover, “no Minister can accept any other payment for something in connection with his/her work as Minister”.

69. As regards other PTEFs, para 12 of the Code of ethics for public employees appended to the [Public Administration Act](#)<sup>32</sup> imposes certain limits to activities which can be retained by the employee taking up his/her duties (and/or at any time thereafter): s/he “shall notify the head of the organisation in writing within a week whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances.”

70. At the same time, para. 27 of the Code of ethics for public employees establishes a preliminary approval system whereby the employee must seek prior consent before engaging in any business or additional parallel employment:

*27. The prior approval of the Permanent Secretary of the Ministry concerned or the Chairperson/Chief Executive Officer is required before public employees may engage in any form of business or employment outside their official duties.*

*28. In all cases when outside employment is considered, public employees shall give their public sector employment first consideration and avoid situations which could give rise to, or the appearance of, a conflict of interest. In particular, they must consider whether the company or organisation concerned is in, or entering into, a contractual relationship with the Government, whether its primary purpose is to lobby government organisations or members of Parliament, or whether it is in a regulatory relationship with the organisation.*

71. Moreover, para. 28 specifies that the employee shall privilege the official function over any opportunity of outside employment and it requires that the employee remains vigilant about situations where the entity or organisation is engaged/engaging in contractual relationship with the Government or lobbying activities, and where there are regulatory relations.

72. As regards political activities, para. 4.9 and 4.10 of the Code of Ethics for Ministers and Parliamentary Secretaries seek to temper any partisan influence on State structures: “Ministers shall keep their roles as Ministers and as Representatives separate, as well as their role as member of a political party”; they also “shall respect the principle of political impartiality of the public service”. Similarly, para. 7.4 requires that Ministers “*respect the impartiality of the public service and shall ensure that their influence on the public service is not abused (...)*”

73. Chapter I (paragraphs 30 to 34) of the code for public employees does not impose general prohibitions. Employees are reminded that their political activities should not interfere with their public mission and their primary duty to serve the Government of the day. If a conflict of interest

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<sup>32</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

arises, an employee may have to stop the political activity or to withdraw from the area or professional tasks giving rise to a conflict.

74. As regards financial interests, this matter is addressed in general terms for ministers and parliamentary secretaries under the rules on conflicts of interest examined earlier. In particular, *“Ministers shall ensure that there is no conflict between their public duties and private interests, financial or otherwise, and it is the personal responsibility of every individual Minister to decide whether steps have to be taken and what needs to be done in order for there not to be such conflicts of interest. Provided that if direction is needed from the Prime Minister with regard to the existence of a conflict of interest, that decision shall be final. The general principle is that a Minister may either dispose of this interest or take alternative measures to prevent it.”* (para. 8.1 of the Code of Ethics for Ministers and State Secretaries). Any special arrangement would thus be decided ad hoc by the Prime Minister, upon the initiative of the Minister seeking guidance on such a matter.

75. As for other PTEFs, paragraphs 9 to 12 of the Code of Ethics for Public Employees also provide – under the rules on conflicts of interest – for a general duty to *“avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties”* and to disclose to the senior management within a week *“whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances if a potential or actual conflict of interest arises”* including *“the notification of all relevant personal, financial, business or other interests, in particular any (...) partnership (...) or any shareholding (...) and any interest in any activity or business”*.

76. The GET understands that the above provisions have been softened in recent years. During the on-site discussions, it was indicated that the special arrangements to allow a minister to exert a parallel activity in the interest of the nation was linked to a specific case involving a minister who was also an ophthalmologist, a rare medical specialisation in Malta. However, according to the chapter on Malta of the [European Commission’s first report on corruption](#), released in February 2014, these amendments were made to allow ministers (and other senior officials) to sit on the board of companies. According to the media, the possibility to grant a derogation for a member of government to conduct a professional activity in parallel would already have been a common practice in the past. Several PTEFs are currently under public suspicion of being involved, or of having sought to become involved into business operations, including through off-shore schemes, in a variety of areas (tourism, recycling, on-line gaming etc.)<sup>33</sup>. Also, some of those who are appointed as advisers / persons of trust manage to keep their business – for instance as a lawyer – when taking up governmental functions. Ministers and parliamentary secretaries are theoretically subjected to strict restrictions on parallel activities (although exceptions can be granted discretionarily), whereas a very tolerant system appears to apply for all other PTEFs who fall under the general rules for public employees. The GET considers that a more consistent approach and stricter delineation of permitted and prohibited activities is needed for PTEFs (with less discretion in granting derogations), including as regards their involvement in legal constructions and off-shore operations. Malta also lacks on this important subject-matter a set of robust rules on how to solve situations of possible incompatibilities and how to terminate such situations. Ideally, the possibility to lodge complaints should be available also to citizens. **GRECO recommends (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.**

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<sup>33</sup> [https://www.maltatoday.com.mt/news/national/64028/panama\\_papers\\_schembri\\_mizzi\\_wanted\\_offshore\\_for\\_recycling\\_remote\\_gaming\\_interests](https://www.maltatoday.com.mt/news/national/64028/panama_papers_schembri_mizzi_wanted_offshore_for_recycling_remote_gaming_interests)

## Contracts with state authorities

77. The authorities indicated that a minister or parliamentary secretary would not be involved in the first hand in a situation allowing him/her to enter contractual relationship with an entity in which s/he has an interest: s/he “would not qualify to be elected as a member of Parliament if he is a party to, or is a partner with unlimited liability in a partnership or a director or manager of a company which is a party to, a contract with the Government of Malta being a contract of works or a contract for the supply of merchandise to be used in the service of the public and has not, within one month before the date of election, published in the Gazette a notice setting out the nature of any such contract, and his interest, or the interest of any such partnership or company, therein”. As for PTEFs other than Ministers who fall under the rules of the Code of ethics for public employees, as indicated above para. 28 of the said code requires that in the context of the management of conflicts of interest connected with parallel activities, one should avoid situations which could give rise to, or the appearance of, a conflict of interest [and] consider whether the company or organisation concerned is in, or entering into, a contractual relationship with the Government (...) or whether it is in a regulatory relationship with the organisation.”

78. With the Code of ethics for public employees, there is also a duty to notify to the senior management all relevant personal, financial, business or other interests, in particular: a) any directorship, partnership, agency or any shareholding; b) any interest in any activity or business in which or with which the organisation is engaged; c) any interest in goods or services recommended or supplied to the organisation.<sup>34</sup>

79. The GET considers that the current situation with regard to accessory activities and conflicts of interests, the way conflicts of interest are actually managed and the insufficient supervision which appears to apply, are creating risks that PTEFs may enter into contractual relations with the State in a way which would favour a private interest. Recommendations have been issued in this report to address those gaps (see paragraphs 66, 76 and 119).

## Gifts

80. Rules imposing limits on gifts both in the Code of Ethics for Ministers and Parliamentary Secretaries, and in the Code of Ethics for public employees.

### **Code of Ethics for Ministers and Parliamentary Secretaries**

- Ministers shall not accept any gifts or benefits, except as provided in this Code, that may or may reasonably create an impression that they are compromising their judgement or place them under an inappropriate obligation (Para. 4.8)

- No Minister shall accept gifts, donations, hospitality or services from anyone, that may place him under an obligation towards such person or persons and this shall also apply to immediate family members of the Minister. In case of doubt, the Prime Minister shall be consulted. (Para 8.4)

### **Code of Ethics for Public Employees**

- No public employee or any member of his household shall accept gifts or services such as might be deemed to create an obligation, real or imagined. (Para 13)

- A gift can be interpreted as an inducement or a reward simply because of its intrinsic value and therefore only token gifts may be accepted. Clause 13 and 14 of the Code of Ethics for public officials (Para 14)

<sup>34</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report. The authorities indicate that the code contains rules for the possible exclusion of a PTEF from contractual relations in a matter where s/he has an interest.

81. There appear to be rules on gifts in place in the two main sets of ethical standards regarding ministers, parliamentary secretaries and all other categories of PTEFs, who fall in principle under the general rules for public employees.

#### *Misuse of public resources*

82. The codes for Ministers and Parliamentary Secretaries, and for public employees, put emphasis on the rational use of public resources for the common good, for instance para. 5.3 of the Code for Ministers on the diligence duty. The same code also insists on the principle of accountability: "Ministers administer public property and shall be transparent in their operations and open to necessary scrutiny. The Code for public employees contains a chapter G devoted to the "Official facilities and equipment" which shall not be abused and used for private purposes.

83. Embezzlement constitutes a criminal offence in accordance with article 127 of the Criminal Code. Sub-paragraph 1 deals with the public sector specifically (subpara. 2 with the private sector): "(1) Any public officer or servant who for his [/her] own private gain or for the benefit of another person or entity, misapplies or purloins any money, whether belonging to the Government or to private parties, credit securities or documents, bonds, instruments, or movable property, entrusted to him [/her] by virtue of his[/her] office or employment, shall, on conviction, be liable to imprisonment for a term from two to six years, and to perpetual general interdiction."

84. As pointed out earlier, including in the introductory paragraphs, in Malta in recent years there have been repeated allegations of improper use of public resources, sometimes for a personal gain or that of relatives and close friends. A common feature of these cases is the lack of reaction of the State system and administrative/financial control mechanisms to such excesses. Even the best rules on personal integrity will have no impact if a stricter financial discipline is not restored in Malta. The recommendation on making the general control mechanisms more responsive and effective, formulated earlier, is meant to address this issue (see paragraph 63).

#### *Misuse of confidential information*

85. The rules of conduct protect the disclosure of confidential information under various provisions.

##### ***Code of Ethics for Ministers and Parliamentary Secretaries***

*-they shall not disclose information or confidential information even after the end of the ministerial office (para. 7.10)*

*-Moreover, "When a Minister terminates his appointment, he shall return to the Cabinet Secretary all the documents, material and resources that were given and entrusted to him in order to perform his duties. As customary, it is within the Prime Minister's discretion to permit to ex-Ministers reasonable access to documents and material concerning the period during which they held ministerial office" (para. 7.9)*

*-[a Minister shall not] make improper use of information received because of his office and during the carrying out of his duties, particularly if this is done in order to unfairly favour any person or persons to the detriment of others (para. 8.6)*

##### ***Code of Ethics for Public Employees: Chapter F. Use of Official Information***

*-A public employee shall only disclose official information or documents acquired in the course of his or her employment when required to do so by law, in the course of duty, or when proper authority has been given. In such cases, comments made by public employees shall be confined to factual information and shall not express opinion on official policy or practice (para. 23)*

*- A public employee as defined in article 2 of the Public Administration Act shall not accept employment in the private sector if he will be placed in a position to make use of "insider information" if such information came to his knowledge as a direct result of his public employment (para 24).*

86. The Criminal Code also criminalises the divulgence of confidential information – article 133 on Disclosing official secrets: “any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine “. Because of the broad Criminal law definition of a public officer, all categories of public officials, whether appointed or elected and thus all PTEFs would be covered.

87. The GET was not made aware of further mechanisms, in particular to prevent insider dealings benefiting the PTEF him/herself, mechanisms to keep out of reach of the PTEF certain types of assets (blind trusts) etc. As mentioned in the present report, there have been multiple allegations of dubious dealings with external businesses in the context of privatisations, energy supply, sale of land etc. which happened at conditions detrimental to the State. Malta should clearly keep those matters under review in the context of proper risk assessments to be conducted for the definition of a strategy, as it was recommended earlier (see paragraph 31).

#### *Post-employment restrictions*

88. The Maltese authorities merely indicated that under the Code of Ethics for Public Employees (para. 29), “former public employees shall ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the organisation in which they were previously employed or of the Public Service generally.”

89. The [Standards in Public Life Act \(SPLA\)](#) is apparently silent on this subject, as regards duties and restrictions laid upon ministers and parliament secretaries. The GET however noted that the [Public Administration Act](#) (art. 2)<sup>35</sup>, provides for a definition of “public employee” which extends for a period of 3 years after the termination of office, the obligations under section B (conflicts of interest), C (acceptance of gifts or benefits) and para. 27 on prior management approval of any business or employment opportunity arising for the public employee, of the Code of Ethics for Public Employees. In the immediate, and notwithstanding the obvious gap seen above as regards ministers and parliamentary secretaries, dealing with ancillary activities actually exerted by PTEFs, and private interests deriving thereof, remains a priority in the GET’s views. Recommendations have been issued in this regard in the present report (see paragraphs 66, 76 and 119).

### **Declaration of assets, income, liabilities and interests**

#### *Declaration requirements*

90. It is recalled that as a rule, all members of government are chosen from among the members of parliament and that the code of ethics for parliamentarians imposes financial declaratory obligations. The Code of ethics for ministers and parliamentary secretaries – paragraph 7.3 – contains the same requirements and thus pursues the financial transparency policy of government members during their term of office:

#### ***Code of ethics for ministers and parliamentary secretaries***

*(...)*

*7.3 When a Minister is appointed to office, he [/she] shall immediately provide a statement of his assets and interests to the Cabinet Secretary on the relative form. Any interest that may otherwise give rise to a perception of conflict of interest and any actual conflict of interest shall also be indicated to the Cabinet Secretary. This statement shall be provided every year in the manner indicated from time to time.*

<sup>35</sup> A [revised version of the PPA](#) was adopted and promulgated on 1 March 2019, with the exception of certain provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

91. The declaration must be made every year, to the Cabinet Secretary. The form, which appears in appendix V to a Manual of Cabinet procedures<sup>36</sup>, provides for the following items to be declared: a) real estate property, b) shares, bonds, other participations in commercial companies or partnerships, whether public or private; c) total amount of deposits in banks and any other types of financial interests; d) positions as directors and other positions; e) income for the reference year; f) total amount of outstanding loans by 31 December of the reference year. The authorities pointed out that “any other types of financial interests” would in principle cover all sorts of assets and movable property of a certain value (cash held in a safety deposit box or outside a financial institution, precious metals and stones, an art collection etc).

92. The form, which can be filled by hand, contains some explanations and indications according to which the form must be submitted within 2 months after appointment and no later than 30 March of each year thereafter, and it should also include in respect of items a), b) and c) (real estate, shares, total deposits) the property of the spouse if it forms part of a community of assets and the property of children as long as the declarant has the custody, and if the official so wishes, the manner of acquisition and of its use.

93. The declarations kept by the Cabinet Secretary are public. No specific arrangements appear to be in place to make the declarations available easily on-line, year after year although the declarations are sometimes published by the media themselves, and commented<sup>37</sup>.

94. No other PTEFs, other than ministers and parliamentary secretaries, are subjected to the above declaratory obligations. Instead, they are required to submit the basic information that any other employee is required to declare to his/her ministry, under the declaratory obligations set forth in the Code of ethics for public employees (art.11) appended to the Public Administration Act<sup>38</sup>:

***Code of ethics for public employees***

***B. Conflicts of Interest***

*(...)*

*9. Public employees shall avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties.*

*10. In many cases only the individual employee will be aware of the potential for conflict. Therefore, the onus is on the employee to disclose to his [or her] senior [manager] if a potential or actual conflict of interest arises.*

*11. This includes the notification of all relevant personal, financial, business or other interests, in particular:*

***(a) any directorship, partnership, agency or any shareholding;***

***(b) any interest in any activity or business in which or with which the organisation is engaged;***

***(c) any interest in goods or services recommended or supplied to the organisation.***

*12. Public employees shall notify the head of the organisation in writing within a week whenever any of the above interests arise namely, upon assuming office, change in duties or due to a change in circumstances.*

95. The GET considers that there is a need to review the declaratory obligations in place for PTEFs so that the more detailed and specific requirements set forth in respect of ministers and parliamentary secretaries apply to a broader number of categories of such persons. The general

<sup>36</sup> An earlier version of this manual from 2014, can be found on-line:

<http://www.independent.com.mt/filebank/Cabinet%20Code%20of%20Ethics%20and%20related%20documents.pdf>

<sup>37</sup> For instance by the Independent, for the situation in 2017: [here](#), [here](#) and [here](#). In April 2016, as regards the [year 2015](#) with a [link to the declarations](#).

<sup>38</sup> A [revised version of the PPA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

recommendation addressed earlier is meant to define on the basis of proper criteria and risk assessments, which groups of senior officials must be considered as persons performing top executive functions. Because of the Maltese practice with the category of persons of trust and because of their possible role in decision-making when they occupy senior posts (and pending the resolution of their possibly unconstitutional existence), this category of officials should be included. As to the content of declarations, the GET is pleased to see that the format of declarations is designed to cover a reasonably broad range of assets and interests. However, the situation of the spouse is captured only insofar as the property is part of a community of assets. In case of another matrimonial regime of assets, the level of transparency of the PTEF's private interests is thus decreased. In light of the above, **GRECO recommends 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.**

#### *Review mechanisms*

96. The replies to the questionnaire indicate that up until recently, the Cabinet Secretary was responsible for checking the information contained in the declarations of Ministers and Parliamentary Secretaries. The Cabinet Secretary also chairs the [Internal Audit and Investigations Department](#) (IAID). As indicated earlier, the Cabinet Secretary is a public officer designated in that capacity by the Prime Minister and who is acting on the basis of his/her instructions.

97. The Commissioner for Standards in Public life, established in 2017 but effective only since October 2018 (see the sections hereinafter on non-criminal enforcement mechanisms) is responsible for examining and verifying such declarations relating to income or assets or other interest or benefits of whatever nature of persons who are under a duty to file such declarations under the [Standards in Public Life Act \(SPLA\)](#) of 30 October 2018, *“as may be provided under this or any other law and to make recommendations in the form of guidelines which the Commissioner considers appropriate and proportionate also with regard to any person who fails to make any declaration or who makes an incorrect declaration in a manner which materially distorts the purpose of the declaration.”* (art.13(1)a of SPLA.

98. As indicated above and discussed in greater detail in the following sections on the non-criminal enforcement mechanisms, the extent of the controls, and the means allocated to the Commissioner are unclear at the moment. It would also appear that the result of a false declaration or failure to file a declaration does not trigger an investigation as is the case for breaches of ethical duties and other statutory obligations. The above-mentioned art.13(1)a of the SPLA merely refer to the issuance of “recommendations in the form of guidelines”, whatever this means. None of the officials entrusted with government and control functions met during the on-site visit could clarify this. The GET is concerned that effective, proportionate and dissuasive sanctions are not available to deal with the declaratory obligations. This is quite worrying given the on-going allegations that current government officials are involved in off-shore constructions, and allegations that officials have sometimes failed to declare significant resources<sup>39</sup>. The thorough verification of a declarant's situation would certainly gain a lot from the possibility to involve criminal investigative bodies, equipped with the legal means to obtain information from various sources, including from abroad. In light of the above, **GRECO recommends 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**

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<sup>39</sup> <http://www.independent.com.mt/articles/2018-05-06/local-news/Konrad-Mizzi-s-declaration-of-assets-did-not-match-FIAU-findings-6736189342>

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.

### **Accountability and enforcement mechanisms**

#### *Criminal proceedings and immunities*

99. Ministers and other PTEFs do not enjoy any form of immunity and they do not benefit from any procedural privilege in Malta. In principle, they are thus treated as anybody else for the purposes of criminal proceedings. It is however noted that following amendments which came into effect in May 2013, the statute of limitation under article 115 paragraph 2 of the Criminal Code was abolished in respect of passive bribery offences committed by “*a person holding the function of a minister, parliamentary secretary, an MP, mayor or local councillor at the time when the offence is committed, if the acts involved an abuse of office*”.

100. Corruption-related offences involving a PTEF fall under the jurisdiction of two types of bodies. **First of all, as regards the regular criminal justice bodies:** in Malta, these are the police (see the second chapter of the present report), the prosecution and the court. The police have the main responsibility for the initiation / conduct of both the investigation and the prosecution of all criminal offences. The Attorney General’s Office (AGO), although it has the dual function of advising government and dealing with prosecutions (through the Office of Prosecution), only advises the police, upon their request. For offences carrying a punishment from 2 to 6 years imprisonment, prosecutorial steps of the police require the approval of the AGO, which, in some cases, also decides whether the case is sent to the lower or the higher court of justice. And where the offence carries a punishment from 6 up to 12 years imprisonment, the Court of Magistrates first acts as the body of preliminary inquiry (to compile the evidence etc.). Where the police would not take up a case, and provided the suspected offence is not a mere contravention, the principle of private prosecution allows any person to ask the magistrate to order the launching of proceedings by the police if “prima facie” evidence suggests the existence of a crime, the so-called challenged proceedings. That magistrate can also be involved to carry out an inquest or to direct the investigation at the request of the police, AGO or a citizen, especially to secure evidence by legal means requiring a judicial order (seizure of documents, access to financial and other protected information etc.). The GET also got confirmation during the on-site discussions that the situation has not changed since the First Round Evaluation and that covert investigative steps such as telephone tapping are to be approved by the Minister of Justice and implemented (especially as regards communications) by the Security Service. **Secondly, a special administrative body,** namely the [Permanent Commission Against Corruption](#) (PCAC): as indicated earlier (see paragraph 32), in 1988, Malta adopted the [Permanent Commission against Corruption Act](#) (hereinafter the PCACA), which established the said Commission with the following tasks a) to advise ministerial bodies on anti-corruption matters but also b) to investigate alleged or suspected corrupt practices committed by or with the participation of any public officer, including any Minister or Parliamentary Secretary, or any person who is or has been entrusted with functions relating to the administration of a public/private partnership. The Commission shall a) at the earliest opportunity make a report of the results of every investigation to the Justice Minister; and b) not later than the end of December of each year, or as frequently as deemed necessary, report about its activities to the President of Malta and formulate recommendations on this occasion. Only limited information is published on the [PCAC’s webpage](#).

101. The GET welcomes the steps taken in 2013 to facilitate the prosecution of passive bribery offences involving senior officials by abolishing the statute of limitation. Although this improvement is quite narrow (it does not concern corruption-related offences other than bribery, in its passive form), such kind of initiatives could inspire other countries. The GET also appreciates the absence of specific immunity arrangements in respect of PTEFs. That said, the capacity of Malta’s criminal justice

system to respond to allegations of corruption-related offences involving PTEFs is affected by a number of shortcomings.

102. First of all, Malta's criminal justice system relies excessively on the central role of the police, which is competent both for the investigation and prosecution of criminal offences. The police has the reputation of being traditionally heavily subjected to the executive branch of power and that its ability to deal with sensitive or major cases depended largely on the capacities, determination and self-assertiveness of the Head of the institution to lead the work despite external pressures. This was repeatedly underlined during interviews and in media material consulted by the GET – see also the second part of this report. Combined with the absence of any meaningful leadership possibilities of the prosecutors and of the inquiring magistrates on the launching and conduct of cases, the criminal justice response can too easily be paralysed where political influences come into play. For instance, where members of government are suspected of committing a crime. The GET learned that the police has thus refused to spontaneously open cases following the Panama Papers and other revelations, or even when information was made available from the FIU. This adds up to the weaknesses reported with regard to the Financial Intelligence Unit, including by Maltese specialists in this area<sup>40</sup>.

103. Secondly, the recent controversies concerning various PTEFs (the Prime Minister and his wife, several ministers, a chief of staff) provide ample illustrations of the inability of Malta's justice system to deal with tips, information and requests which come to the attention of the police, prosecution or inquiring judge. In many other GRECO countries, on a given case, one or more of such bodies would act ex officio. But in Malta, as it was broadly reported in the media and interviews held by the GET, the police has refused to open cases arguing that no "hard" evidence had been presented to it, even if it was undisputed that legal off-shore constructions had been set-up under questionable circumstances. A similar position is sometimes held by inquiring magistrates and courts, leading to inconsistencies. In the so-called Egrant inquiry, which was opened on the basis of media and internet information on the Panama papers at the request of the Prime Minister and his wife (with their objective to be cleared off suspicions), a preliminary investigation report concluded that the suspects were not involved as beneficiaries of the suspected legal constructions and bank operations. In the same context, and on the basis of the same information leaked in the media, members of the judiciary have sometimes opposed to the applicant that a preliminary inquiry ("inquest" in Maltese) cannot be initiated if the complaint is not supported by evidence<sup>41</sup>. In the GET's opinion, article 546 paragraph 1 of the Criminal Code regulating inquests launched by the police and/or the AG, makes it clear in the last sentence that it is for the on-site inquest of the magistrate (and not for the applicant) to document the circumstances of the suspected crime<sup>42</sup>.

104. Thirdly, the GET noted that the PCAC has remained a very weak body since it was first examined in the First Evaluation Round<sup>43</sup> and the few changes made in response to GRECO's recommendations at the time have not contributed to improve the results over the years. The PCAC can at best conduct an administrative preliminary inquiry and although there is a widespread belief in Malta that the PCAC has a broad jurisdiction, according to the law it is actually restricted to a limited number of criminal offences such as soliciting undue payments (*concession* in French), passive bribery and conflicts of interests involving an official, and related ancillary offences. Various

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<sup>40</sup> <https://www.timesofmalta.com/articles/view/20180220/local/malta-sending-message-that-serious-financial-crimes-go-unpunished.671253>

<sup>41</sup> See for instance

[https://www.maltatoday.com.mt/news/court\\_and\\_police/92599/court\\_rejects\\_busuttil\\_and\\_casas\\_attempt\\_to\\_revive\\_call\\_for\\_inquiry\\_into\\_daphne\\_project\\_revelations](https://www.maltatoday.com.mt/news/court_and_police/92599/court_rejects_busuttil_and_casas_attempt_to_revive_call_for_inquiry_into_daphne_project_revelations)

<sup>42</sup> [Article 546 CC](#) states inter alia that "upon the receipt of any report, information or complaint in regard to any offence liable to the punishment of imprisonment exceeding three years, and if the subject-matter of the offence still exists, the state thereof, with each and every particular, shall be described, and the instrument, as well as the manner in which such instrument may have produced the effect, shall be indicated. For the purpose of any such investigation, an inquest on the spot shall be held". (underlined by the GET)

<sup>43</sup> [Link](#) to the report – a recommendation on this institution remained partly implemented

interviewees met by the GET described the PCAC as an administrative body with limited human and other resources, subjected to the authority of the Government and with no real guarantees of independence. The PCAC is also exposed to risks of a paralysis due to issues with the appointment of members, not least because of the limited attractiveness and high sensitivity of PCAC's work in Malta's current context (this was the case for many months in 2017 for instance). Although it may seek assistance from the police, this does not happen in contemporary practice due to a lack of trust between institutions (fears of leaks or for the safety of witnesses). Moreover, the PCAC submits its conclusions and recommendations on concrete cases to the Minister of Justice who then shall decide whether to proceed further and to refer a case to the Police. In the GET's view, the procedure before the PCAC generates a special privilege for public officials and it gives to the executive branch of power excessive prerogatives. The PCAC can hardly be seen as a specialist body meant to facilitate the investigation of corruption. GRECO has already expressed several times concerns about the existence of similar mechanisms.

105. Under the above circumstances, including risks of political interference, it is therefore not surprising that the contribution of the PCAC to Malta's anti-corruption efforts has been negligible. In a national assessment of the Maltese justice system from 2013, the following was pointed out: "although [the PCAC has] existed since 1988, and handled 428 investigations, it appears that it hardly had any success in the fight against corruption because it is not clear to this Commission that there were any cases whereby the Police brought someone to Court on the basis of a report of the [PCAC]."<sup>44</sup> The GET itself could not obtain any updated data because revealing any information about the PCAC's activity reportedly constitutes a criminal offence: in the GET's view, the institution can therefore not be held publicly accountable despite its potentially central role in the fight against corruption. As regards the other core missions of the PCAC – advising the government – in practice the definition of anti-corruption measures and policies is reportedly the task of the government alone. The GET was also informed that recommendations given on integrity policies are not taken into account (for instance as regards the need to develop training on integrity issues in the public sector).

106. Last but not least, the existence of parallel jurisdictions in the hands of the police and the PCAC raises a number of questions<sup>45</sup> to which officials met on-site by the GET answered mostly with personal guesses. The GET's conclusion is that in the current context, there is no added value with the PCAC (which could be abolished). The criminal investigation and prosecution system should be reformed and be made more responsive and effective, with the prosecutors being given the faculty to direct investigations and the responsibility for taking such cases to court. This would obviously require structural changes. The need to strengthen the institutional and operational capacity of criminal justice bodies has been pointed out repeatedly in recent years. The Bonello report (November 2013) mentioned earlier proposed to dissociate the prosecution function from the AG's office and to entrust an independent prosecutor's office with that function, provided with investigative powers. Similarly, the December 2018 report of the Venice Commission recommended the following: "an independent Director of Public Prosecutions (DPP) with security of tenure should be established, who takes over prosecuting powers and the corresponding staff from the Attorney General, and the Police. Magisterial inquests should be absorbed into this function. The decisions of this DPP, notably not to prosecute, should be subject to judicial review." The GET can only concur with these conclusions.

107. Overall, it is clear that Malta needs to increase its capacity to deal with allegations of corruption and other offences involving senior officials. At the moment, it would appear that most (if not all) files against PTEFs and other closely related officials are stuck at an early stage of criminal proceedings. Despite the number of public allegations, sometimes supported by new elements

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<sup>44</sup> [Report of the Commission for the Holistic Reform in the Field of Justice](#) (so-called "Bonello report"), November 2013

<sup>45</sup> Are these exclusive of each other, can a file closed by one body be brought before the other, where for instance the Minister responsible would decide not to proceed against a PTEF, possibly another member of government?

brought to light every month (for instance as regards certain dubious companies or State contracts audited by the NAO), it was unclear to the GET whether any investigation or preliminary enquiry has even started to date concerning any of the governmental officials concerned, apart from the enquiry done at the request of the Head of Government in relation to himself and his wife. This conveys a feeling in the public that senior officials benefit from a total impunity for their actions. This is worrying. **GRECO recommends (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.** At the time of adoption of the present report, the GET was pleased to learn from the Maltese delegation that the Prime Minister had stated publicly that he agreed to implement the recommendations from the Venice Commission.

108. The GET also recalls that the investigation and prosecution of corruption will often require the use of special investigative techniques because of its eminently secretive nature. The on-site discussions showed that this subject-matter remains another weakness of Malta's criminal justice system, which could contribute to explain the lack of results with regard to cases involving PTEFs in recent years. The situation has remained unchanged since the First Round evaluation of Malta. Such covert operations are conducted by Malta's Security Services (MSS) and regulated by the [Security Services Act](#) of 1996 (amended last in 1997). This act provides for broad discretion of the executive – the Minister for Home Affairs and National Security, but also the Prime Minister (art.11) – as regards the use of the above techniques, which are not supervised by a judicial authority. The supervision currently in place involves a mere commissioner who is appointed by the Prime Minister and reports to him/her (art.12), and a Security Committee composed of the Prime Minister, two other members of government and the leader of the opposition (art.14). Surveillance measures can be applied for a renewable term of 6 months without absolute upper limit, the warrant can be modified at any time by the minister etc. Inconsistent information was available to the GET as to whether the information gathered can be used as evidence in court (and under which circumstances), or only for intelligence purposes. In parallel, new trends have appeared concerning the use of data traffic. The GET noted that the current situation remains over the years a source of controversies<sup>46</sup> and more than ever, Malta needs to provide for a proper system of checks and balance, as well as a balance between the needs of an effective fight against corruption (and other forms of serious crime) and the preservation of fundamental rights. The recommendation from the first evaluation remains largely pertinent and it is to be reiterated. **GRECO recommends 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.**

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<sup>46</sup> See, for instance, one of the multiple media reports here: <http://www.independent.com.mt/articles/2018-06-20/local-news/Legality-of-using-phone-taps-by-Malta-Security-Services-challenged-in-court-6736192082>

## *Non-criminal enforcement mechanisms*

109. As regards ministers, parliamentary secretaries and parliamentary assistants, the main body responsible for the enforcement of the rules contained in the code of ethics for these categories of officials was the Prime Minister, until 30 October 2018 when the [Standards in Public Life Act](#) (SPLA) was enacted. If such an official has behaved or acted in such a way that prima facie constitutes a breach of the Code of Ethics, the Prime Minister used his discretion in deciding what actions shall be taken.

110. As from 30 October 2018, as indicated earlier, the Commissioner for Standards in Public Life and the Committee of the same name, are responsible for examining possible breaches of any statutory or ethical duty as follows:

- a) obligations laid upon ministers, parliamentary secretaries and parliamentary assistants: with regard to the [Standards in Public Life Act](#) (SPLA) and regarding the ethical duties enshrined in the Code of ethics for ministers;
- b) obligations laid upon persons of trust: with regard to the code of ethics appended to the [Public Administration Act](#)<sup>47</sup>;
- c) obligations laid upon other categories of PTEFs: the Prime Minister may decide, in accordance with art.3(2) SPLA, to extend the applicability of the SPLA to other categories of persons.

111. The Commissioner, besides his/her capacity to make general policy-making recommendations, acting upon his/her own initiative or following a complaint (made orally, or in writing, provided it is not anonymous), may decide to start an investigation under the rules 13 et seq. of the Standards in Public Life Act (SPLA). Where police proceedings have been initiated or are pending before a court, or upon a request before a court, s/he must suspend his/her action. The Commissioner may summon witnesses and persons to give evidence including the production of documents (failure to do so is sanctioned by contempt of the commissioner and attracts an administrative fine between 50 and 2,500 euro). The Commissioner determines his/her rules of procedure, provided they are adversarial and based on the principle of a fair trial.

112. The rules provide for different outcomes:

- a) If during or after the investigation, substantial evidence suggests that any significant breach of duty or misconduct was committed, the Commissioner “**shall refer the matter to the competent authority including the police**” (para. 18(4)). S/he may remain informed of the processing of the case. In any case, the Commissioner is to send his/her report and conclusions about a *prima facie* violation to the (parliamentary) Committee for Standards in public life (para. 22 and 27 SPLA);
- b) if following the completion of his investigation, there appears to be prima facie a violation of an ethical or other duty or any other statutory obligation, the Commissioner is to report his conclusions to the committee (para. 22(1)), if the conclusion is that the matter should be referred to another authority, or if there was a violation / a conduct that must be altered, or if other steps must be taken. The conclusions contain, as appropriate, recommendations on measures to be taken.

113. The Commissioner is given an initial period of 6 months to complete the investigation. If more time is needed, an intermediary report shall nevertheless be submitted every 6 months to the Committee.

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<sup>47</sup> A [revised version of the PAA](#) was adopted and promulgated on 1 March 2019, with the exception of a few provisions, and the authorities indicated that the code of ethics for public employees was also reviewed. These late changes could not be taken into account in the present report.

114. The said Committee may reject the conclusions (by a motivated decision), or carry out additional investigations, or approve the conclusions and pronounce the following measures : a) admonishing the official; b) sending the report to the police or Permanent Commission against Corruption for further investigation; c) in case of a public employee, it may direct the Government or competent body to take measures to remedy the breaches (special arrangements are made in case of an MP); d) recommending the House of Representatives to direct the person to rectify the breach.

115. As regards other senior public officials and categories of PTEFs, who fall under the Code of ethics for public employees, the main authority receiving a notification of a possible breach is the Permanent Secretary of the body/ministry concerned. Chapter J of the Code refers to the possibility to apply a disciplinary action, or to ask for criminal proceedings. Rules 32 et seq. of the Public Administration Act<sup>48</sup> regulate the role of the Public Service Commission, its inspections and investigations, the right to summon persons and give evidence under oath, the right to ask for the production of documents and to do on-site controls. The Commission applies the Inquiries Act for such purposes. It reports about the results of its investigations to the Prime Minister and it may recommend the initiation of a disciplinary or criminal action. The Maltese authorities indicated in their latest comments that these provisions had actually never been in force because of a constitutional law issue.

116. As regards **statistical information on the enforcement** of integrity principles, and examples of cases handled, the replies to the questionnaire contained the following information for the whole of the integrity mechanisms discussed above: an audit report by the NAO claiming irregularities in the transfer of government land in 2015 led to the resignation of a top civil servant and a Parliamentary Secretary.

117. The GET considers that the establishment of the Commissioner for Standards in Public Life (CSPL) is a valuable and timely development, and a core element of the supervisory arrangements concerning PTEFs. Unfortunately, although the [Standards in Public Life Act \(SPLA\)](#) was adopted in the beginning of 2017, the pre-conditions for its enactment by the Government were fulfilled only on the last day of the GET's visit (October 2018), with the designation of the Commissioner. The Act came into force on 30 October 2018 and no information was thus available on the actual benefits of this new mechanism, which is regulated in a complex manner, with overlapping and inconsistent provisions (for instance para.18(4) and para. 22(1) regarding the outcome of an investigation by the Commissioner). Ultimately, it would appear that the only sanction foreseen is for the PTEF to be admonished by the Committee, unless the matter becomes a criminal investigation because it was forwarded to someone else such as the police, the PCAC, or another body (unspecified by the law). The GET would have expected to see more effective and dissuasive sanctions to be applied in certain cases, such as a reduction of salary, ordering the repayment of damage (in case of misuse of public resources), the possibility to recommend the dismissal from government functions etc.

118. It also remains unclear what means are expected to be ultimately available to the CSPL. At the time of discussion of the present report, the Maltese authorities indicated that process for hiring office staff was on-going and that five persons had already been appointed. The GET also noted that the jurisdiction of the CSPL does not extend to acts which have occurred before the enactment of the new law (art.14 para 1 of the SPLA). The media reported that on the first day in office, the CSPL stated that he might not investigate the case of 17Black, one of the central legal entities suspected of being involved in secret dealings with currently serving government officials and there are fears that the CSPL would remain a weak body.

119. As things stand, the competence of the CSPL only extends to ministers and parliamentary secretaries (as regards the obligations under their specific code of ethics), and due to special arrangements made in the SPLA, to the persons of trust with regard to their obligations under the

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<sup>48</sup> Ibid

code of ethics for public employees. All other PTEFs are, in principle, subjected to the general disciplinary arrangements applicable in their ministry, i.e. the minister or another PTEF depending on the way powers have been delegated. The GET understands that these retain broad discretionary power when deciding what actions should be taken in the event of breaches of ethical rules. In light of the present Maltese context, and numerous allegations that current rules are not complied with in practice, this is not a satisfactory situation. As a rule, all persons considered as PTEFs should be subjected to the highest standards of supervision and this would imply that additional decrees are passed to extend the applicability of the SPLA to those other categories of officials. For the time being, there is however not even a clear view as to which categories of senior officials are to be considered as PTEFs, hence the recommendation on a strategy addressed in the beginning of this report. Once this has been sorted out, the CSPL would need to be given the authority to supervise the conduct of all those PTEFs. **GRECO recommends (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.**

## V. CORRUPTION PREVENTION IN LAW ENFORCEMENT AGENCIES

### Organisation and accountability of selected law enforcement authorities

#### *Overview of the main law enforcement authority – the Malta Police Force*

120. The Malta Police Force (MPF) is a civil force and the exclusive law enforcement agency of the country. It is regulated by the new version of the [Police Act](#) (PA) from April 2017 (as amended), which replaced the act of 1961<sup>49</sup>.

121. The main objectives of the MPF are to preserve public order and peace, prevent, detect and investigate offences, collect evidence and prosecute offenders. When it comes to prosecution, the law establishes certain powers and duties of the police mainly the power to Stop and Search, to perform Road Checks, powers of Entry, Search and Seizure under and without warrant, the powers of Seizure and Retention and the powers of Arrest and Detention, these are all regulated by the PA and the Criminal Code respectively. Besides uniformed officers effecting duties from police stations throughout the Maltese Islands, the MPF also has its specialised squads.

122. The MPF comprises a series of central departments including operational services such as a) the Criminal Investigation Department (CID), b) Drug Squad, c) Vice Squad and Economic Crimes Unit, d) Protective Services, e) Special Branch, f) Administrative Law Enforcement Unit. The territorial organisation is based on two regions comprising a total of 10 police districts<sup>50</sup>. The MPF had a total of approximately 2400 staff (of which 2300 are sworn officers) at the time of the visit. About one fifth of these are women and it is only in 2017 that for the first time a female officer reached the rank of assistant commissioner, which is the second highest below the head of police - the Commissioner (there are nine ranks in total).

123. The MPF is under the responsibility of the Minister(try) for Home Affairs and National Security (MHANS) and the general strategic direction of the Government.

124. The new PA established in 2017 a new body, namely the Police Governance Board (PGB) with the following tasks: (a) to develop the long-term vision, purpose and direction of the Force; (b) to develop a long-term strategic document; (c) to advise on any recommendation brought before it; and (d) to approve key organisational policies. The strategic documents referred to in (a) and (b) are to be approved by the Minister. The Board must submit an annual report of its work to the Minister and subsequently to the House of Representatives. The five members of the PGB are appointed for renewable term of 3 years by the Prime Minister in consultation with the Minister for Home Affairs and National Security, among persons who have knowledge and experience in such areas as policing, strategic management, criminology, criminal justice, public administration. The members of the PGB were finally designated in February 2019. The Commissioner and the Chief executive Officer (see below) are members without a right to vote.

125. The MPF is headed by a Commissioner assisted by four deputies and possibly technical specialists who may be engaged from outside the force. The four deputies are responsible for four different areas namely: a) Investigations and Security, b) Field and Operational Support, c) Human Resources and Administration, and d) Legal, Finance and information and communication technologies. These in turn are assisted by Assistant Commissioners of Police who head the different sections/regions and so on. Orders are imparted on a top/bottom chain of command with each rank imparting instructions/order to the next lower level rank. Most instructions are given in written form and usually retained for record purposes.

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<sup>49</sup> [Link to the 1961 Act](#) (as subsequently amended)

<sup>50</sup> [link](#) to the organisational chart

126. In 2017, with the new PA, the function of Chief Executive Officer (CEO) was introduced to assist the Commissioner of Police on all administrative and daily matters and to implement a more systematic policy as regards the management of the human resource and the modernisation of the police. His specifically defined mandate includes such items as to ensure timely accomplishment of identified priorities and goals of the Police Force; to define and promote an internal culture of wellbeing, respect and empowerment; to provide professional advice, guidance and mentoring on all arising administrative matters; to lay the foundation for effective people management practices and development; to ensure members of the MPF receive adequate training and possess the necessary skills and knowledge and to maintain for that purpose links with the training institutions; to implement performance measurements tools and internal procedures; to manage the tendering processes and contracts. The CEO was appointed by the minister in charge of the Police, following an open competition involving the Public Service Commission.

*Access to information, confidential information and data protection*

127. There is little or no information available on these subjects. The authorities indicated before and during the visit that these matters are regulated in the [Code of Organisation and Civil Procedure](#), which only deals with the ways in which persons directly concerned as suspects by law enforcement have access to data and the file concerning their proceedings; after the visit, they also referred to the existence of similar provisions of the Criminal Code. The GET noted that the Police Act (PA) (art. 62 et seq.) is the legal basis which enables the MPF to collect and retain data of various sorts (fingerprints, photographs, measurements, body and blood samples, criminal patterns etc.) and to process that data in the context of investigations or for the future identification of criminal perpetrators. Art. 89(2) prohibits the disclosure of data and the list of disciplinary offences in annex 2 of the PA sanctions the divulgence of confidential information to persons not entitled to it and the duty of confidentiality applies to any civil employee by virtue of the Professional Secrecy Act.

128. The GET noted that in addition to the above, the Police Act prohibits the communication to the press or broadcasting media “of any details (...) regarding the identity of any person arrested” or “who is about to be charged before the courts or of any investigation”. It recalls that the Maltese Police is currently confronted with allegations of ineffectiveness and political obedience / subjection to the government. One of the reasons is the lack of information made available to the public about the action possibly taken in response to the suspicions that senior officials and members of government may have been involved in corrupt and other illegal actions. It is important for Malta to achieve a proper balance between on the one hand the rights of defendants and the presumption of innocence, and on the other hand the right of the public to be informed as well as the needs of public accountability of the Maltese Police. This would require that exceptions are provided for to the current total prohibition of public communication on cases handled by the police, and that adequate institutional and practical measures be put in place for an official communication policy of the Maltese Police. As regards communication with the general public and the media, this could take place through the establishment of press speakers and press attachés responsible for delivering messages and answering questions. Victims of crime and their close relatives should also be entitled to receive information about the development of proceedings on their cases. The murder of Daphne Caruana Galizia has recurrently shown the distress of her family seeking updates about the evolution of the case and the police work<sup>51</sup>. Such a policy would also contribute to reducing the pressure of the media, NGOs and other bodies or persons interested in information from individual police officers, and thus reducing risks of inappropriate leaks, the selling of information etc. The GET has come across numerous media articles referring actually to information supplied by insider sources. **GRECO recommends 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**

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<sup>51</sup> <https://www.independent.co.uk/news/world/daphne-caruana-galizia-murder-malta-journalist-year-on-anniversary-corruption-a8585186.html>

**cases which are of particular interest to the public or to victims of crime and closely related persons.**

#### *Public trust in law enforcement authorities*

129. The GET was informed that no official surveys in relation to the Police had been done in Malta since the 1990s but that the media and others had done their own. The first such media poll that the GET came across was one from 2015<sup>52</sup>, which pointed to the fact that 72% of respondents believed that the Police Force needed a radical shake up. The comments accompanying the results emphasised that: “*Over the years, the police force has been embroiled in far too many controversies (...)*.” The GET also noted that the current Commissioner had himself been the frequent target of public criticism for his rapid promotions, lack of leadership and sympathies for the Prime Minister expressed on his blog. Some of those met during the visit regretted the present situation and they pointed to the fact that the MPF had also achieved some good results with regard to drug-trafficking.

130. The GET noted that the above confirms the critical findings of such official polls as those conducted under the Eurobarometer, even though in its latest edition of autumn 2018 the level of public trust has increased again by 15% since 2015. It also confirms the need to strengthen integrity arrangements such as those on conflicts of interest (see paragraphs 138 and 160). It is therefore timely for Malta to initiate an overarching policy/strategy which would i.a. address such concerns expressed by the population (see the recommendation in this direction at paragraph 134).

#### *Gender equality*

131. As indicated in the overall presentation of the MPF, women are traditionally strongly under-represented in the police forces, both globally and in senior leadership positions. The GET noted also that legal and regulatory texts referring to the police functions are drafted having men in mind, and not gender inclusive but a general introductory provision would typically state that any reference to “he” shall be understood as addressing also a female staff. During the meetings with the police and discussions with its CEO on the plans to modernise the human resource management component, no reference was made any particular projects to promote a better gender balance. The GET recalls that a balanced representation of both genders in an institution and its management, is a matter of democracy and equal human / social rights, but it can also be a contributing factor to promote integrity in the service and to counter gender-specific silence codes and so on. See also paragraph 134 in this respect. The authorities indicated in their latest comments that within the MPF, a working group on *Equality and Diversity* was recently created, chaired by the CEO, to look into these matters and to formulate proposals.

#### *Trade unions and professional organisations*

132. There are two police unions in Malta : the Malta Police Association (1,575 of which 298 are females) and the Police Officers Union (1257 members, 1080 male and 177 female members).

### **Anti-corruption and integrity policy**

#### *Anti-corruption and integrity policy, mission statements and ethical principles*

133. As to a possible dedicated anti-corruption policy, the replies to the questionnaire refer to the existence of the Internal Audit and Investigations Unit and of the CEO, and to the control function of the Office of the Ombudsman and of the Permanent Commission against Corruption. The replies also point out that disciplinary measures and regulations pursuant to the Public Service Commission (see

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<sup>52</sup> [https://www.maltatoday.com.mt/news/national/56463/online\\_poll\\_absolute\\_majority\\_mistrust\\_maltas\\_police\\_force](https://www.maltatoday.com.mt/news/national/56463/online_poll_absolute_majority_mistrust_maltas_police_force)

paras. 88 and 89 above) apply also to LEOs. The general mission of the MPF, defined in article 4 of the PA, is to promote and maintain Malta as a safe and secure state. There are seven main objectives of the Force, one of which is “to perform honestly and effectively all those duties assigned to it by this Act or by any other law.”

134. The on-site visit confirmed that there is no dedicated anti-corruption or integrity policy in place for the Maltese Police Force (MPF). This is an important gap which needs to be addressed, as in the case of PTEFs discussed in the first part of this report. The GET appreciates the assurances given by the Chief Executive Officer newly appointed in 2017 to deal with the general management (except operations) in the MPF. And that a number of reforms have been entrusted to him or are considered: introduction of a compliance officer, new in-house training with a focus on ethics and the quality of management, definition of job descriptions for all management functions etc. In the context of this general transformation and reform project, integrity elements will be included. The GET supports this, all the more so since the newly created Police Governance Board (PGB), was recently appointed and that its tasks include i.a. to develop the long-term vision, purpose and direction of the Force, and to develop a long-term strategic document. The current level of public trust (see also paragraph 129-130) and the various gaps identified in the present report call for rapid improvements which can only be achieved through concerted action and the collective ownership of these reforms. Obviously, such a strategy will need to take into account not only the problems currently identified in the light of disciplinary or court practice, but also those concerning activities exposed to higher or lower risks (risk-based approach) – see also paragraph 139 et seq. hereinafter on the absence of a risk-based approach in policy-making. **GRECO recommends 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.** [Recommendation Rec \(2001\) 10 of the Committee of Ministers on the European Code of Police ethics](#) can give useful orientations for the design of such a strategy.

### *Codes of Ethics*

135. The main body of rules of conduct is contained in the Police Act, in form of a list of specific disciplinary offences which appears in appendix 2 of the Act in combination with article 24. These refer to a) discreditable conduct (e.g. using defamatory or insulting words, inducing a colleague to commit a breach of discipline), b) insubordinate or oppressive conduct, c) disobeying orders, d) neglect of duty (e.g. neglecting a task, allowing a prisoner to escape, failure to report any matter that must be reported), e) falsehood or prevarication (e.g. making false statements, destroying official documents), f) breach of confidence (e.g. divulging information, making anonymous communications to the commissioner), g) corrupt practice (see below), h) unlawful or unnecessary exercise of authority, i) malingering, j) unjustified absence etc.

#### ***Police Act, annex 2 - disciplinary offences***

*(...)*

*7. Corrupt practice, that is to say, if a member of the Force*

*a) receives any bribe; or*

*b) fails to account for or to make a prompt and true return of any money or property received by him in his official capacity; or*

*c) directly or indirectly solicits or receives any gratuity, present, subscription or testimonial, without the consent of the Commissioner; or*

*d) places himself under pecuniary obligation to any competent authority, or any person who holds a licence granted by the Commissioner or concerning the granting or renewal of which the Police may have to report or give evidence; or*

*e) improperly uses his character and position as a member of the Force for his private advantage; or*

f) in his capacity as a member of the Force, writes, signs or gives, without the sanction of the Commissioner, any testimonial of character or other recommendation with the object of obtaining employment for any person or of supporting an application of any kind; or  
g) without the sanction of the Commissioner, supports an application for the grant of a licence of any kind; or  
h) without good and sufficient cause, is or becomes subject to pecuniary embarrassment.

136. The [Code of Ethics for the Police](#) adopted in 2002 contains various references and comments concerning the subject of integrity, honesty, neutrality, professionalism, fairness and so on, for instance: a) *“The integrity and honesty of each member of the Malta Police force should extend to his or her personal and private life and no member may engage in any activity which may bring discredit to the force or to herself or himself, or lessen his/her efficiency in the performance of duty; identification by a member of the Malta Police Force actively or publicly with a political party is prohibited.”*; b) *“Every member of the Force should resist any attempt to compromise his or her impartiality or to undermine the integrity of the Force. A member of the Malta Police Force shall not accept any gifts, favours, discount or hospitality which might be seen to compromise his or her duties in the present or in the future.”*; c) *“The Malta Police Force and its individual members are accountable to the public on whose behalf we perform the task of policing. For this reason, care in the management and control of state resources entrusted to us is a responsibility which rests on every member of the Force.”*

137. The authorities indicated that the Code of Ethics for Public Employees mentioned earlier in respect of PTEFs is also applicable to members of the Maltese Police. These two codes are enforceable and can lead to disciplinary sanctions in case of a breach of duties.

138. The GET is pleased to see that Malta has comprehensive general rules guiding the conduct of LEOs in daily work, either in the form of ethical principles or in the form of disciplinary requirements. That said, the on-site discussions showed that there is a clear need to update these texts which are 15 or more years old, to review the consistency of the rules, and to complement these with more detailed guidance. New phenomena have appeared, for instance police officers using social media in a questionable manner (including the Commissioner himself when expressing admiration for the Head of Government). The GET recalls that rules of conduct should be enshrined in a living document, which can be updated at regular intervals and complemented with examples and explanations as the need arises. Moreover, the rules are inconsistent on a variety of subjects, including gifts (which are sometimes confused with bribes), or not specific enough, for instance with regard to conflicts of interest – see also the corresponding sections hereinafter on gifts, conflicts of interest, parallel activities, contacts with third persons etc. And because a text, as perfect as it may be, cannot anticipate all the possible situations arising in daily life and work, it is essential that police officers can turn to a designated person who can provide confidential advice on integrity and other matters (this should not involve the persons or bodies entrusted with supervisory and disciplinary tasks) - see also paragraph 43. **GRECO recommends 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.**

#### *Risk management measures for corruption prone areas*

139. No analyses of corruption risk-prone services and risk-prone situations have been carried out. The authorities did not refer to the existence of any document providing a picture of any known or proven instance of corruption or related misconduct by LEOs.

140. The GET recalls that risk-based approaches are nowadays a common feature of policy-making, be it in relation to anti-corruption policies, or in relation to other subject-matters (management of public resources, reputational risks, the management of human resources and information technologies etc.). Proper analyses of risks need to be conducted and to feed into the design of strategies, policies, rules and routines. The recommendation formulated earlier as regards the need for a strategy takes this into account.

#### *Multiple eyes principle and other internal measures*

141. The authorities referred to the following: a) orders or instructions are imparted in a top to bottom process, where the vast majority are put in writing and kept in police files or logged through other manual or electronic means; b) all ranks are legally duty bound to report suspicious activities; c) measures such as random checks are also utilised.

142. The on-site discussions confirmed that for the time being, there is no deliberate policy to share responsibilities or systematise the “four eyes” principle in daily routines. As in other countries, street patrols are increasingly done by single officers. In the context of the elaboration of a strategy, which was recommended earlier (see paragraph 134), this subject-matter would deserve to be borne in mind in the context of the review of risk-prone areas of work and procedures.

#### *Handling undercover operations and contacts with informants and witnesses*

143. The authorities referred to the possibility to use controlled deliveries and undercover operations in accordance with the relevant law (e.g. Dangerous Drugs Ordinance) and with the approval of a magistrate. Contacts with informants are always referred to the superior rank where the information is registered and informants can be involved in controlled deliveries. This subject-matter deserves to be borne in mind by the Maltese authorities in the context of the review of risk-prone areas of work and procedures which will lead to the adoption of a strategy on integrity within the MPF.

#### *Advice, training and awareness*

144. The GET was not informed of any existing initiatives, policies and/or programmes to provide advice to a LEO and to raise awareness among the police force about integrity-related and corruption prevention measures, apart from the training provided by the Academy for Disciplined Forces. Nor are specific measures in place to inform the public about the existing integrity policy and risk-management system in that area, and on the conduct expected from LEOs. The public can obtain general information about the above standards by consulting the acts and codes published on the government portal.

145. The above Academy is an autonomous educational institution set up to carry out training and professional development of members of the Disciplined Forces in Malta, including the Armed Forces of Malta, Civil Protection Department, Corradino Correctional Facilities and Malta Police Force. Fundamental Rights and Ethics is a specific training module that is provided to all new police officers (18 hours). Through this specific module, trainees are expected to: a) Identify core national and international legislations relating to fundamental human rights in law enforcement, b) Describe the main ethical issues encountered by police officers, c) Recognize the importance of being non-judgemental and treat people with deserved dignity and respect, d) Identify secondary victimization, e) Point out suspects, victims and witness rights with confidence, f) Identify ethical issues within the criminal justice context, g) Analyse ethical dilemmas to reach well-informed conclusions, h) Demonstrate sensitivity in diversity, particularly with intercultural populations and vulnerable people.

146. The module which involves case studies and role play is compulsory for all police officers and is assessed in the form of two written examinations. A total of 80-100 new officers are trained each year. The subjects of fundamental rights and ethics is also embedded in other subject areas such as safe weapon handling, power and duties of the police, investigations etc. This category of training is included in in-service training and promotion based training.

147. The Academy for Disciplined Forces is in the process of accrediting training programmes including the Fundamental Rights and Ethics study unit. The Fundamental Rights Agency “Fundamental Rights-Based Training: A manual for police training” will be incorporated in this new accredited study-unit.

148. The on-site discussions confirmed that the [Academy for Disciplined Forces](#) does not provide for regular in-service training to members of the police. The subject of integrity is part of a basic module of 18 hours in the initial training for new recruits, devoted to fundamental rights and ethics - 6 hours are spent on the latter, which clearly isn't enough in the GET's opinion. The Academy also has a counsellor who can be contacted at any time for advice and mentoring. The GET was informed that also serving officers consult him; however, it is doubtful that many serving officers, who have no training opportunity at the Academy after their initial training, know about such possibilities. For the time being, only a new programme launched in January 2019 for Constables and Sergeants contains some in-service training elements on integrity-related subjects; the in-service training schemes were abolished in 2013. The Academy has reportedly not enough resources to make available specialised in-service training beyond a few categories of officers (prison staff, immigration services). Even senior officers do not benefit from dedicated training (leadership, leading by example etc.). The MPF reportedly organises some in-service sessions on its own for its inspectors. But overall, not much appears to be done regarding specific subjects discussed in the present report and there is clearly no in-service training policy to satisfy all the needs of a more robust integrity policy to be introduced as result of the first recommendation. Last but not least, article 13 of the Police Act requires every police officer to engage in a process of continuous improvement through in-service training. The GET takes the view that training of police staff is a cornerstone for developing a police service that is in line with the objectives of the police itself. Taking into account that the police in Malta is a civil force with clearly articulated objectives of a civil police service, it is somewhat difficult to understand that its training is carried out by an institution that also trains military forces and other types of public officials, such as correctional staff etc. In accordance with the European Code of Police Ethics (Rec (2001)10, e.g. paragraphs 26-28), it would appear appropriate for the police to have its own training centre or department, or at least, to make a stronger distinction between police training and other types of training and to make the training as open as possible towards society at large. Moreover, the GET is of the strong opinion that both initial training and in-service training needs to be strengthened, including in respect of officers at all levels, in particular as concerns topics such as police integrity, police neutrality, operational independence, conflicts of interest etc. For these reasons, **GRECO recommends 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.**

## **Recruitment and career**

### *Recruitment and appointment*

149. The ranks consist of the: Commissioner of Police (politically appointed), Deputy Commissioners, Assistant Commissioners, Superintendents and Inspectors. The other ranks are Sergeant Majors, Sergeants, and Constables. All these are employed on a permanent basis. Reserve police constables are employed on a yearly contract whose contract is renewed on satisfactory performance and the Commissioner's approval. All sworn officers join the Force either as constables or as Inspectors and then progress up the ranks.

150. The recruitment of new LEOs is based on public calls for applications. Promotions are based on internal calls. Only the Commissioner of Police is appointed by the Prime Minister. All decisions on mobility (transfer, rotation, secondment etc.) are decided by the Commissioner of Police. Dismissals are the competence of the Public Service Commission mentioned earlier, in respect of PTEFs.

151. Screening procedures exist which involve the checking of criminal records, as well as checks with District Police, Drugs Squad, CID, Economic Crimes, and MSS. Drug tests are also affected on all recruits and cadets joining the Force, including randomly or ad hoc (for instance after a period of sick leave).

152. As indicated earlier, new recruits are trained at the Academy for Disciplined Forces.  
*Performance evaluation and promotion to a higher rank, mobility, rotation*

153. The performance of LEOs is evaluated by the officer and senior officer under whose authority the police officer operates but information was not available on the way the system is implemented (criteria used, periodicity etc.).

154. The above appraisals are taken into account only in relation to negative consequences, in which case a discussion is organised with the Human Resource Department and the report is discussed. The replies to the questionnaire do not refer to any merit-based policy taking into account appraisals or other factors for promotions to a higher rank, career evolution etc.

155. There is no mechanism in place to assess the integrity of individuals throughout their career, e.g. through random or targeted integrity tests. There is no mobility or rotation policy as such either (contradictory information was given to the GET on this).

156. The GET considers that more needs to be done as regards the selection and promotion of LEOs in Malta, and assessing their integrity during their career. Proper job and post descriptions have not been done up until now for all ranks (they are being drafted for the upper ranks at the moment) and promotions should be coupled with the performance appraisals – i.e. these should also be taken into account for career progressions. The level of integrity could be assessed in that context, in addition to periodic integrity tests. Transparent and objective criteria are essential when making decisions concerning the career of an officer. They can also make the life of managers much easier and they can limit accusations of partiality or bias from those who do not perform well enough and still object to a poor appraisal. A merit-based approach (taking into account appraisals and additional skills acquired through training etc.), and the involvement of panels in the selections and decisions on promotions at all ranks would help combat the perception of nepotism and that political sympathies or other illegitimate factors can play an important role. The GET was informed that the Commissioner has often too much decision-making power, also in respect of mobility and transfers. Representatives of the unions stressed that there have sometimes been controversial waves of decisions made on recruitments and promotions. The GET recalls also that the rules of conduct prohibit political sympathies in the context of the MPF's work. As regards the highest ranks, the appointment of senior officers – including the Commissioner himself – was sometimes marred by similar controversies<sup>53</sup>. Tests are not systematically held for the higher ranks and they are often based on a mere interview, which leaves broad room for discretionary decision. In the current context, it is clear that Malta needs to take determined action to improve the career system. **GRECO recommends (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.**

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<sup>53</sup> [https://www.maltatoday.com.mt/news/national/68165/laurence\\_cutajar\\_appointed\\_police\\_commissioner](https://www.maltatoday.com.mt/news/national/68165/laurence_cutajar_appointed_police_commissioner)

### *Suspension and dismissal from office*

157. The Maltese authorities did not provide any details on these subjects in their preliminary submission of information. Suspensions and dismissals are addressed in the Police Act. As regards the young recruits in the lower ranks, who are hired on a contractual and temporary basis, they don't enjoy professional tenure as their colleagues who are full members of the body of police officers. As regards the latter, their dismissal can be decided at any time by the Prime Minister, upon a recommendation of the Public Service Commission where the police officer is not efficient, where s/he is unfit for medical reasons or where it is in the public interest that s/he should no longer serve. An officer can also be dismissed by the minister responsible for the MPF in case his/her post is abolished for structural or other reasons (in which case s/he can benefit from a pension under certain circumstances). A dismissal can also result from a disciplinary decision, rendered by the Public Service Commission if the officer has committed a serious offence.

### *Salaries and benefits*

158. Once a constable joins the Force his annual salary is pegged at Scale 14 Step 1 which is €14,928.02. This increases as the constable progresses, or upon promotion. Besides allowances for working on Sundays and Public Holidays, Special duties allowance (for those working in certain squads, CID, Drugs, etc.), shift allowance, qualification allowance, etc. In addition, there are allowances tied to higher ranks which are comparable to allowances granted to officers in headship positions (Directors, etc.) within the civil service. Allowances cease upon retirement of a police officer; however, police officers are eligible for a service pension after 25 years of service.

### **Conflicts of interest**

159. The replies to the questionnaire indicate that the definition of the concept of conflict of interest contained in the Code of Ethics for Public Employees, mentioned earlier, applies also as regards LEOs. No further information or explanation is provided, except a reference to the GHQ circular 24/2015 on the declaration of certain interests (see below). No information is made available either on the ad hoc disclosure and management of conflicts of interest, whether there is a duty to withdraw from certain cases, whether the situation of relatives is to be taken into account when assessing certain situations etc. No examples are available either on cases and how they have been handled or addressed.

160. The GET considers that the subject of conflicts of interest deserves to be regulated in greater detail in the rules specifically applicable to members of the MPF. It is indeed doubtful that in their daily work, members of the Force would turn to the rules for public employees, given that their requirements as a uniformed police body are normally stricter. The GET recalls that conflicts of interest can occur in multiple situations, because of the officer's parallel activities, because of connections with the persons involved in proceedings, or for other reasons. There have been a number of such cases in recent times<sup>54</sup>. These ultimately affect the image of the institution. Rules on conflicts of interest should regulate the way such conflicts are to be managed (disclosure, possible self-withdrawal or recusal etc.), including ad hoc, when they arise in circumstances not necessarily anticipated by the rules. A recommendation was addressed earlier, to the effect of strengthening the rules of conduct including in respect of conflicts of interest (see paragraph 138).

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<sup>54</sup> <http://www.independent.com.mt/articles/2018-10-05/local-news/Constitutional-Court-orders-Silvio-Valletta-out-of-Caruana-Galizia-murder-investigation-6736197323>

## **Prohibition or restriction of certain activities**

### *Gifts and hospitality*

161. The GET noted that the list of disciplinary breaches in the Police Act (its annex 2) prohibits only the taking of bribes and the Code of Ethics for the police contains certain comments (not necessarily a statutory rule) which refer to a prohibition in principle of “any gifts, favours, discount or hospitality which might be seen to compromise his or her duties in the present or in the future”. The discussions on site referred to the existence of yet another set of rules contained in a special circular which is issued from time to time in relation to Christmas presents. The latest version available was issued on 28 November 2018 by the Office of the Prime Minister (circular n°8/2018). It recalls the earlier circulars and prohibitions for all staff to make gifts to a person with supervisory functions. It also prohibits the sponsoring of Christmas parties by clients or the commercial community.

162. The GET noted that during meetings with the MPF, confusions were made with the criminal concept of bribery. It was sometimes stated that a gift or other benefit would be treated as a bribe and that it would attract a criminal procedure for bribery. The GET recalls that rules on gifts, hospitality and other benefits are by definition of a preventive nature and that it is easier to put appropriate ex ante restrictions or bans on such benefits than to seek ex post a criminal conviction in court for an act of passive (or active) bribery – provided the employing institution effectively sends such case to the courts. Malta clearly needs a robust set of rules on gifts and other benefits (favours, hospitality, other benefits). A recommendation concerning the review of rules of conduct was issued before and gifts need to be addressed in that context (see paragraph 138).

### *Incompatibilities, outside activities and post-employment restrictions*

163. Maltese law enforcement officials are not subject to a strict prohibition to hold post/functions or engage in outside activities, whether in the private or public sector. However, such additional assignments have to be approved, in principle.

164. In July 2015, the Commissioner issued GHQ Circular 24/2015 which recalled the pertinent provisions (it was then article 6(f) of the Third annex to the Police Act) and the duty not to have business, trade or financial activities interfering with the official duties. It added that these would be prohibited unless they concerned investments with the Malta stock exchange or commercial banks. Subsequently, GHQ Circular n° 8/2018 was issued in February 2018, with a reference to article 11 of the Police Act:

#### ***Police Act, article 11***

*11. Every police officer shall be deemed to be a police officer at all times and shall dedicate his whole time to the service of the Force and shall not carry on any other work unless prior permission in writing has been obtained from the Commissioner.*

165. Circular n°8/2018 stresses that “*if a member of the force has or proposes to have a business, trade or financial activity which has not previously been disclosed, the member is to give written notice to the Commissioner without any delay*”. The circular establishes a board consisting of three members (a deputy commissioner, a chief executive officer and an assistant commissioner) to review the individual situations and to authorise “*only those activities that are compatible with the ethos and values of the Malta Police Force*”.

166. The GET considers that there is a need for a more robust approach in respect of outside activities. As things stand, too much discretion is left to the newly established body to decide which

parallel activities are permissible or not. Strangely enough, during the on-site discussions, it was also indicated that as a rule it is for the Permanent Secretary of the Ministry for Home Affairs and National Security to authorise such activities: this clearly suggests that there is a lack of knowledge of the rules in place. The previous circular from 2015 already pointed to the phenomenon of officers who engage in side activities, ignoring (or not being aware of) their declaratory obligations. Malta needs to take more determined action in the above fields. **GRECO recommends 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.**

#### *Misuse of public resources*

167. The authorities did not refer to any particular rules, if any, in this area of anti-corruption prevention. As indicated earlier under PTEFs, embezzlement constitutes a criminal offence in accordance with article 127 of the Criminal Code (sub-paragraph 1 deals with the public sector specifically). In their latest comments, Malta stressed that the Code of Ethics and professional obligations contain a general duty of care in the management and control of State resources.

#### *Misuse of confidential information*

168. The authorities referred to the applicability of the Public Administration Act without specifying which rules these would be, and to the Criminal Code provisions a [revised version of the PPA](#) was adopted and partly promulgated on 1 March 2019). As indicated earlier, the Criminal Code criminalises the divulgence of confidential information – article 133 on Disclosing official secrets: any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine (multa)”. The GET also noted that various provisions of the PA and the code of ethics deal with the protection of police information, for instance art.89(2) which makes it a disciplinary offence to use data for purposes others than those for which it is intended, and item 6 of the Code which prohibits the divulgence of information. The GET recalls that this area of police activities is classically a sector at risk (in Malta and elsewhere), including for bribery purposes. The GET also noted that even in the context of the arrest of those suspected of having murdered Daphne Caruana Galizia, there have been allegations that the criminals might have been tipped-off from within the police<sup>55</sup> (the authorities pointed out that no evidence was found to confirm these suspicions). The strategy, as recommended earlier, should address this subject-matter as a particular risk-prone area.

#### *Third party contacts*

169. Third party contacts are regulated in general and specific terms in the Code of Ethics for police officers. These deal with the duties towards the community, the behaviour during police operations and when the use of force is necessary, the duty of confidentiality on all matters concerning the Force. The situation in Malta does not call for particular comments other than those already made before about the need to find a proper balance between the duty of confidentiality and the information of the public / victims / their relatives, and the above-highlighted risks of misuse of confidential information to the benefit of third parties (to be addressed via the strategy recommended above – see paragraph 134).

#### **Declaration of assets, income, liabilities and interests**

170. There is no general system of declarations of assets and interests by LEOs. As indicated earlier, there is a general duty under article 11 of the Police Act to be “a police officer at all times and

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<sup>55</sup> <https://www.bbc.com/news/world-europe-43960638>

(...) to not carry on any other work unless prior permission in writing has been obtained from the Commissioner.” As it was also indicated, in practice, successive police commissioners have issued circulars imposing systematic declaration upon all officers in respect of their involvement in business, trade or financial activities, with some exceptions, for these to be reviewed and authorised as appropriate. As indicated earlier, the declarations are currently to be examined by a commission of three persons to determine whether the activity declared is compatible with the tasks of a police officer. See paragraph 166 and the corresponding recommendation on desirable improvements.

## **Supervision and enforcement**

### *Internal oversight and control; External oversight and control*

171. The **Internal Audit and Investigations Unit**, hereinafter referred as IAIU is the internal department within the Police Force, entrusted with the internal supervision of the work of the Force in order to ensure its accountability. The Internal Audit and Investigations Unit was set up within the Force to check processes and internal procedures as well as to investigate any complaint against police officers made by members of the public or by one member of the Force. Upon receipt of a complaint, the Internal Audit and Investigations Unit shall, as soon as possible, inform the Independent Police Complaints Board. The IAIU shall, as soon as may be, after concluding an investigation on a complaint, transmit a report and recommendations thereof to the **Independent Police Complaints Board**, or the CEO as the case may be. A copy of the report and, or recommendation is to be forwarded to the Commissioner of Police.

172. Disciplinary proceedings with respect to LEOs are also regulated according to article 110 of the Constitution. Where any powers to exercise disciplinary action are delegated in accordance with the said article 110, **the Commissioner of Police and/or the disciplinary board** shall, unless otherwise stated in the instrument of delegation, follow the regular procedure and shall have the powers to collect the evidence and to recommend the relative penalty, if any, applicable in the case and to hear evidence on oath, and a warrant signed by the said Commissioner or disciplinary board, as the case may be, shall be equivalent to a subpoena issued to compel the attendance of witnesses or to compel them to produce documents or other exhibits. The disciplinary board is composed of three members, one as the Chairperson, which is appointed by the Commissioner from members of the Force. The members shall hold office for a period of two years, renewable.

173. The disciplinary offences are enumerated in an appendix to the police act (see above, the section on rules of ethics). If the LEO is found guilty, s/he shall be charged with an offence against discipline, and s/he may be compelled to appear before a disciplinary board appointed by the Commissioner. If the conduct falls into the list of serious offences, the provisions of the Public Service Commission Regulations are applied (see paragraph 135 above) (art. 24 PA and its annex 2).

174. In proceedings before the Commissioner or disciplinary board under art. 23 – (a) an officer higher in rank than the officer charged shall be designated to represent the prosecuting side and produce the evidence in support of the charge; (b) the officer charged may defend himself in person, or through the assistance of a legal professional, another police officer, or a trade union representative.

175. The officer charged may summon and cross-examine witnesses under the same conditions as prevail for the prosecution. Before rendering a decision and awarding the penalty, the Commissioner shall hear final submissions by the prosecution and the defence on the merits and on the penalty applicable if any. Summary notes of the proceedings shall be kept by the presiding officer, signed by him, and attached to the records of the case. These provisions shall also apply to the disciplinary board before submitting his opinion to the Commissioner as provided in article 28 (art. 27 PA).

176. Disciplinary measures taken against a LEO do not preclude any criminal proceedings under the provisions of the CC or any other law, and vice versa. In proceedings before the Commissioner the following penalties may be awarded: (a) a fine not exceeding seven days' pay; (b) loss of the benefit of weekly rest days, up to seven days; (c) severe reprimand; (d) reprimand; (e) warning (art. 31 PA). In case of serious offences, the following penalties apply: (a) dismissal; or (b) asking the officer to resign, or at a specific date; or (c) reduction in rank or seniority; or (d) deferment of an increment or the reduction in the offender's rate of pay. These penalties shall only be recommended by the Public Service Commission (article 110 of the Constitution) even though nothing precludes the PSC from imposing a penalty listed in article 31 (art. 32 PA).

177. Disciplinary proceedings before the Commissioner must be instituted within three months from the date of the commission of the disciplinary offence (art. 33 PA).

178. In respect of the **Independent Police Complaints Board (IPCB)**: the GET learned during the on-site discussions that this body was recently established under the new Police Act of 2017, and that it has taken over the responsibility of the former Police Board, which was an external control body ("Ombudsman of the Police"), completely independent from the police, with its own premises. The IPCB is currently composed of three members (one of whom shall be the Chairperson), all appointed by the President of Malta on a proposal of the Minister responsible for the MPF. Their term is 3 years, renewable. The Chairperson of the Board shall be a retired Judge or Magistrate. The function of board member is incompatible with any other function as a public officer, serving judge or magistrate, member of a public elected assembly or member of a corporation.

179. The IPCB has the following functions: (a) to expeditiously inquire into and report on any matter regarding the conduct of the Force or any of its members either on its own motion on any matter referred by the Minister or on any complaint and, or request which the IPCB may receive, also from citizens; (b) to inquire and report on any complaint made to the IPCB by an officer against treatment deemed prejudicial or discriminatory, or which may be the cause of undue distress; (c) to request, if necessary, at any stage, the collaboration and, or assistance of the IAIU; (d) to monitor relations between the Police Force and the public; (e) to monitor, supervise and visit any cells where persons are or may be detained and to report thereon to the Police Governance Board and to the Minister; (f) to perform any other function that may be assigned to it by regulations, or by any specific written instructions from the Minister; (g) to recommend, in its decisions, any such action deemed fit and is to send its recommendations to the Minister and to the Social Affairs Committee about every complaint or request received; (h) to hear appeals from decisions of the disciplinary board provided that an appeal from such decision has been filed within fifteen days from the date of notification of the decision; (i) to refer its findings to the Attorney General and to the Commissioner of Police, where it results that the matter may involve criminal proceedings; and (j) to submit an annual report to the Minister, the Commissioner of Police and the Social Affairs Committee. (art. 36 PA). The IPCB has the power to: (a) summon witnesses who shall be heard on oath; (b) administer an oath to any witness and to any person concerned in the investigation of the complaint and require them to give evidence. (art. 35 PA).

180. With the above changes, there is no special body specifically responsible for the external oversight of the police Force, leaving aside the general competence of the audit bodies of the supervisory ministry, of the National Audit Office, and of the Permanent Commission against Corruption.

181. The GET learned during the discussions that the creation of the IPCB had not really led to actual improvements compared to its predecessor, the Police Board. The latter reportedly never managed to identify any breaches due to its poor performance. The IPCB is not better equipped. It was still not operational at the time of the visit (no offices, no staff etc., which requires decisions from the government). Moreover, although the number of members was reduced compared to its predecessor, the IPCB was entrusted with the additional functions of an appeal body for disciplinary

matters within the Police – a function entrusted in principle, since 2014, to the Grievance Boards to be established in each Ministry. This could lead to a paralysis of the institution as regards its main tasks, which are to deal with complaints against police officers. The GET also noted that the IPCB, despite its name, does not have the same guarantees of independence as its predecessor: its members can be removed at any time by the minister who has the police in his/her portfolio. Before 2017, the dismissal of a member of the Police Board required a vote in Parliament. The GET was also informed that the current deadline to complete a case and draw conclusions is six months, which is clearly unrealistic. The IPCB is an important institution, which clearly should be strengthened in order to have any real added value compared to its predecessor. The appeals concerning disciplinary matters should be taken away from its mandate and its independence and capacity of action need to be strengthened. It will also be important that the IPCB reports about its activities through public reports. As things stand, under the Police Act the IPCB only reports to the Minister, the Commissioner of Police and the Social Affairs Committee (who can decide or not to publish the report). This is important for the accountability and the independence of the institution. **GRECO recommends 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.**

#### *Complaints system*

182. Citizens can address complaints, free of charge, including anonymously via [www.pulizija.gov.mt](http://www.pulizija.gov.mt) to the IPCB and the IAIU mentioned above. The GET was told that the Ombudsman also receives requests from citizens, who are then advised to turn to the above-mentioned bodies. The Ombudsman's Office, in line with what seems to be its current practice, may nonetheless keep a file under review to ensure that the procedures are properly followed by these bodies.

183. Upon the receipt by the police (through the IPCB or IAIU) of any report, information or complaint requiring proceedings to be taken, the territorially competent magistrate or Court of magistrate (as the case may be) can be involved to give the necessary advice for such proceedings. In case of inaction by the police in the first hand, the complainant can turn directly to the court of magistrates for it to order the police to institute proceedings; the Commissioner is to be kept informed.

#### *Immunities or other procedural privileges*

184. Law enforcement officers in Malta do not enjoy immunities or other procedural privileges / special criminal proceedings.

#### *Reporting misconduct or crime, whistleblower protection*

185. The authorities indicated that there is a general duty for all officers to report a possible case of corruption or misconduct against a colleague, either to the direct superior, or a superior of trust or to the IPCB or to the IAIU. At the same time, anyone can report the misconduct of a police officer. The report must be made to any officer with a higher rank in case of an offence liable to prosecution ex officio by the police. The report cannot be anonymous, though, and there is no particular policy in place to facilitate or encourage the reporting in practice.

186. As indicated in respect of PTEFs in the first part of this report, the [Protection of the Whistleblower Act](#) establishes a system of internal and external reporting channels to be used by persons disclosing in good faith corrupt practices and other suspicious behavior. All ministries should thus appoint an official responsible to receive reports from informers, while the Cabinet Office

performs the tasks of the external whistle-blowing unit in accordance with the terms of the above Act. Reporting persons can benefit from various measures including immunity from criminal proceedings, in which case the Attorney-General acting in consultation with a Judge of the superior Courts and the Commissioner of Police may grant such immunity even where the reporting person was him/herself involved in criminal acts.

187. The GET considers that the system to report possible misconduct or a crime within the MPF needs to be reviewed. The fact that the current arrangements do not provide for the possibility to receive anonymous complaints from within the police, whereas this is possible for complaints emanating from any citizen, creates an inconsistent situation and it would appear that the above act on the protection of whistleblowers does not apply to police officers. Moreover, clarification is required as to the protection which can concretely be afforded to a police officer (not just a legal immunity but also against retaliatory action), especially where s/he would denounce malpractices involving his/her management. Last but not least, the GET is disappointed by the absence of practical measures to encourage disclosures (listing the channels to use, how to deal with situations involving colleagues or supervisors, the type of protection which can be afforded and so on). **GRECO recommends 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.**

#### *Statistics*

188. The authorities did not provide any statistical or other empirical information before the visit concerning the enforcement and complaints mechanisms, and only a partial overview was made available during the interviews. Additional information had to be requested after the visit.

189. As regards minor offences, there have been 108 cases heard and decided. In 2016, all cases concerned the disobeying of an order and the vast majority of cases resulted in the imposition of a sanction such as a short term suspension from duties (1 or 2 days mostly) or a warning. In 2017, the structure of cases involves in addition a number of acts of causing a damage, or prejudice to the reputation of the institution, negligence of duties, unjustified absences etc. is very different with more than half of the cases ended with the LEO found innocent; were a disciplinary measure was applied, it was generally a reprimand or a warning (3 measures of suspension from duty). Figures for 2018 are not available, which the authorities explained by the fact that the IPCB is not operational.

190. In the period 2014-2018, the Public Service Commission has handled approximately 120 cases of serious misconduct which required a court decision for such offences as negligent and reckless driving, insults and threats, harassment, assault, theft, tampering of evidence, misuse of the IT system. About one sixth of these are pending (situation as of February 2019), including two cases of bribery and similar offences. LEOs were found guilty in 14 of these 120 cases. In the vast majority of cases, the proceedings led to an acquittal or they were closed for various (unspecified) reasons. Disciplinary measures were applied (including temporarily, e.g. suspension) in only a handful of cases. According to another set of data, in the period 2013-2018, there have been six cases of corruption including bribery sent to court concerning LEOs: four cases are still pending, in the two other cases, the person was acquitted.

191. The GET considers that statistics and other information concerning the conduct of LEOs should be kept more systematically and more consistently, despite the various bodies involved in decisions on those matters. Such data is essential to assess the risks that the MPF is confronted with, regarding the conduct of LEOs including their level of integrity. The GET observes also that overall, there are strong variations across the years, regarding the type of conduct leading to disciplinary measures and court proceedings and that when proceedings result in the imposition of a disciplinary measure, these are the milder ones (warnings and reprimands, short term suspension). These

features suggest that there is a need for a more consistent and stricter policy as regards disciplinary matters. As things stand, the overall response to the misconduct of LEOs could lack dissuasiveness.

## **VI. RECOMMENDATIONS AND FOLLOW-UP**

192. In view of the findings of the present report, GRECO addresses the following recommendations to Malta:

*Regarding central governments (top executive functions)*

- i. 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 interest, declaratory obligations, and supervision by the Commissioner for standards in public life (paragraph 26);**
- ii. 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 (paragraph 31);**
- iii. 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 (paragraph 42);**
- iv. 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 (paragraph 43);**
- v. 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 (paragraph 47);**
- vi. 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 (paragraph 51);**
- vii. 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 (paragraph 55);**
- viii. 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 (paragraph 63);**
- ix. 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 (paragraph 66);**

- x. (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 (paragraph 76);
- xi. 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 (paragraph 95);
- xii. 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 (paragraph 98);
- xiii. (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 (paragraph 107);
- xiv. 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 (paragraph 108);
- xv. (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 (paragraph 119)

*Regarding law enforcement agencies*

- xvi. 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 (paragraph 128);
- xvii. 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 (paragraph 134);**

- xviii. 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 (paragraph 138);**
- xix. 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 (paragraph 148);**
- xx. (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 (paragraph 156);**
- xxi. 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 (paragraph 166);**
- xxii. ii) 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 (paragraph 181);**
- xxiii. 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 (paragraph 187).**

193. Pursuant to Rule 30.2 of the Rules of Procedure, GRECO invites the authorities of Malta to submit a report on the measures taken to implement the above-mentioned recommendations by 30 September 2020. The measures will be assessed by GRECO through its specific compliance procedure.

194. GRECO also invites the Maltese authorities to authorise, at their earliest convenience, the publication of this report.

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## About GRECO

The Group of States against Corruption (GRECO) monitors the compliance of its 49 member states with the Council of Europe's anti-corruption instruments. GRECO's monitoring comprises an "evaluation procedure" which is based on country specific responses to a questionnaire and on-site visits, and which is followed up by an impact assessment ("compliance procedure") which examines the measures taken to implement the recommendations emanating from the country evaluations. A dynamic process of mutual evaluation and peer pressure is applied, combining the expertise of practitioners acting as evaluators and state representatives sitting in plenary.

The work carried out by GRECO has led to the adoption of a considerable number of reports that contain a wealth of factual information on European anti-corruption policies and practices. The reports identify achievements and shortcomings in national legislation, regulations, policies and institutional set-ups, and include recommendations intended to improve the capacity of states to fight corruption and to promote integrity.

Membership in GRECO is open, on an equal footing, to Council of Europe member states and non-member states. The evaluation and compliance reports adopted by GRECO, as well as other information on GRECO, are available at: [www.coe.int/greco](http://www.coe.int/greco).