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Monitoring of the application of the European Charter of Local Self-Government in Malta

Committee on the Monitoring of the implementation of the European Charter of Local Self-Government and on the respect of Human Rights and the Rule of Law at local and regional levels (Monitoring Committee)

Co-rapporteurs:¹ Cecilia Felicitzasz FRIDERICS, Hungary (L, ECR)
Matthias GYSIN, Switzerland (L, ILDG)

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Summary

The present report was prepared following the monitoring visit to Malta that took place from 7 to 9 November 2023. It welcomes the 2019 local government reform, the lowering of the minimum age for local elections to 16, and Malta's ratification of the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority.

However, the rapporteurs express concerns about the limited scope of local self-government, the ineffectiveness of consultations with local authorities, and the excessive supervision of local self-government by the central authorities, particularly through executive secretaries. They highlight financial constraints to which local authorities are subject, including the lack of adequate financial own resources allocated to them and dependence on earmarked grants. Furthermore, local councils' powers to manage their human and administrative resources remain limited, while mayors can only work part-time. Additionally, the regions recently recognised as the level of local self-government under domestic law cannot be considered genuine regions within the meaning of the Charter since their members are not directly elected and they lack financial autonomy. Finally, Valletta does not enjoy any specific status as the capital city.

It is therefore recommended that the national authorities of Malta, among other measures, increase local authorities' competences, ensure effective consultation process, limit administrative supervision to supervision of compliance with the law, review the system of financing local authorities, and diversify local funding. It is equally important to grant local councils more administrative freedom, enhance their powers to manage executive secretaries independently, and allow mayors to choose between full-time or part-time work. Conferring special status on Valletta should also be considered to enable it to meet the specific needs associated with its role as the capital.

1. L: Chamber of Local Authorities / R: Chamber of Regions.
EPP/CCE: European People's Party Group in the Congress.
SOC/G/PD: Group of Socialists, Greens and Progressive Democrats.
ILDG: Independent Liberal and Democratic Group.
ECR: European Conservatives and Reformists Group.
NR: Members not belonging to a political group of the Congress.

DRAFT RECOMMENDATION²

1. The Congress of Local and Regional Authorities of the Council of Europe (“the Congress”) refers to:

a. Article 2, paragraph 1.b, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that one of the aims of the Congress is “to submit proposals to the Committee of Ministers in order to promote local and regional democracy”;

b. Article 1, paragraph 3, of the Charter of the Congress of Local and Regional Authorities appended to Statutory Resolution CM/Res(2020)1 relating to the Congress, stipulating that “The Congress shall prepare on a regular basis country-by-country reports on the situation of local and regional democracy in all member States and in States which have applied to join the Council of Europe, and shall ensure the effective implementation of the principles of the European Charter of Local Self-Government;”

c. Chapter XVIII of the Rules and Procedures of the Congress on the organisation of monitoring procedures;

d. the Contemporary commentary by the Congress on the explanatory report to the European Charter of Local Self-Government adopted by the Statutory Forum on 7 December 2020;

e. the Congress priorities for 2021-2026, in particular priority 6b concerning the quality of representative democracy and citizen participation;

f. the Sustainable Development Goals (SDG) of the United Nations 2030 Agenda for Sustainable Development, in particular Goals 11 on sustainable cities and communities and 16 on peace, justice and strong institutions;

g. the Guidelines for civil participation in political decision making, adopted by the Committee of Ministers on 27 September 2017;

h. Recommendation CM/Rec(2018)4 of the Committee of Ministers to member States on the participation of citizens in local public life, adopted on 21 March 2018;

i. Recommendation CM/Rec(2019)3 of the Committee of Ministers to member States on supervision of local authorities’ activities, adopted on 4 April 2019;

j. the previous Congress Recommendation on the monitoring of the European Charter of Local Self-Government in Malta [[Recommendation 400 \(2017\)](#)];

k. the Explanatory memorandum on the monitoring of the European Charter of Local Self-Government in Malta.

2. The Congress points out that:

a. Malta joined the Council of Europe on 29 April 1965, signed the European Charter of Local Self-Government (ETS No. 122, “the Charter”) on 13 July 1993, and ratified it on 6 September 1993. It did not ratify Article 9.3 of the Charter. The Charter entered into force on 1 January 1994;

b. the Committee on the Monitoring of the implementation of the European Charter of Local Self-Government and on the Respect of Human Rights and the Rule of Law at local and regional levels (“the Monitoring Committee”) decided to examine the situation of local democracy in Malta in the light of the Charter. It instructed Cecilia Felicitasz Friderics, Hungary (L, ECR) and Matthias Gysin, Switzerland (L, ILDG) with the task of preparing and submitting to the Congress a report on monitoring the application of the European Charter of Local Self-Government in Malta;

2. Preliminary draft recommendation approved by the Monitoring Committee on 26 March 2024.

c. the monitoring visit took place from 7 to 9 November 2023. During the visit, the Congress delegation met the representatives of various institutions at all levels of government. The detailed programme of the visit is appended to the explanatory memorandum;

d. the co-rapporteurs wish to thank the Permanent Representation of Malta to the Council of Europe and all those whom they met during the visit.

3. The Congress notes with satisfaction that:

a. The 2019 local government reform has led to a more formal recognition of the principle of local government in legislation, established a general right to consultation, clarified the role of executive secretaries, expanded various forms of citizens' participation at the local level, and granted more freedom for local councils in determining the number of employees they can recruit;

b. the minimum age requirement for election to local councils was lowered to 16 with the aim of increasing youth participation in political life;

c. in 2018, Malta signed and ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207).

4. The Congress expresses its concerns on the following issues:

a. The scope of local self-government remains minimal, and local councils are overall not empowered to regulate and manage a substantial share of public affairs under their responsibility. In addition, further functions have been removed from local councils, contrary to the principle of subsidiarity;

b. local authorities' responsibilities must be aligned with nationally defined policies while supervision by the national government, notably through the executive secretaries, is extensive and disproportionate, leading to excessive involvement of the national authorities in local affairs;

c. the effectiveness of consulting with local authorities, including through the Local Councils' Association, needs improvement for all matters affecting them, especially concerning activities that were outsourced to specialised agencies but are relevant to local government;

d. local authorities' financial autonomy is limited as they lack adequate financial resources of their own, of which they may dispose freely within the framework of their powers;

e. mayors are only allowed to work part-time, regardless of the size of their locality and the workload in practice;

f. local councils' flexibility in determining their administrative structures and implementing their own human resources policy is limited;

g. grants to local authorities are mostly earmarked for the financing of specific projects;

h. the status of the capital city of Valetta remains the same as of any other local council and does not take into account specific aspects and needs connected to its role as the capital;

i. while regions have been recognised as a level of local government by domestic law, indirect election of the regional council members and the lack of financial autonomy impede their consideration as genuine regions within the meaning of the Charter.

5. In light of the foregoing, the Congress requests that the Committee of Ministers invite the authorities of Malta to:

a. revise the Local Government Act to increase the share of public affairs under local authorities' own responsibility and refrain from centralisation of already limited local competences, including to the regional level;

b. review the current system of administrative and financial supervision of local authorities to limit it to ensuring legality control;

- c. further revise legal provisions concerning executive secretaries to enable local councils to select or remove them without the approval by the national government;
 - d. set up a consultation mechanism involving relevant specialised agencies to ensure that local authorities are effectively consulted in practice, in due time and in an appropriate way, on all matters that concern them, both by the national authorities and these agencies;
 - e. in consultation with the Local Councils' Association, develop a system of financing local authorities based on their own financial resources, which should be sufficiently diversified to enable local authorities to adapt their finances to the evolving needs and different economic cycles;
 - f. legally allow mayors to choose to work full-time or part-time, to enable them to respond to the different needs of their respective localities;
 - g. provide more freedom to local authorities, including through allocating financial resources, to adapt their own internal administrative structures to local needs;
 - h. reduce the ratio of earmarked grants and allow local authorities to access the national capital market without prior approval of the national government;
 - i. consider conferring a special status for Valetta as the capital city, to enable it to meet the specific needs associated with its role as the capital.
6. The Congress calls on the Committee of Ministers and the Parliamentary Assembly of the Council of Europe to take account of this recommendation on the monitoring of the European Charter of Local Self-Government in Malta and the accompanying explanatory memorandum in their activities relating to this member State.

EXPLANATORY MEMORANDUM

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1. INTRODUCTION: AIM AND SCOPE OF THE VISIT, TERMS OF REFERENCE

1. Pursuant to Article 1, paragraph 2, of the Charter of the Congress of Local and Regional Authorities (“the Congress”) appended to Statutory Resolution CM/Res (2020)1, the Congress regularly prepares reports on the state of local and regional democracy in Council of Europe member States. The monitoring missions of the Congress pursue the overall aim of guaranteeing that the commitments entered into by member states when ratifying the European Charter of Local Self-Government (“the Charter”, ETS no. 122) are fully honoured.

2. Malta became a member of the Council of Europe on 29 April 1965 and ratified the European Charter of Local Self-Government on 6 September 1993. It did not ratify Article 9.3 of the Charter. It has ratified the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207) on 16 January 2018.

3. The Committee on the Monitoring of the implementation of the European Charter of Local Self-Government and on the Respect of Human Rights and the Rule of Law at local and regional levels (“the Monitoring Committee”) decided to examine the situation of local democracy in Malta vis á vis the Charter. A delegation from the Congress, composed of rapporteurs Cecilia Felicitasz Friderics, Hungary (L, ECR) and Matthias Gysin, Switzerland (L, ILDG) was appointed to carry out a monitoring visit in Malta. They were assisted by Prof. Francesco Palermo, member of the Group of Independent Experts on the European Charter of Local Self-Government (Italy) and by the Secretariat of the Monitoring Committee.

4. The monitoring visit took place from 7 to 9 November 2023. The Congress delegation, as a regular practice, met the representatives of various institutions, including at all levels of government. The rapporteurs regret however that the Ministry for Finance and Employment could not meet them during the visit. The detailed programme of the monitoring visit is appended to the explanatory memorandum.

5. The rapporteurs wish to thank the Permanent Representation of Malta to the Council of Europe and all those who they had exchanges with during these meetings.

6. According to Rule 88.3 of the Rules and Procedures of the Congress of Local and Regional Authorities of the Council of Europe, the preliminary draft report was sent on 29 February 2024 to all interlocutors met during the visit for their comments and possible adjustments or corrections (hereinafter referred to as “consultation procedure”). The present report is based on the comments received, which were considered by the rapporteurs before submission for approval to the Monitoring Committee.

2. INTERNAL AND INTERNATIONAL NORMATIVE FRAMEWORK

7. The Republic of Malta is a parliamentary democracy. The constitutional framework is based on the separation of powers, with an independent judiciary. The Constitution (*Konstituzzjoni ta' Malta*), adopted in 1964, provides the legal foundation for the country's governance. Malta became a republic in 1974: the President serves as the head of state, while the Prime Minister is the head of government. The Parliament consists of a unicameral house, the House of Representatives (*Il-Kamra Tad-Deputati*). Members are elected through a single transferable vote system and candidates to the general elections may contest no more than two districts. The right to vote for Parliament is acquired at the age of 16, the right to stand for election at 18.

8. The system of government is based on the Westminster model: the Prime Minister is the head of the executive and is the leader of the party with a majority in the House of Representatives. The leader of the second-largest party in the House leads the opposition, which plays a crucial role in scrutinising the government's actions and in proposing alternative policies. This system promotes a check-and-balance mechanism, fostering accountability and transparency in governance. Malta's political landscape is characterized by a multi-party system, with two major parties dominating: the Labour Party and the Nationalist Party. These parties have historically alternated in power, contributing to a competitive and dynamic political environment.

9. Malta's legal system is a blend of civil and common law traditions. The judiciary is independent, with the highest court being the Constitutional Court. The other superior courts are the Court of Appeal,

the Court of Criminal Appeal, the Criminal Court and the Civil Court. The Inferior Courts are the Courts of Magistrates. The country is a member of the European Union since 2004, following a referendum held in 2003, and member of the Council of Europe since 1965, the year following independence from the UK. Over time, Malta has developed into an important centre for financial services, and it has a very low unemployment rate, at 2,5% at the time of the visit in November 2023.

2.1 Local government system (constitutional and legislative framework, reforms)

Legal framework

10. The local government sector in Malta comprises 68 local governments (localities), 6 regions and the Local Councils Association. Local self-government is exercised through a system of democratically elected local councils, while regions (regional councils) are groupings of local councils for specific purposes and, as of 2019, represent the second tier of the local self-government according to the Local Government Act.

11. Each locality is administered by a local council, as stipulated by Article 115A of the Constitution and Article 3.1 of the Local Government Act (LGA), the main law on the subject. Each local council is vested with functions and powers provided under the Local Government Act and it constitutes the core body of local self-government in the Republic of Malta. The local council is presided by the mayor as the representative of the council for all purposes under Article 26.1 LGA.

12. Local self-government in Malta was initially regulated by the Local Councils Act (LCA), Cap. 363, enacted by Act XV of 1993, renamed into Local Government Act by the reform of 2019. This piece of legislation established local councils as local government authorities with their own legal personality, provides a detailed list of their functions and the powers of the national government to carry out supervision and control over them, institutionalises the office of the mayor and prescribes the main procedural framework for the conduct of local councils' meetings. The LGA is supported by 14 schedules, in which further details are provided as to a wide range of procedural and other issues of administrative and financial nature.

13. Local self-government was enshrined in the Maltese Constitution a few years after the enactment of the Local Government Act (then LCA), through a constitutional amendment in 2001, implemented through Act No. XIII of 2001, which added a new chapter (XA) to the Constitution. The new chapter, which comprises one single Article (115A), provides that the State shall adopt a system of local government whereby the territory of Malta shall be divided into such number of localities as may be determined by law from time to time. Each locality is administered by a local council elected by the residents of the locality, and it is established and operates according to the law.

14. The mayor is the elected councillor who obtains the highest number of votes among the list that obtains the absolute majority in the council. The councillor of the same party who receives the second highest number of votes becomes deputy mayor (Article 25 LGA). The mayor presides over all the meetings of the local council and supervises all the functions of the local council. The LGA adopts a dual system of authority, consisting of democratically elected appointees (mayor and councillors) and an executive authority, vested in the executive secretary, who is appointed jointly by the local council and the government, heads the administration and the staff and ensures administrative and financial control. Under Article 27 LGA, the legal and judicial representation of the local council is exercised jointly by the mayor and the executive secretary.

15. Apart from the mentioned provisions in the Constitution and in statutory law, a number of regulations, orders and legal notices have been issued to date in order to deal mainly with procedural and administrative issues, such as the Local Councils (Association) Regulations, the Local Councils (Financial) Regulations, the Local Councils (Procedures) Regulations, the Local Government (Human Resources) Regulation, the Private Guards and Local Wardens Acts, the Local Councils (Delegation Function) (Police Licences) Order, the Local Councils (Twinning) Regulations, and others.

16. Further to the localities, 6 regions exist as administrative agencies, as provided for by Article 37A LGA and by the Eleventh Schedule of the same law: Gozo region (*Ghawdex*), Southern Region (*Nofsinhar*), Port Region (*Port*), Western Region (*Punent*), Eastern Region (*Lvant*), Northern Region (*Tramuntana*). The regions are groups of localities pooled together based on their geographical location. Representatives of the local council of each locality forming each region – appointed one by each mayor – constitute the regional council, chaired by a president elected by the councillors of the said localities. The regional president receives the same remuneration as a mayor and the function is likewise part

time. Regional councillors are not remunerated for this function, but only as officials of the respective locality.

17. The Regions are supra-local units initially created for essentially two purposes: to comply with the NUTS-classification at EU level, and to improve the performance of entrusted tasks by the local councils and relieve them by allowing the councils to delegate the tasks that councils were unable or unwilling to carry out on their own. Successive reforms of the local government, and in particular the 2019 reform of the LGA, strengthened their position and attributed them more significant functions such as the coordination of some local services of general interest like in particular waste management. Regions are also entrusted with the social impact assessment.

Developments in the area of local self-government since 2017

18. Since the last monitoring report, some significant changes have been introduced in local self-government in Malta. In 2017, within the framework of a reorganisation of the structure of the government, the Local Government Division has been established within the responsible ministry (now named Ministry for the National Heritage, the Arts and Local Government) and tasked with control, coordination, supervision and monitoring of local councils.

19. After a broad consultation process that was started in July 2017, a White Paper on the Local Government Reform was published in October 2018 proposing an extensive reform of the local government system, to address its shortcomings, including some of those highlighted in the last monitoring by the Congress. After a further public consultation on the proposed reforms, in April 2019, the LGS (then still Local Councils Act) was amended by virtue of Act No. XIV of 2019.

20. The reform of 2019 (Act No. XIV of 2019) introduced several significant changes. Besides changing the name of the very foundational law of local self-government into Local Government Act, to acknowledge the importance given to the concept of local government as a whole, the reform redesigned and strengthened the role of regions and streamlined some aspects related to the local councils. As to the regions, the reform elevated them to the second level of the local government structure in Malta; when they were established in 2011, the regional bodies were mere regional committees, which the reform reshaped in regional councils. The reform provided the regional councils with own functions and allocations, notably in the areas of waste collection and management, of social inclusion and to some limited extent for local tribunals, an extension of the courts system dealing with minor offences. The number of regions was increased from 5 to 6 and new rules on incompatibility were introduced, such as the separation between regional president and mayor. The regions have also been provided with an own funding scheme, which did not exist before. These changes have contributed to make the system of local government more consistent. The planned reform also included the amendment of Article 115A of the Constitution to include the regions and to constitutionalise the two-tier system of local self-government.

21. The regions have not been included in the Constitution to constitutionalise the two-tier system of local self-government so far and no intention to pursue constitutional reforms was signalled to the delegation.

22. As to local councils, their functions in social, educational and community services have been streamlined, emphasising their role of support to residents in these fields. The reform also abolished the administrative committees, which were the elected bodies administering the communities, or hamlets, i.e. villages within localities. While communities remained, the functions of the former administrative committee, together with the relative funding, were transferred mainly to the local councils. Committees and subcommittees can be appointed by the local councils as are necessary and the mayor must chair them (Article 26 LGA). The reform also clarified the responsibilities of the local councils, demarcating them to the areas of cleanliness of roads, sport and physical activities, infrastructure and activities for the youth and the elderly as well as social aspects. It also strengthened the possibility for local councils to co-determine the number of staff by proposing to the government adjustments to the staffing plan.

23. Finally, the reform lowered to 16 the age to contest in local elections: while in 2019 this opportunity was limited to the election as councillor but not for mayor or deputy mayor, in December 2023, a further reform extended to 16-year-olds the possibility of being elected mayor and deputy mayor if they received the most votes within the political party obtaining a majority vote as from the local elections in June 2024 (Article 25 LGA). Despite some criticism raised by civil society, especially arguing that

persons who are legally not considered as adults should not be shouldering such a responsibility, Parliament decided unanimously to continue the path towards reducing voting age across the board and to increase youth's participation in political life. Malta has thus become the first European country to allow mayors to be elected at the age of 16. It is noteworthy that such a momentous reform has been approved by both the majority and the opposition and, although the reason might be the difficulty for both parties to find candidates for local elections, it shows that there is a cross-party support for such a courageous step. The rapporteurs note that, while neither the Charter nor its Explanatory Report of the Contemporary Commentary take an explicit stand on this particular point, such a choice is perfectly in line with the Charter and its spirit, which aims at increasing citizen's participation at the local level, as well as Congress resolution 387/2015 "Voting at 16 – Consequences on youth participation at local and regional level".

24. The 2019 reform further extended the possibility to resort to citizens' consultation and other forms of participation at local level, such as being entitled to attend the meetings of the local councils and to contribute to the work plan during the first three months of the new local council legislature.

25. Among the shortcomings highlighted in the 2017 report, but which have not yet been addressed, should be mentioned the very limited scope of local government and the excessive dependency of local councils on the national government both in financial terms and as far as supervision is concerned, starting from the dual governance represented by the council and the executive secretary. Furthermore, and importantly, the functions of local councils have been further restricted, not only by assigning some of them to the regional level, but also by entrusting an increasing number of activities and competences to specialised agencies in many areas, such as road management and energy, thus indirectly but very significantly impacting the real powers of local councils.

2.2 Status of the capital city

26. The capital of the Republic of Malta is the city of Valletta, which is the political, administrative, economic and cultural centre of the country. The city constitutes a favourable tourist destination, attracting visitors from all over the world, especially after having been the European Capital of Culture of 2018. The city makes a significant contribution to Malta's economy, hosting on average some 40.000 persons per day (workers and tourists) on top of its residents, that amount to about 6.000 persons.

27. Despite previous recommendations by the Congress, the city of Valletta does not enjoy a special constitutional or legal status and is therefore not able to self-regulate specific aspects and needs connected to its status of the country's capital. Consequently, the city is heavily dependent on the national government in financial, regulatory, and administrative terms, like any other local council in the country.

28. While the restoration of buildings – a very significant activity for a locality of such a touristic importance – is carried out and paid by the central government, and Valletta also benefits from the adjustment fund for about € 100.000 per year and participates in special schemes for specific projects, the formula for distributing funds to local councils remains the same for all, without special provisions for the capital city. This is particularly impacting on Valletta, as it has to support the concentration of administrative activities (ministries and other offices) and a proportionally bigger amount of waste production due to the number of tourists and hotels. A further example of the extra costs for Valletta not covered by the adjustment fund is maintenance of gardens, for which the government allocates about € 28.000 per year but the overall costs are about € 48.000 per year, according to information provided to the rapporteurs by the mayor and the executive secretary. This explains why the locality of Valletta has a significant deficit, and despite the fact that the current administration has managed to reduce it over the years, it remains quite high.

29. Financially, Valletta has benefitted from the reform of 2019, which has allowed for a minimum of own-generated resources for local councils. In particular, the funds for events are significant compared to the average, as many public events take place in the capital. Valletta also receives some EU-funds from Erasmus+ cultural initiatives and exchanges.

30. A strategy for Valletta was elaborated in 2016 but produced little outcome. In December 2023, a few weeks after the visit, the Minister for the National Heritage, the Arts and Local Government launched a public consultation for a new management plan of Valletta, a mandatory step according to the guidelines for UNESCO's World Heritage Sites. For two months, stakeholders are invited to review and

contribute to the draft plan submitted by the Minister; such plan, however, does not address the issue of the legal status of the capital city.

31. The rapporteurs recall the invitation already expressed in the previous monitoring report to consider providing Valletta with a special status in legislation. This is not per se an obligation under the Charter, but it is highly recommended for several reasons explained in [Congress Recommendation 452\(2021\)](#) on the status of capital cities. In particular, the report on which such recommendation is based identifies four areas in which a special status is of particular importance: “an elected citywide administration to credibly and effectively promote the (specific) interests of the capital; a division of capital city responsibilities from those of other government levels that is clear and respects the principle of subsidiarity; financial resources matching responsibilities; and formalised intergovernmental cooperation, vertically, with the national and, if existing, regional governments, as well as, horizontally, with neighbouring municipalities” (para. 11). In the case of Malta, a special status for the state capital should serve in particular the purpose to regulate peculiar aspects of the locality’s affairs, limiting at the same time its financial, regulatory and administrative dependence on the national government.

2.3 Legal status of the European Charter of Local Self-Government

32. Following the adoption of the (then) Local Councils Act, the national government decided to sign and later ratify the Charter. The signature took place on 13 July 1993 and the Charter was ratified on 6 September of the same year. Since 1993, the Local Government Act (former Local Councils Act) has been amended a considerable number of times.

33. The Charter has the status of any other ratified international treaty in the Republic of Malta as regulated by the Ratification of Treaties Act (Act V of 1983), Chapter 304 of the Laws of Malta. For the purposes of this Act, the word “treaty” means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation. Treaties regulating the relationship of Malta with any multinational organisation, agency, association or similar body have to be approved by a resolution of the House of Representatives.

34. The Republic of Malta declared itself to be bound by Article 2, Article 3, paragraphs 1-2, Article 4, paragraphs 1-6, Article 5, Article 6, paragraphs 1-2, Article 7, paragraphs 1 and 3, Article 8, paragraphs 1-3, Article 9, paragraphs 1, 2, 7 and 8, Article 10, paragraphs 1-3 and Article 11 of the Charter. After having ratified some outstanding provisions from Articles 7 and 9 of the Charter, the only remaining reservation to the applicability of the Charter to the Republic of Malta comprises of Article 9, paragraph 3, relating to the inability of local councils to impose and collect local taxes and charges.

2.4 Previous Congress reports and recommendations

35. Three monitoring visits took place to Malta which led to respective recommendations based on explanatory reports. The first recommendation adopted by the Congress was Recommendation 122(2002), the second Recommendation 305(2011) and the third Recommendation 400(2017). The monitoring visit upon which this explanatory report was prepared constitutes the fourth monitoring of Malta’s compliance with the commitments undertaken through the ratification of the Charter.

36. In particular, Recommendation 400(2017) invited the Maltese authorities to:

“a. amend Article 115A of the Maltese Constitution to clearly define the principle of local self-government and provide for a clear recognition of this principle;

b. provide for greater freedom and flexibility to local councils to manage their own financial affairs and set their own expenditure priorities as well as increase the annual grant allocated to local councils for the execution of their functions;

c. extend the list of functions of local councils under the [then] Local Councils Act to increase the share of public affairs under their own responsibility on the basis of the principle of subsidiarity;

d. review the tight system of financial monitoring, supervision and control, and limit it to ensuring the legality of the operations of the local councils in order to decrease the involvement of the central government in local affairs;

- e. set up a formal consultation mechanism to ensure that in practice local authorities are effectively consulted, in due time and in an appropriate way, on all matters that concern them directly in conformity with Article 4.6 of the Charter;
- f. increase the allowance payable to councillors and provide for adequate compensation for loss of earnings, remuneration for work done, reimbursement for reasonable expenses incurred in the execution of their duties and corresponding welfare protection;
- g. revise legal provisions concerning executive secretaries so as to ensure the freedom of local councils to select or remove their executive secretary without the approval by the central government;
- h. confer a special status for Valetta as capital city in the light of Congress Recommendation 219(2007) on the status of capital cities;
- i. abolish the system of requirement of the approval of the central government prior to obtaining any loan;
- j. consider the ratification of Article 9, paragraph 3 of the Charter;
- k. consider signing and ratifying the Additional Protocol to the European Charter of Local Self-Government on the right to participate in the affairs of a local authority (CETS No. 207);
- l. introduce measures in co-ordination with local authorities to encourage and enable women's access to local political office according to the principle of gender equality".

37. The rapporteurs welcome the fulfilment, at least in part, of some recommendations from the previous monitoring, notably a certain recognition of the principle of local self-government, a slight increase of the allowance for local councillors and more clarity introduced as to the role of executive secretaries. Most of the other previous recommendations, however, remain valid.

3. HONOURING OF OBLIGATIONS AND COMMITMENTS: ANALYSIS OF THE SITUATION OF LOCAL DEMOCRACY ON THE BASIS OF THE CHARTER (ARTICLE BY ARTICLE)

3.1 Article 2 – Constitutional and legal foundation for local self-government

Article 2 – Constitutional and legal foundation for local self-government

The principle of local self-government shall be recognised in domestic legislation, and where practicable in the constitution.

38. Article 2 of the Charter provides that the principle of local self-government should be enshrined in written law.

39. The principle of local self-government is recognised in the Constitution of Malta and in the applicable domestic legislation, although it is not framed in terms of a right. The reform of 2019 has represented an important step forward in terms of formal reference to the principle in the legislation, by renaming the Local Councils Act into Local Government Act and by consistently establishing a two-tier system of local government in the country.

40. The recognition, however, is nominal and formal rather than substantial.

41. Malta has no consolidated tradition of local self-government, although the identification with the respective locality is strong in the residents. While the establishment of local councils dates back no longer than 30 years, the relatively high number of localities (68, 14 of which on the island of Gozo) largely depends on the historical presence of catholic church parishes as the only local government level for a long time. Most of the current localities territorially correspond to the long existing parishes, which are in number of 78 (15 in Gozo). For a long time, in fact, church parishes have been *de facto* the only local government in Malta, and they have provided the basis for a territorial districting when local councils have been introduced, and a significant reduction in number of local councils would have deemed unpopular.

42. Overall, the 2019 reform intended to address the inefficiency caused by the small size of localities, without reducing their number. This is the underlying reason for transferring significant functions to the regions, such as waste management. The reform rationalises the system of local government a step further and represents a compromise between efficiency considerations and the will not to unsettle the established system of local government in Malta.

43. Despite the shortcomings of local self-government in practice, the improvement represented by the reform of 2019 lead the rapporteurs to conclude that Malta complies with Article 2 of the Charter.

3.2 Article 3 – Concept of local self-government

Article 3 – Concept of local self-government

1. Local self-government denotes the right and the ability of local authorities, within the limits of the law, to regulate and manage a substantial share of public affairs under their own responsibility and in the interests of the local population.
2. This right shall be exercised by councils or assemblies composed of members freely elected by secret ballot on the basis of direct, equal, universal suffrage, and which may possess executive organs responsible to them. This provision shall in no way affect recourse to assemblies of citizens, referendums or any other form of direct citizen participation where it is permitted by statute.

44. Article 3 of the Charter lays down the essential characteristics of local self-government.

3.2.1 Article 3.1

45. While the principle of local self-government is formally respected in Malta, in practice its essence is largely absent. When the (then) Local Council Act was adopted in 1993, its goals were devolution, de-concentration and de-politization, trying to overcome the attitude of micro-managing from the centre which is inevitable in a very small country. Thirty years down the road, however, these goals have overall been failed: devolution is minimal, and there are tendencies to take back the little local powers from local councils, especially by attributing them to regions or specialised authorities; consequently, the trend is also to re-concentrate the power in the hands of the government, making local authorities mere ‘filters’ to channel residents’ claims to the government; finally, de-politisation never occurred, as the party system and logic at local level corresponds to that at the centre, and the informality of relations, while understandable in a small environment, often replaces the formal cooperation mechanisms.

46. According to the explanatory report to the Charter, “[t]he notion of ‘ability’ expresses the idea that the legal right to regulate and manage certain public affairs must be accompanied by the means of doing so effectively” (Article 3.1). The Contemporary Commentary by the Congress on the explanatory report to the European Charter of Local Self-Government from 2020 (hereinafter “Contemporary Commentary”) further specifies that “local authorities should also be able to exercise this legal right to self-government effectively through the proper institutional and regulatory means provided for in other articles of the Charter (Article 9: adequate financial resources; Article 6: organisational and human resources, etc.)” (para 27).

47. In Malta, such means are extremely limited. At the same time, also the functions of local authorities (local councils and regional councils) are minimal, which paradoxically creates a certain balance between tasks and available resources. The whole system, however, does not meet the requirement of an “effective” local self-government, especially as it does not provide local authorities with the right and the ability “to regulate and manage” a “substantial share” of public affairs, making them rather mere executors of the decisions made by the national government for a very limited set of tasks.

48. In May 2023, the government adopted a national strategic vision for local government until 2030, based on five pillars: good and effective government, regional resource for local councils, a cleaner environment, proximity, and digitalization. The strategy includes a series of commendable goals, although it does not contain detailed measures. The delegation was informed that in particular the part on digitalisation has been subject to a broad process of consultation. When implemented, the strategy would represent an improvement for local government, strengthening in particular a service-oriented approach to the residents. The strategy focuses on streamlining and coordinating local activities especially at regional level. While this might represent an important step, the rapporteurs note that such a process of coordination should result in strengthening and not in further weakening the local government in Malta, and a growing role for the regions should not take place at the expense of local councils. Decentralisation should concern the functions of the national government and not entail a

centralisation of the already very limited local functions. The rapporteurs see the new strategy as an opportunity to increase the scope of local self-government in Malta.

49. For the time being, however, Malta is not compliant with Article 3.1 of the Charter. The Maltese authorities are invited to expand the scope of local self-government and to reduce the heavy dependence of localities from the national government.

3.2.2 Article 3.2

50. At local level, the rules about election, composition, functions, roles, requirements, incompatibilities, remuneration, dismissal and dissolution, responsibility of local councils and mayors are laid down in detail in the LGA (Articles 3-37, plus some of the schedules attached to the LGA, including those on elections, financial allocations, and the code of ethics).

51. The key bodies are local councils (Articles 3-24 LGA), elected through a free ballot for five years by all residents of the locality aged 16 and older. The electoral system is proportional representation with single transferable vote. Local councils have legal personality, can enter contracts, sue and be sued in courts.

52. The candidate to the local council who wins the highest number of votes from the party that secures the majority of votes in the council assumes the position of mayor while the second-highest ranked candidate on the same list assumes the position of deputy mayor (Articles 25-32 LGA and Seventh Schedule as amended in 2012). The mayor is the legal representative of the council, including in judicial proceedings. Representation and responsibilities, however, are shared with the executive secretary (Article 27 LGA), who is the head of the administration.

53. The mayor or deputy mayor can be dismissed by the council upon a vote of no confidence delivered by a majority of councillors (Article 29 LGA), who can appoint by the same majority a different mayor from among the councillors. The reform of 2019 has adjusted the mayor's honorarium, linking it to a share of the honorarium paid to members of Parliament, ranging from 45% to 85% depending on the size of the locality. The honorarium for the councillors is determined by regulation of the Minister (Article 32 LGA, more under Article 6 of the present report).

54. Dismissal of councillors can also be declared by the minister if a councillor does not attend for six consecutive meetings or is absent for more than one-third of meetings within a six-month period. The minister exercises this power after the council has resolved that a councillor has failed to attend for such a period without reasonable grounds for absence. In serious cases of a council breaching its financial responsibilities, the president, acting on the advice of the prime minister, has the power to intervene and dissolve a council. A 'Code of Good Practice for Local Government' exists to provide examples of good practice and guidelines on transparency, ethical behaviour, and accountability.

55. As to participation, local councils have several opportunities. There are no legislative impediments to resorting to a referendum (according to Article 36A.1 LGA, the relevant parts of the Referenda Act are applicable to local councils), although there is no strong tradition for such an instrument in Malta: only seven referendums have been held in the country, one affecting the island of Gozo only. For this reason, local referendums are almost never held: the only reported example was the in locality of Qala (Gozo) with regard to the fate of the Hondoq bay, although this took place over a decade ago. Similarly, local councils can with no restrictions set up committees for participation of the citizens, but in practice this does not happen.

56. The LGA provides that meetings of local (and regional) councils shall be open to the public and streamed and kept on demand on the internet in an audiovisual form on the council's website (Article 44.1). Local councils reportedly regularly hold public meetings, but they are poorly attended.

57. Furthermore, Article 3A LGA prescribes an obligatory form of participation, stating that within three months from the beginning of office of a local council, a public meeting shall be summoned to discuss the council's work plan. Furthermore, once a year the population can participate in local council meetings and discuss the priorities with the councillors. These forms are reported not to be significantly attended by the residents. According to information provided to the delegation by several mayors, informal ways of participation are preferred, both by the residents and by the representatives themselves, such as social media streaming of the meetings of the local councils or even direct communication with mayors and councillors, such as calls and messages and expect some reaction, even if the issue is not in the remit of local councils, as it is normally the case.

58. Most of the provisions laid down in the LGA for the local level also apply to regions. The main difference consists in the indirect election of regional councils and presidents (Article 37A LGA). In this context, it shall be reminded that Article 3.2. of the Charter “means that indirect or second-degree elections of local councils or assemblies are inconsistent with the Charter” (Contemporary Commentary, para. 39). If regions were just platforms for cooperation among localities, as they essentially were before the 2019 reform, indirect election would be less problematic than it is now that regional councils are “another level of local government” (Article 37A.3 LGA).

59. The full enjoyment of the right to local self-government is limited by the dual nature of local governance. In both the localities and the regions, the head of the local administration is the executive secretary. According to Article 52.1 LGA, the executive secretary is the administrative and financial head of the council, having the power to issue all notices, prepare the agenda in consultation with the mayor, attend all meetings of the local council, draw up and sign the minutes of the local council (and the committee meetings), submit detailed annual administrative reports to the mayor, execute legitimate decisions of the local council. Article 27 LGA establishes the dual system by providing that the legal and judicial representation of the local council is exercised jointly by the mayor and the executive secretary.

60. The executive secretary ensures administrative and financial control (further elements of the role of executive secretaries in supervision are described under Article 8, below) and co-signs all acts adopted by the council and the mayor, and can therefore stop any activity or initiative planned by the local council which is in breach of the law, regulations, national or local strategies or policies, or any activity or initiative which has not been approved by a local council decision. The executive secretary is the head of the administration and of the staff and prepares the budget and the administrative report, the two main documents of the local council.

61. The appointment of the executive secretary is a dual act between the Minister for National Heritage, the Arts and Local Government and the local council. Candidates can apply for the job only from a list of qualified staff kept by the Local Government Division of the Ministry, which also establishes the criteria to be admitted. The candidates are heard by the local council, which votes on the appointment. This is eventually approved by the Minister, who must also approve their dismissal suspension or withhold of remuneration (Article 53B.2 LGA) and can eventually transfer the executive secretary to another local council. The executive secretary’s salary is paid by the national government and varies according to the number of members of the local councils, i.e., the size of the localities (Article 4.2 Local Government Human Resources Regulation). Importantly, executive secretaries work full-time, unlike the mayor (Article 51 LGA).

62. With the 2019 reform, more clarity and legal certainty has been introduced regarding the role of executive secretaries, who are now all public officials (i.e. government staff, unlike employees of the local or regional councils) after 4 years in service. This means that even if they are removed, executive secretaries remain public officials and do not lose the job nor the salary. The recruitment process includes a screening process by the Public Service Commission, which certifies that the candidates are eligible for the post, followed by another interviewing board set up by the local councils. The board will recommend the best candidate to the local council, ultimately making the final decision.

63. In practice, such a dual system works well in case of harmony between the mayor and the executive secretary, whereas in case of conflict it becomes quite dysfunctional, as most acts of the localities need to be signed by both the mayor and the executive secretary. The rapporteurs acknowledge that the very strong role of the executive secretary has been introduced from the start of local self-government in order to prevent corruption and bad administration at local level, to support weak administrations with a degree of professionalism and to exercise preventive control so as to avoid a too pervasive successive supervision. At the same time, the rapporteurs note that executive secretaries have a factual veto power on decisions made by political bodies and being the most qualified persons in the administration, working full time (unlike the mayor) and being public officials not depending on the local council, their role is *de facto* prevailing over that of elected authorities, thus significantly constraining the already limited scope of local self-government.

64. Overall, considering the rules on election and participation, but also the role attributed to the executive secretary and the considerations already raised in the previous monitoring reports in this regard, and considering the little but significant improvement introduced by the 2019 reform, the rapporteurs conclude that Malta is partly compliant with Article 3.2 of the Charter.

3.3 Article 4 – Scope of local self-government

Article 4 – Scope of local self-government

1. The basic powers and responsibilities of local authorities shall be prescribed by the constitution or by statute. However, this provision shall not prevent the attribution to local authorities of powers and responsibilities for specific purposes in accordance with the law.
2. Local authorities shall, within the limits of the law, have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence nor assigned to any other authority.
3. Public responsibilities shall generally be exercised, in preference, by those authorities who are closest to the citizen. Allocation of responsibility to another authority should weigh up the extent and nature of the task and requirements of efficiency and economy.
4. Powers given to local authorities shall normally be full and exclusive. They may not be undermined or limited by another, central or regional, authority except as provided for by the law.
5. Where powers are delegated to them by a central or regional authority, local authorities shall, insofar as possible, be allowed discretion in adapting their exercise to local conditions.
6. Local authorities shall be consulted, insofar as possible, in due time and in an appropriate way in the planning and decision-making processes for all matters which concern them directly.

65. Article 4 lays down the general principles on which the responsibilities of local authorities and the nature of their powers should be based.

3.3.1 Article 4.1

66. The LGA contains a detailed list of the powers of local and regional councils. The functions of the former are laid down in Article 33 and are aimed at facilitating the delivery of services in five areas: infrastructure, education and sports, culture, environment, and citizens' rights. According to said provision, the functions of local councils include:

- establishment, upkeep and maintenance of children's playgrounds, public gardens, sport, culture and other leisure centres, and as part of a national scheme to administer local libraries and to ensure that these are, as far as possible, accessible to all persons;
- upkeep and maintenance of local public roads, including proper road signs and road marking;
- urban planning and building schemes;
- issue guidelines to be followed in the upkeep, restoration, design or alteration of the facade of buildings, including the type of lighting and materials used, advertisements and shop fronts, and ensuring that premises open to the public are accessible to all persons;
- maintenance and cleanliness of road signs and road lights, the collection and removal of all refuse, maintenance and upkeep of all public conveniences, dustbins and collection of waste and to ensure that these are all accessible to all persons;
- maintenance and repair of local roads, pedestrian areas, parking areas, road signs and road markings within the locality, installation and maintenance of bus shelters, pedestrian and parking areas and provide for the protection of schoolchildren in the vicinity of schools;
- providing information relating to the rights of citizens including information on consumers' rights, transport, communications, tourist facilities, taxation, social security, public health and other matters of public utility and interest;
- propose and be consulted regarding any changes in traffic schemes directly affecting the locality;
- establishment, upkeep and maintenance of childcare centres, kindergartens and other educational services or buildings;
- establishment, upkeep and maintenance of health and rehabilitation centres, government dispensaries, health district offices and homes for senior citizens, day centres for senior citizens and night care centres.

67. Furthermore, local councils can be tasked with functions delegated by the national government, such as maintenance of local public libraries; proposing appointees for presidents of primary schools; make the best use of facilities already existing in schools in the locality after normal school hours; implement the concept of lifelong learning with all residents, particularly adults and the elderly, by providing such service within the same locality; promotion of social policy initiatives; safeguarding of local identity; assistance to artists and musicians and sports persons from the locality; organisation of cultural activities; protection of the natural and urban environment of the locality; organisation of sports or physical activities; promotion of entrepreneurship.

68. In practice, however, the powers are way more limited than the list may suggest. First, a number of functions are excluded from the competence of local councils by Article 33.2 LGA, such as main roads, national monuments, national parks or gardens, industrial estates, ports, airports and other national territories, establishments, buildings and the items specified in the Fourth Schedule of the LGA, which are the responsibility of the national government. Second, as a matter of law, legal notices issued by the Minister can also transfer functions to local governments, but there is not a single example of such a transfer in the last decade, which means that the process is one-way only, from local governments to the centre.

69. Third, while the list of functions assigned to local councils has not been changed in the law, many of them have been taken away from them by means of legal notices issued by the Ministry for the National Heritage, the Arts and Local Government, such as waste collection and traffic, but also other functions such as public lightning. This is all the more problematic as this trend has been happening without consultation of local councils but by top-down decisions, and while these can be challenged in courts, this does not happen in practice.

70. Another reason for disempowerment of localities has been the process of outsourcing of public functions to national authorities in charge of services previously attributed to localities, such as road management.

71. While the five areas of service delivery might seem to cover a broad spectrum, in reality the functions are limited to the basic social services to local residents, organising activities and performing administrative tasks, as well as caring for sport, culture and tradition.

72. More in detail, the concrete functions are the following. For education and sports: supporting lifelong learning, maintenance of local libraries (often placed in school buildings that do not belong to the localities), support physical activities. For culture: providing cultural activities within the limit of the budget, meaning that in most localities just a few minor activities especially for elderly can be organised, while the main cultural initiatives are carried out either by the government, or by agencies, or through special projects. For infrastructures: road sweeping and cleaning road signs and lights, maintenance of education buildings, day care centres for the elders, public gardens and children's playgrounds. As to the environment, local councils are generically responsible for the protection of the natural environment of the locality, which in the end means that they can apply for project funds in the area of environment, and citizens' rights means assistance to residents by providing information related to the exercise of their rights in general. According to some interlocutors, after waste collection and traffic management - the two main functions previously vested in the local councils - have been taken away from them, the scope of local government has been significantly reduced and is now limited to street cleaning, garden maintenance and some paperwork.

73. Also the functions of the regional councils are listed in detail in the LGA (Article 37B, as amended in 2019).

These are:

- the issuance of a call for tenders for waste management;
- the social aspect, which includes researches and report of social impact evaluations;
- assistance to local councils within the region, including professional services in the environmental sector, social, cultural, touristic and information technology;
- assistance to local councils within the region to benefit and successfully manage programmes which are funded by the European Union;
- provision of subsidy to students for researches regarding aspects relating to the region;
- coordination with local councils of sports and physical activities and initiatives, including those relating to welfare;
- coordination with ministries, departments and government entities to facilitate the work of local councils, including coordination with the maintaining order sections;
- to give an opinion regarding the local plan;
- preparation of a workplan which includes the region's financial needs and human resources.

74. Besides waste collection and management and some preparatory segments of social policy, the functions of regional councils are limited to assistance and coordination of local councils and liaising with the government. According to the LGA, the functions of the regional councils are laid down by the Minister responsible for local government (currently named Minister for the National Heritage, the Arts and Local Government) through regulations issued following consultation with the Local Councils Association (Article 37A.7 LGA). The funds for their activities, which essentially are costs for staff and

for waste management, are determined by the national government and paid automatically by the local councils.

75. The role and weight of the region is partly different in Gozo for obvious geographic reasons, as the region corresponds to the island and in some way also represents the island's distinct identity, although the powers and role of the Gozo region are as limited as for the remaining five regions. The interlocutors also pointed out to the delegation that, while a distinct regional identity is clearly present in Gozo, this is not channelled through the region and residents identify themselves rather with their locality and with the island as a whole, but not with the region as such. The existence of a Ministry for Gozo in the Government has no significant impact on the local authorities (local councils and regions) as the budget is either spent directly by the Ministry or it is assigned by means of schemes that are difficult to apply for.

76. While very limited in practice, perhaps more so than one might infer from a superficial reading of Articles 33 and 37B LGA, the basic powers and responsibilities of local authorities are laid down in the law. For this reason, the rapporteurs conclude that Malta formally complies with Article 4.1. of the Charter.

3.3.2 Article 4.2

77. Like other countries which experienced the influence of British legal tradition, in Malta local governments' rights are formally restricted by the "ultra vires" principle, which means they can only carry out functions assigned directly to them by law (see in this respect the Contemporary Commentary, para 58). Furthermore, as commented above, the scope of local government is very limited especially given the extreme legal, administrative and financial dependence from the centre.

78. However, for the sake of Article 4.2 of the Charter, local councils are entitled to propose to the government to take up additional functions. More specifically, local councils have the right to advise and to be consulted by any authority empowered to take any decisions directly or indirectly affecting the Council locality, and can enter into agreements with any agency or public body or government department with a view to promoting the delegation to the local council of any public function and can exercise any function delegated to it by the government through the Minister, and can provide all works or services that the law does not exclude from their competences or assigns to other authorities (Article 33.1 lit w LGA). While no such delegation of further functions is reported to take place, it is anyway possible under current legislation.

79. The rapporteurs thus conclude that Malta complies with Article 4.2 of the Charter.

3.3.3 Article 4.3

80. The system of local self-government in Malta is not inspired by the principle of subsidiarity, which is instead the underlying principle of Article 4.3 of the Charter. The list of powers and functions of local (and regional) councils are laid down in the law and there are several means to re-centralise them. The list is exhaustive and does not imply that all the functions thereby included are to be carried out by the councils. Responsibilities are assigned based on criteria of deconcentration, not closeness to citizens.

81. After the introduction of the principle of (limited) decentralisation in the 1990ies, the process indicated an approximation towards the criterion of proximity to the citizens in delegating functions: a process that never really developed, as recalled in the previous monitoring reports, but was at least to be identified. The recent trend towards re-centralisation, instead, runs counter to the very idea of subsidiarity.

82. For these reasons, the rapporteurs conclude that Malta is not compliant with Article 4.3 of the Charter.

Article 4.4

83. Article 4.4. of the Charter complements the provision of the previous paragraph: not only shall the local powers be attributed according to the principle of subsidiarity, but they must be full and exclusive. According to the Explanatory report to the Charter, the main goal of this provision is to avoid overlapping responsibilities, "in the interest of clarity and for the sake of avoiding any tendency towards a progressive dilution of responsibility". In this respect, there is compliance as the responsibilities are clearly divided.

84. However, the Contemporary Commentary makes clear that “the law may certainly introduce limitations on the powers given to local authorities, but such limitations should be exceptional, based on objective reasons and interpreted narrowly” (para 66). Even more importantly, the “allocation of responsibilities should promote *predictability* and guarantee *continuity* in the provision of certain local public services that are considered to be essential for the population” (para 68).

85. In Malta, responsibilities are divided in law but much less in practice. Local authorities are fully dependent on the national government in the concrete definition of their margin of intervention, as well as financially. The Minister, in agreement with the Local Councils’ Association, draws up a written policy on local government and “no decision taken by a local council shall go against that established policy” (Article 2A LGA), the government being the sole interpreter of such policy, and thus able to intervene in and block any action by local councils it deems appropriate. Every by-law adopted by local councils (Article 34 LGA) has to be submitted by the executive secretary to the Local Government Division of the Ministry, and the national government can propose amendments (Article 35.3 LGA) and ultimately object to any by-law approved by any council, provided that the objection is justified in writing (Article 35.5 LGA).

86. Responsibilities are not full and exclusive not only as to the content of the activities performed by local authorities, but also from the point of view of the set up of local government more in general. In addition, the dual system based on a shared responsibility for any activity between the political (local council, mayor) and the administrative side (executive secretary) makes the local government structure per se not compatible with the wording and the spirit of Article 4 of the Charter.

87. The rapporteurs thus conclude that Malta does not comply with Article 4.4. of the Charter.

3.3.4 Article 4.5

88. According to the law, the Minister responsible for local government can devolve functions to local authorities, by means of an order to be published in the Government Gazette (Article 33.1 lit x LGA), and the Minister responsible for transport can “transfer all and any rights previously pertaining to Infrastructure Malta in relation to a local road in terms of the Agency for Infrastructure Malta Act or any other law, to a local council” (Article 33.4 LGA). The law thus provides for a fully-fledged possibility to devolve additional governmental functions to some or all local councils.

89. In practice, however, as mentioned before, such opportunity has not been used recently. Furthermore, when it comes to roads, the trend has been the opposite, meaning that some functions previously assigned to local councils such as traffic lights and partly maintenance of local roads have been transferred to Infrastructure Malta as part of a nationwide 7-year plan to modernise the entire road network. There is thus no significant precedent recently to evaluate the degree of discretion for local councils in adapting the exercise of delegated powers to local conditions.

90. It must be recalled however that, the proximity to the population of local public services is a fundamental necessity, and local authorities have a vital role to play in the provision of these services. The practice in Malta is however not following the principle of proximity, and the legislation does not allow local authorities to exercise discretion in performing their tasks, neither in those that (should) belong to them as own functions, nor in carrying out delegated ones.

91. Given the existence in the law of the possibility for the government to delegate further functions to local councils and regretting the lack of its implementation in practice in recent years, the rapporteurs conclude there is partial compliance with regard to Article 4.5 of the Charter.

3.3.5 Article 4.6

92. Local councils have a general right to be “consulted by any authority empowered to take any decisions directly or indirectly affecting the council and the residents it is responsible for” (Article 33.1 lit. i LGA). With specific regard to traffic schemes, local councils have the right to be consulted by the competent authority or agency prior to any changes directly affecting the locality, although in this case only “where applicable” (Article 33.1 lit. e LGA). Formally, therefore, consultation is provided for in the legislation, not only as a possibility (as in specific areas such as traffic schemes), but as a general principle. This is a clear improvement introduced by the 2019 reform, establishing a general right to consultation instead of the mere right to be informed by the government that was established before.

The way the principle is carved in legislation makes it justiciable at least in law, should it not take place for whatever “decision directly or indirectly affecting the council and the residents it is responsible for”.

93. Following this legislative improvement, consultation is reportedly carried out extensively by the Ministry for the National Heritage, the Arts and Local Government and in particular by its Local Government Division. While in the previous report the lack of consultation by the government was lamented and interlocutors asked for increasing the frequency and the extent of consultation, the interlocutors at local level met by the delegation during the visit all agreed that consultation is a more established practice in recent times, and the Ministry reported that some form of consultation takes place with individual local councils or with the Local Councils’ Association at least weekly if not daily.

94. The national government may engage with local authorities through various mechanisms, such as consultations, advisory committees, and negotiations. Additionally, local councils may advocate for their financial needs and priorities through the Local Councils’ Association, which represents their interest. Furthermore, specific requirements can also be addressed to the Parliamentary Secretary responsible for local government, who has the remit to escalate such issues further up in Parliament, where every year one session is devoted to local government issues and attended by local representatives. Specific provisions are laid down as to the procedure to be followed in case local councils are consulted in planning issues (Article 37 LGA).

95. Notwithstanding such important developments, most interlocutors met by the delegation shared the view that consultation, while more frequent and structured, involves issues of overall limited importance. The most significant decisions impacting on localities such as transport and infrastructures are outsourced to special agencies, such as Transport Malta, Infrastructure Malta, the Environment and Planning Authority, or the Energy and Water Agency. These agencies do not see as their duty to consult with the local councils, as they are not formally part of the government, and in fact they are subject to much less obligations than the government.

96. Several interlocutors complained that, even when consultation with the agencies takes place, it is highly ineffective, since long and complex documents are to be commented within extremely short deadlines, making consultation a formal rather than a substantial exercise.

97. Also when it comes to consultation carried out by the government, many interlocutors expressed the concern that in most cases the process is seen as a formality, the decisions are already made by the government and there is in practice no room for changing them as a result of the consultation process. In sum, consultation is generally in place but its effectiveness remains poor. It happens in the surface and is rather formal, while informal channels, including political proximity, seem to be more effective.

98. The fact that consultation is overall perceived as a bureaucratic exercise without any significant impact on the decisions, and that the more relevant decisions are made by specialised agencies that do not or anyway ineffectively involve the local councils, generates a significant gap and even a sense of frustration. Local councils feel to be consulted on issues of minor importance and to be completely sidelined when capital decisions are made on issues directly affecting them. After improving the legislation, such a deficit in effectiveness of consultation in practice needs to be addressed, in line with Recommendation 328 (2012) of the Congress, which requires that local authorities should have an active role in adopting the decisions on all matters that concern them and in a manner and timing such that they have a real opportunity to formulate and articulate their own views and proposals, in order to exercise influence.

99. The rapporteurs therefore conclude that Malta partly complies with Article 4.6 of the Charter.

3.4 Article 5 – Protection of local authority boundaries

Article 5 – Protection of local authority boundaries

Changes in local authority boundaries shall not be made without prior consultation of the local communities concerned, possibly by means of a referendum where this is permitted by statute.

100. Article 5 is concerned with the procedural guarantees to be applied in case of changes of boundaries or amalgamation with other authorities. The provision requires that in such cases appropriate prior consultation with the concerned authorities and their residents is carried out, that it is of a binding nature and that it is effective, i.e., the consultation should be able to bring changes to the

original proposal. Article 5 is therefore a specification of the principle of consultation in the specific context of changes to local authority boundaries.

101. The LGA contains a specific provision in this regard. According to Article 3.3, “changes in the boundaries of localities shall be made only in exceptional circumstances and only by the electoral commission, after consultation with the Minister, the local councils concerned and, wherever possible, with the local residents”.

102. While “among the different ways of conducting such specific consultation, the Charter clearly prefers local referendums, in which all local residents may express their views on the proposed changes or mergers” (Contemporary Commentary, para. 95), the practice in Malta of not resorting to referendums but rather to other forms of consultation lays within the remit of the margin of discretion of the states in choosing the means to implement the provisions of the Charter.

103. The most recent example of changes of local borders has been the establishment of the Port region decided by the reform of 2019 (with effect from January 2022). This change aimed at ensuring a more efficient distribution of the councils within each region and a more even organisation of the workload, and it was carried out guaranteeing consultation of the involved localities. Several interlocutors, however, brought to the attention of the delegation that, in their view, consultation was rather formal as the decision was already taken by the government.

104. The rapporteurs consider that since there are legislative provisions on consultation for the case of changes of local boundaries and they seem implemented in practice, the situation in Malta is compliant with the requirements of Article 5 of the Charter.

3.5 Article 6 – Appropriate administrative structures and resources

Article 6 – Appropriate administrative structures and resources for the tasks of local authorities

1. Without prejudice to more general statutory provisions, local authorities shall be able to determine their own internal administrative structures in order to adapt them to local needs and ensure effective management.
2. The conditions of service of local government employees shall be such as to permit the recruitment of high-quality staff on the basis of merit and competence; to this end adequate training opportunities, remuneration and career prospects shall be provided.

105. Article 6 is concerned with the way in which administrative services are organised (para. 1) and requires, for the efficiency and effectiveness of a local authority, that it is able to recruit and maintain a staff whose quality corresponds to the authority’s responsibilities (para. 2).

3.5.1 Article 6.1

106. Article 6.1 of the Charter requires that local authorities be vested with discretion to determine their own internal administrative structures or organisation, of course within the general statutory framework of government organisation (“without prejudice to more general statutory provisions”). “The ultimate goal of the paragraph is to safeguard local autonomy by allowing local authorities to establish internal administrative structures and arrangements that enable them to meet the various needs of local residents and provide a full range of public services” (Contemporary Commentary, para. 96). The power to determine the own internal administrative structures implies that “the power of local entities to organise their affairs must be very broad and should include not only the power to decide on their internal local organisation but also the power to establish independent bodies such as local companies or agencies to improve the delivery of local services, as well as the power to conclude agreements with other local authorities” (Contemporary Commentary, para. 98).

107. In Malta local councils can establish committees and sub-committees (Articles 25.5, 33A, 47.1 LGA) and two or more councils can set up joint committees to discharge any of their functions jointly (Article 37.1 LGA). On the other hand, local councils are fully dependent on the government including in financial terms, which narrows significantly the already limited discretion they have.

108. With regard to staff, the 2019 reform has allowed more discretion for local and regional councils in determining the number of employees they can recruit, although within the limits of the financial resources assigned to them (Article 53.1 lit a LGA). Before the reform, local councils could employ a maximum number of employees based on each locality’s population. This change represents a

significant step forward, although in practice the limited resources assigned to local councils do not allow them to make autonomous decisions on the staff.

109. Some interlocutors reported to the delegation that mayors tend to recruit employees at a lower scale of qualification to save money, which hinders the quality of services and overall, the quality of human resources at local level and makes the local councils generally and qualitatively understaffed. Other interlocutors pointed out that, paradoxically, understaffing is a less acute problem than it was in the past because the downsizing of local autonomy has also reduced the amount of work required to perform a decreasing number of duties. It is clear, in any case, that, despite the positive change introduced by the 2019 reform, local councils do not enjoy yet the flexibility in determining their administrative structures that is required “to adapt them to local needs and ensure effective management” as prescribed by the Charter’s provision.

110. The rapporteurs thus conclude that Malta partly complies with the first paragraph of Article 6 of the Charter.

3.5.2 Article 6.2

111. The conditions for qualification and the salary scheme of the staff employed by the local and regional councils are laid down in detail in the Local Government (Human Resources) Regulations (hereinafter LGHRR), Subsidiary Legislation 363.20. The council can determine the working hours of the employees, upon recommendation by the executive secretary. The salary scheme is the same for the whole civil service, both local and national, and is determined by the national government (Article 15 LGHRR).

112. Overall, in the opinion of the rapporteurs, local authorities in Malta cannot determine the ‘conditions of service’ of their own employees, i.e. “the legal, managerial and factual context in which local employees provide their services” (Contemporary Commentary, para. 102). In particular, while they retain some discretion in choosing the staff to be hired, they are not in the position to define and implement their own human resources policy so as to attract, recruit and retain skilled administrative staff. Limitations in this regard do not only come from the limited budget and the financial dependence from the government but are also due to the legal and administrative constraints that restrict their margin of discretion.

113. It must be noted that, in a country with almost full employment and a small population, it is particularly challenging to find qualified staff for the local government sector. Public salaries are overall not competitive and career opportunities at local level are much more limited than in the state administration. The rapporteurs heard that qualified personnel prefer to seek a job in the state administration or to become executive secretary. Furthermore, the limited human and financial resources of local councils also reverberate on the training opportunities and career development. Given such external conditions, the very limited financial, legal, and administrative autonomy of the local and regional councils is a further obstacle to attracting, hiring and retaining qualified staff.

114. As to training opportunities, both the government and the Local Councils’ Association organise trainings for elected members, executive secretaries, regional managers and staff of local councils on a regular basis on several issues of interest, including on project writing and digitalization.

115. The rapporteurs consider that the requirements of Article 6.2 are partly met in Malta.

3.6 Article 7 – Conditions under which responsibilities at local level are exercised

Article 7 – Conditions under which responsibilities at local level are exercised

1. The conditions of office of local elected representatives shall provide for free exercise of their functions.
2. They shall allow for appropriate financial compensation for expenses incurred in the exercise of the office in question as well as, where appropriate, compensation for loss of earnings or remuneration for work done and corresponding social welfare protection.
3. Any functions and activities which are deemed incompatible with the holding of local elective office shall be determined by statute or fundamental legal principles.

116. Article 7 of the Charter aims at ensuring that elected representatives may not be prevented by the action of a third party from carrying out their functions, must be adequately compensated and the incompatibilities with their office should be laid down clearly in the law.

3.6.1 Article 7.1

117. The conditions of office that shall provide local elected representatives with free exercise of their functions are of different nature. On the one hand, the access to local public offices should be guaranteed to all on an equal basis, the requirements must be laid down in a clear way in the legislation and should not be dependent on political or other considerations. This aspect is fully guaranteed in Malta as a democratic state.

118. On the other hand, such conditions include other aspects related to financial, technical, organizational, and material issues that have to be provided for free and effective exercise of the functions. Elected officials must be provided “with the facilities, equipment and technical support needed to carry out their tasks. This has to be done irrespective of the officials’ political affiliation, so local authorities must not discriminate, on material grounds, against the different political factions or groupings forming part of the council” (Contemporary Commentary, para. 110).

119. The infrastructural conditions of most local councils are relatively poor, as the delegation could experience firsthand when visiting many councils. At the same time, the government reported that the digitalisation plan is expected to benefit local and regional councils in the coming years, thereby strengthening their administrative capacity. There is no evidence of differential treatment among local councils based on political affiliation, although some interlocutors pointed out that, given the predominantly informal system of relations, political closeness to the national government may in the end result in a comparative advantage in accessing certain information.

120. In Malta local and regional councils, including mayors and regional presidents, serve only on a part time basis.

121. The rapporteurs heard criticism during several meetings about this part-time system. Several interlocutors pointed out that the duties of the mayor are often time consuming, especially as mayors are expected to be available for the residents around the clock, given the ‘intermediary’ function that they perform as a matter of practice rather than as a matter of law. In fact, the time devoted to performing the tasks of elected representative office ranges from a few hours a month to full-time engagement.

122. In this regard, it has to be taken into consideration that the Maltese localities differ in size, population and needs. Some localities have less than 300 inhabitants and the biggest one around 30.000. While some mayors are at ease with a part-time office, for others it is extremely difficult to perform the tasks next to a regular job. The one-size-fits-all model of part-time (and corresponding remuneration) might discourage some from engaging in local politics and services for the community, especially persons who have a full-time and not flexible job. It is a matter of fact that quite often mayors are retired persons or people who have a part-time employment. This affects the future career prospects of elected representatives, since political office is more attractive for those who have the time and financial means to live independently of the income of the local office.

123. Combined with the high demands and the little prestige of the mayoral function, the rapporteurs consider that such a uniform rule is an obstacle that limits attractiveness for local engagement. To allow for a choice between the part-time or full-time for mayors – at least for those of the bigger localities – might help to counteract such worrying trend.

124. Therefore, rapporteurs conclude that the situation in Malta is partly compliant with Article 7.1 of the Charter.

3.6.2 Article 7.2

125. As clarified by the Contemporary Commentary (para. 114) “[b]y ‘appropriate financial compensation’, the Charter means the combination of several elements: firstly, ‘appropriate compensation for expenses incurred in the exercise of the office’; secondly, if this is the case (‘where appropriate’), compensation for loss of earnings incurred by the local representative in discharging his/her duties for the local authority; thirdly, ‘remuneration for work done’, that is to say, a proper ‘salary’ for the job; and, finally, social welfare protection”.

126. After the 2019 reform, the remuneration for mayors is based on clear criteria laid down in the law. In particular, mayors from smaller localities (with five councillors) receive the equivalent to 45% of the honorarium paid to a member of Parliament; in medium localities – having between seven and nine councillors – the honorarium is 65% of that of a member of Parliament, and in bigger localities, with more than nine councillors (the maximum number of councillors is 13), 85% of a member of Parliament (Article 32.1 LCA). The honorarium is considered to be income for welfare purposes, unless the mayor decides otherwise (Article 32.1A LGA). The allowance for councillors is determined by ministerial regulation and, according to information provided to the delegation, amounts to approximately 2400 euros per year. Councillors are not entitled to any reimbursement of expenses (Article 32.2 LGA). Furthermore, they must set up, at their own expenses, an internet connection with email access at their residence.

127. The appropriateness of the amount paid for honoraria is relative and depends on different factors, such as the amount of time invested in the activities, the duties that are required, the responsibilities attached to the function, the financial regime for the earnings. Overall, also based on information provided during the meetings, honoraria of mayors are to be considered low, also given that as a rule there is no compensation for expenses incurred in the exercise of their duties nor for loss of earnings. More importantly, mayors who work in the private sector often need to take some hours of leave to attend meetings related to their functions, and very often they have to use their vacation leave due to council-related responsibilities. Furthermore, mayors lack support staff like secretariat staff, public relations officer, or a personal assistant and incur in a considerable amount of extra work.

128. At the same time, the overall high number of localities (68) and corresponding number of councillors (to date 486) makes it difficult to increase the remuneration and this makes it even more difficult to find a high number of qualified persons who decide to contest in local elections (at least 800 are needed to run local elections).

129. Despite all these practical difficulties, the rapporteurs find that Malta complies with Article 7.2 of the Charter.

3.6.3 Article 7.3

130. The LGA (especially in Article 24) clearly defines the incompatibilities between the holding of a representative position at local level and other activities, either public or private. The reform of 2019 brought additional clarity in the system by explicitly stating incompatibility between the position of regional president and that of mayor, councillor, or president of the Local Councils' Association (Article 37A.1 lit. e LGA). Mayors cannot be members of Parliament but their office, being part-time, is compatible with public or private employment as well as with economic activities.

131. The rapporteurs consider that Malta complies with Article 7.3 of the Charter.

3.7 Article 8 – Administrative supervision of local authorities' activities

Article 8 – Administrative supervision of local authorities' activities

1. Any administrative supervision of local authorities may only be exercised according to such procedures and in such cases as are provided for by the constitution or by statute.
2. Any administrative supervision of the activities of the local authorities shall normally aim only at ensuring compliance with the law and with constitutional principles. Administrative supervision may however be exercised with regard to expediency by higher-level authorities in respect of tasks the execution of which is delegated to local authorities.
3. Administrative supervision of local authorities shall be exercised in such a way as to ensure that the intervention of the controlling authority is kept in proportion to the importance of the interests which it is intended to protect.

132. Article 8 deals with supervision of local authorities' activities by other levels of government.

3.7.1 Article 8.1

133. Supervision as intended by the Charter means “any form of intervention in the decision-making process of a local entity by which a higher administrative level explicitly or tacitly approves, clears, agrees, suspends, or annuls a proposal or a final decision, rule or plan approved by a local entity.

Examples of such supervision are, inter alia, reporting the decisions of local authorities to the supervising authority, requirements to obtain prior authorisation to act; confirmations for decisions to take effect, the power to annul a local authority's decision, accounting controls, etc." (Contemporary Commentary, para. 125).

134. In Malta, the Local Government Division within the Ministry for the National Heritage, the Arts and Local Government is the authority entrusted with the responsibility for monitoring all local authorities (local and regional councils) and to ensure that they operate within the law. The Division is responsible for the control, coordination, supervision and monitoring of the functions of local government, as well as to assist the Ministry in the formulation of strategies, policies and legislation as may be required. It consists of an office of the Director General and, following a reorganization of ministerial departments in 2021, three directorates: Monitoring and Support; Strategy and Policy Implementation; and the newly established Finance and Procurement Compliance, tasked with the supervision of local councils' financial performance and related controls, with the provision of internal audit reviews, the implementation of the recommendations by the National Audit Office and the issuing of directives for common financial practices. This has overall further strengthened the government's supervision on local councils' financial management.

135. Overall, the system of supervision is clearly defined in the law, as requested by the Charter. Some important aspects, however, are laid out in the secondary legislation, such as the Local Government (Financial) Regulation (Secondary Legislation 363.01).

136. At the same time, supervision is not limited to what is established by legislation but is more pervasive in practice. It has been reported to the delegation that, sometimes advised by executive secretaries, and sometimes out of personal links or simply due to fear of successive control, any initiative taken by the local councils is notified to the national government and often its prior approval is awaited. Furthermore, the very role of the executive secretary widens the scope of supervision by establishing an extensive system of preventive control over any activity of local and regional councils.

137. In addition, in accordance with the Committee of Ministers of the Council of Europe Recommendation to member States on supervision of local authorities' activities [[CM/Rec\(2019\)3](#)], compulsory automatic administrative supervision should be limited to activities of a certain significance, and it should normally take place after the exercise of the competences (a posteriori), while a priori administrative supervision should be kept to a minimum and normally be reserved for delegated competences. Not least, in the case of a priori supervision, absence of a decision by the supervisory authority within a specified time should mean that the planned activity may take effect. These principles are not fully reflected in the situation in Malta with regard to supervision.

138. The rapporteurs conclude therefore that the Republic of Malta is partly complying with the requirements of Article 8.1 of the Charter.

3.7.2 Article 8.2

139. As will be further elaborated below under Article 8.3, the system of supervision in Malta goes beyond administrative supervision and includes detailed provisions on financial supervision and above all focuses on preventive supervision through, especially, the executive secretary. Several other provisions in the LGA (the whole Third Schedule of the Act) deal with electoral supervision.

140. Due to the pervasiveness of the supervision as a whole, most of the legality checks are carried out preventively by the executive secretary, who is the extension of the ministerial administration in the localities (see above under Article 3.2). The second level of such control is exercised by the Local Government Division within the Ministry for the National Heritage, the Arts and Local Government and the third one by courts, although the first two checks seem to be very effective as no judicial cases are reported which affect local government in recent times (see below under Article 11). Legality checks are thus part of a wider system of control and supervision which includes preventive legality control over expenditure and to prevent corruption. Also in this respect, the mechanism has been effective, as hardly any case of corruption is reported at local level.

141. The executive secretary can oppose decisions by the local councils if they do not comply with the law or the financial rules, not on the merit. Should a local or regional council disagree with the interpretation given by the executive secretary, the issue is referred to the Local Government Division in the Ministry, which seeks a solution with the mayor. As a matter of law, the local council can challenge

the opposition raised by the Ministry, including in courts, but this never happens in practice and as a matter of fact the Division has the final say.

142. Furthermore, the executive secretary is vested with the role of prosecutor in judicial trials affecting violations of local by-laws (Article 36 LGA), which reportedly never happens, not least due to the extremely limited scope of local self-government.

143. Administrative supervision based on expediency should be limited to the tasks that higher-level authorities (the supervisory bodies) have delegated to local authorities (Contemporary Commentary, para. 134). In Malta, cases of delegated functions are very rare if not at all absent. At the same time, the pervasive role of preventive supervision played by the executive secretary makes it difficult to draw a clear line between legality and expediency control in practice.

144. Given these critical issues, the rapporteurs conclude that the Republic of Malta partly complies with Article 8.2 of the Charter.

3.7.3 Article 8.3

145. As previously mentioned, the rapporteurs consider the system of supervision as overall very pervasive. This, combined with the lack of income-raising capacity, makes the autonomy of local councils very limited. In Malta, supervision powers of the national government are disproportionately extensive, especially in respect of the importance of the activities carried out by the local and the regional councils.

146. Supervision is taking place preventively by means of the dual governance system and the controlling role of executive secretaries, aiming at ensuring that funds entrusted to the local councils are appropriately used, that legislation is respected, and government's policies are followed, and not least at preventing corruption. The Minister can require the executive secretary to produce any document he/she considers necessary without giving any reason for such demand (Article 64 LGA).

147. Administrative supervision is unduly expanded by the power of the Minister for the National Heritage, the Arts and Local Government and the Minister of Finance to prescribe indicators to measure the performance of local council services, with a view to facilitating comparisons of cost, economy, efficiency and effectiveness between local councils over time. The appraisals made by the Director of the Local Government Division must be published (Article 66 LGA) and local councils must provide annual information to the Local Government Division on how the funds allocated for the previous year have been managed and spent.

148. Supervision involves the expenditures of the local and regional councils. The Auditor General appoints, based on public tenders, "local government auditors", who may be either individuals or companies, to audit the accounts of every local and regional council, as well as of the Local Councils' Association (Article 65.1 LGA). Local government auditors are appointed for one year, renewable each year for a total period of not more than three consecutive years. In case of appointment of individual local government auditors, they must neither be councillors of the locality whose books they are auditing, nor employed of the council of the said locality or be related by consanguinity or affinity in the direct line or up to the 3rd degree in the collateral line, to any councillor of that locality. According to Article 65.3 LGA, local government auditors have access to all books, records, returns and other documents relating to the accounts of local councils and may require any person holding or accountable for any such books or documents to appear before them at the audit. Furthermore, under Article 66.2 LGA, the local government auditors are required to control that local councils have made arrangements for securing economy, efficiency, and effectiveness.

149. The final financial audit of all local and regional councils as well as of the Local Councils' Association, is carried out by the National Audit Office (NAO). A financial audit ends with the publication of an independent auditor's opinion, illustrating whether the financial statements give a true and fair view of each council's finances and whether these have been prepared in line with the requirements of the relevant financial reporting framework, provided by the International Financial Reporting Standards (IFRSs). The weaknesses identified by local government auditors are reported upon in a management letter, which is then scrutinised by the NAO as part of the process of preparing the annual report by the Auditor General on the workings of local government. The NAO reports that not all local and regional councils submit their financial statements. In 2021, out of 74 councils (68 local, then 5 regional and the Association) only 58 did so. The financial audit indicates that adjustments are often necessary, and that the main shortcomings of local councils are poor accounting – especially due to lack of internal review

prior to the submission of the financial statements for audit – and an inadequate system of internal controls. This shows that the overall administrative capacity of certain local councils requires improvement.

150. Some role in financial supervision is also played by the Public Account Committee in the Parliament, which is chaired by a member of the opposition.

151. Each local council is obliged to prepare, discuss, approve, and send to the Minister for the National Heritage, the Arts and Local Government and to the Minister of Finance business and financial plans, which are revised or confirmed annually (Articles 7-9 Local Government (Financial) Regulations, S.L. 363.01).

152. In addition, the national government exercises indirect supervision over local councils through the allocation of annual grants based on the formulae prescribed under or based on the LGA and taking into consideration the budget prepared by each local council.

153. As already stated in the 2017 monitoring report, the mentioned statutory and administrative provisions and the tight supervisory powers of the national government over the financial management of local councils indicates that “the system insists much more on preventive or even day-to-day control than on verifying in the aftermath whether wrongdoings have been committed” (para. 162). Furthermore, “when combined with the extended intervention powers of the central government in the local affairs and the execution of functions that should normally be undertaken by local councils, this kind and extent of administrative supervision of local councils by the central government limits the autonomy of local councils even further, compromising the aim of self-governance pursued by the Charter” (ibidem).

154. As no significant changes have been introduced since the last monitoring report in the system of supervision in order to address these concerns, the rapporteurs conclude that Malta does not comply with Article 8.3 of the Charter.

3.8 Article 9 – Financial resources

Article 9 – Financial resources of local authorities

1. Local authorities shall be entitled, within national economic policy, to adequate financial resources of their own, of which they may dispose freely within the framework of their powers.
2. Local authorities' financial resources shall be commensurate with the responsibilities provided for by the constitution and the law.
3. Part at least of the financial resources of local authorities shall derive from local taxes and charges of which, within the limits of statute, they have the power to determine the rate.
4. The financial systems on which resources available to local authorities are based shall be of a sufficiently diversified and buoyant nature to enable them to keep pace as far as practically possible with the real evolution of the cost of carrying out their tasks.
5. The protection of financially weaker local authorities calls for the institution of financial equalisation procedures or equivalent measures which are designed to correct the effects of the unequal distribution of potential sources of finance and of the financial burden they must support. Such procedures or measures shall not diminish the discretion local authorities may exercise within their own sphere of responsibility.
6. Local authorities shall be consulted, in an appropriate manner, on the way in which redistributed resources are to be allocated to them.
7. As far as possible, grants to local authorities shall not be earmarked for the financing of specific projects. The provision of grants shall not remove the basic freedom of local authorities to exercise policy discretion within their own jurisdiction.
8. For the purpose of borrowing for capital investment, local authorities shall have access to the national capital market within the limits of the law.

155. Article 9 stems from the assumption that legal authority to perform certain functions is meaningless if local authorities are deprived of the financial resources to carry them out. Thus, it contains the essential provisions to make sure that such financial resources are attributed to local authorities and that local authorities have a margin of appreciation on how to spend them within the limits of the law.

3.8.1 Article 9.1

156. The rules on financial resources of local authorities are laid down in Articles 55-68 LGA, in the Eight Schedule to the same law, and in the Local Government (Financial) Regulation (S.L. 363.01). According to Article 55 LGA, each year the Minister of Finance allocates a provision under the Appropriation Act, which serves for the exercise of the functions of local and regional councils. Such allocations are made available to the councils by the Minister of the National Heritage, the Arts and Local Government upon a written request by the executive secretary and after consultation with the Local Councils' Association. The amount of the allocations is determined based on a formula laid down in the Eighth Schedule to the LGA which considers the ratio of the population and the territory of each locality.

157. The formula is clear and transparent although, according to some interlocutors, the current funding mechanism, which was established some time ago, might not always reflect the present-day scenario and, even more importantly, does not consider that localities have different needs and operate in different socio-economic contexts.

158. Local councils have no power to establish any local tax nor to determine a local rate of any state tax. The limited power they enjoyed raising additional funds, such as parking fees, has been eliminated by the reform of 2019, which cancelled former Article 60 LGA. During the consultation procedure the Association noted that local councils may propose by-laws through which they can raise funds for services.

159. Next to the national government transfers determined by the formula, which makes up over 90% of the budget of local and regional councils, limited additional resources come from supplementary or special governmental funds and from the transfer of a very small share of earnings from events organized by or in localities, such as festivals and the like. Finally, in case of urgent and unforeseen cases (such as during the pandemic), Parliament can establish additional contingency funds according to Article 105 of the Constitution.

160. More in detail (figures 2021), local councils were allocated a total of €48.828.584, of which €41.800.000 distributed according to the formula, €3.822.146 were supplementary funds received from the government and €3.206.438 were incomes generated by the local councils. On top of this sum, further €416.445 were distributed to specific local councils for specific exigencies or because they experienced a decrease in the respective allocation compared to precedent periods. The regions received a total sum of €3.298.234, of which €129.572 of self-generated income. The Local Councils' Association received a contribution of €240.000 (2021) and generated a significant additional amount by renting its facilities. It must be noted that a significant number of local councils have not been able to generate any own income, and a few did not receive any additional income from the government. In sum, local authorities are not entitled to own financial resources.

161. The other two requirements under Article 9.1 of the Charter next to own resources are adequateness of such resources and the right to freely dispose of them by local authorities, the criteria which are not fulfilled in Malta.

162. According to the Contemporary Commentary (para. 146), "the wording 'adequate financial resources' incorporates the requirement to ensure proportionality between mandatory functions of local authorities and the funding available [...] The national economic context should allow financial resources for local authorities to be allocated or redistributed within the framework of national expenditure. Whatever the case, local authorities are expected to be duly consulted on how resources are allocated or redistributed to them and what principles will be involved in determining the amounts". While local and regional councils are entitled to regulate a very limited share of the public affairs, the local spending is even less significant: in Malta, less than 1% of the GDP is spent by the local governments, which is by far the lowest rate in the European Union³ and has decreased over the last decade.

163. Overall, while the budget of local councils is extremely limited in absolute terms, only a few councils run a budget deficit (on average, less than 1 out of 6 according to data provided by the NAO). Deficits are not compensated, and the Minister may retain any portion of the amount due to councils based on the formula he/she deems necessary to ensure redress of any negative balance (Article 55.3 LGA),

³ Source: OECD, Key data on Local and Regional Governments in the European Union (brochure), OECD, Paris 2019, p. 9.

although councils with a deficit normally negotiate with the national government a plan for financial adjustment.

164. The fact that certain councils have high cash balances, at times also exceeding the annual financial allocation for the pertinent financial year, suggests that deficit is not necessarily caused by insufficient financial allocations, but might be also due to other factors. For sure, the arithmetic system on which the formula is based, does not allow to consider the different challenges each council is exposed to. Furthermore, the rapporteurs also heard that activities carried out by local councils are diminishing, which might explain the relatively sound financial situation of most councils. According to the NAO, the different financial situation of the various councils requires a case-by-case evaluation, considering the unique circumstances of each council. While some councils do indeed have adequate resources to fulfil their mandates, others are facing financial challenges and constraints. The rapporteurs share the Office's opinion that a more diversified approach which takes the different specific reality of each council into account would allow to better assess whether the funding for local authorities is adequate or not.

165. As to the right to freely dispose of the funds, while in principle there is no prohibition for local councils to decide how to spend the resources attributed to them, this is not the case in practice. First, most of the local budget is spent on staff costs. Second, even the very limited funds are earmarked: an example is the budget for waste collection, which is now a regional and no longer a local responsibility; the respective funds are transferred to the local councils, which pay their own share to the respective region. The same goes for the rent that the local authorities pay to government for the national estate on which their buildings are erected. During the consultation procedure the rapporteurs were informed that very recently this has been drastically reduced and capped at 500€ annually through an agreement with the Ministry responsible for public lands. Third, the law prohibits local and regional councils to make donations, neither of money nor in kind (Article 63A LGA).

166. Finally, and more importantly, the restrictive but detailed list of mandatory tasks in Article 33 LGA means that funds are allocated to cover specific categories of expenditure and the local councils do not have the ability or financial capacity to engage in the execution of non-mandatory tasks. The funds allocated to each local council by way of grants are provided for specific purposes. During the consultation procedure, the Ministry noted that the specific purposes are broad and flexible and allow councils to design projects that are required by the local community. However, local councils cannot dispose grants freely in the exercise of their functions nor choose to cut expenditure on one function to spend more money on another function at any given year.

167. As the local authorities are not entitled to own financial resources, nor can they dispose freely of the resources made available to them, the rapporteurs conclude that Malta does not comply with the obligations stemming from Article 9.1 of the Charter.

3.8.2 Article 9.2

168. Article 9.2 of the Charter establishes the principle of commensurability between financial resources available to a local authority and the tasks it performs. "This means that the resources available to local authorities should be sufficient and commensurate with their functions and tasks" (Contemporary Commentary, para. 149).

169. As mentioned under Article 9.1, in Malta both the funds and the tasks of the local authorities are extremely limited. This makes resources in some way commensurate with the functions of the local authorities. However, reaching such proportion by reducing the functions of the local councils is not respectful of the spirit of the Charter.

170. Furthermore, commensurability requires that "any new task assigned or transferred to local authorities must be accompanied by the corresponding funding or source of income to cover the extra expenditure" (Contemporary Commentary, para. 150). No new tasks are assigned or transferred to local councils, and some are taken away from them, like waste management.

171. For this reason, the rapporteurs conclude that Malta does not comply with Article 9.2. of the Charter.

3.8.3 Article 9.3

172. Article 9.3 of the Charter is not ratified by Malta, and it is therefore not applicable to the country. The provision, one of the most significant of the whole Charter, aims at ensuring that local authorities have some tax-levying power, as this is key to financial autonomy.

173. The Charter requires that a proportion of local revenues should come from local taxes, and local authorities must be able to determine the rate applicable. These are two sides of the same coin, as local taxes are not only an important source of funding for local authorities, but also represent the precondition for the ability to make political choices and thus to create political accountability.

174. As reported to the delegation, there is broad and cross-party consensus in the country that local taxes are not a priority in Malta. One reason that has been provided for such reluctance in introducing some tax-levying power for local councils is that it would not be feasible to establish 68 different tax regimes in a small country like Malta, although the formulation is overstated, as local taxing power does not imply a different tax regime but just a specification of the principle of equality, whereby different situations should be treated differently, and of the principle of competition among local councils.

175. The rapporteurs recall that some sort of financial autonomy is key in determining the overall scope of local self-government, and that not ratifying Article 9.3 puts into question the basic features and the foundational elements of local self-government.

3.8.4 Article 9.4

176. This provision of the Charter requires that income sources for local authorities be diversified and buoyant, i.e., able to safeguard their autonomy in different and changing cycles of the economy. Consequently, "local authorities' finances should not be based solely on taxes or transfers and should be bolstered by all possible sources of local income: transfers, local taxes, charges, fees, profits under private law, interest on bank accounts and deposits, penalties and fines, sales of property or goods and services offered to the private sector, etc.". Furthermore, transfers "should be updated and possibly increased over the years in order to take account of price increases, or factors involved in the delivery of services" and "local authorities should also be allowed to increase their tax rates where such a decision is necessary owing to inflation" (Contemporary Commentary, paras. 161 and 164).

177. In Malta, local resources come from transfers only: to over 90% for local councils and to 100% for regional councils. The amounts that local councils are entitled to retain, such as permit fees for scaffolding, are close to insignificant and are decreasing compared to the past, when they could keep at least part of the parking fees. The delegation was informed that plans to take away further responsibilities and connected resources are underway, like street sweeping which is likely to be assigned to the National Cleansing Directorate. The system of local financing in place is far from being inspired by the principle of diversification of income sources.

178. An undiversified model of financial resources cannot be buoyant either. As there are no local taxes, rates or other own resources, local councils are not entitled to adapt their own resources to the different economic cycles. It is only for the national government to decide on local finances and to determine if and to what extent funding can be increased, as it was reported will be the case for 2024.

179. Consequently, the rapporteurs conclude that Malta does not comply with Article 9.4 of the Charter.

3.8.5 Article 9.5

180. In Malta there is no equalisation mechanism as such since the funding of local and regional council comes almost entirely from the national government. As no taxes are raised locally, there are technically no fiscally strong and fiscally weak localities. Rather, every council receives a share of the national budget allocated to local government according to a formula.

181. However, an equivalent measure to equalisation exists in the formula itself. For each of the four categories of local expenses (1. Landscaping and maintenance of parks and gardens; 2. Road maintenance and infrastructure; 3. Waste management; 4. Administration), the amount of the funds allocated to each locality equals to a proportion of the total government expenditure on the respective categories, taking into consideration the figures for each locality separately and ensuring a uniform approach to spreading the available grants to the localities.

182. Furthermore, a specific albeit limited form of equalisation is provided by the adjustment fund established by the national government, which is designed to compensate local councils with special needs by transferring earmarked funds for specific purposes. An example are the additional funds provided to the locality of Marsa, which is particularly impacted by migration.

183. According to Article 58 LGA, the Minister for the National Heritage, the Arts and Local Government, upon approval of the Minister of Finance, can establish special funds for local councils. According to the respective ministerial regulation, local councils that face specific challenges or experience a decrease in their allocation compared to previous years can apply for additional funds (overall limited: €3.822.146 in 2021) to the Local Government Division. Application is to be submitted through a specific template and must include a detailed plan illustrating the intended use of the additional funds. The money is transferred only after the Division certifies that the plan is justified.

184. The rapporteurs thus conclude that Malta complies with Article 9.5 of the Charter.

3.8.6 Article 9.6

185. Article 9.6 of the Charter specifies the general principle of consultation, enshrined in Article 4.6, in the area of distribution of resources. Local authorities should be consulted “in an appropriate manner”, which means that sufficient time must be available for consultation based on adequate information provided to local authorities, and that consultation should not be carried out as a necessary bureaucratic step whereby decisions are already made. Rather, local authorities must be given the opportunity to present their claims effectively and decisions should be subject to change after consultation.

186. In the last monitoring report, the rapporteurs concluded that Malta was in violation of Article 9.6, due to the lack of formal consultation of the national government with the local authorities. The predominance of informal channels of consultation remains a problem, as mentioned above under Article 4.6, and more attention should be paid to a fair and above all effective approach to consultation in general. At the same time, the reform of 2019 took an important step in this regard, by replacing the text of Article 57 LGA as follows: “[t]he allocation mentioned in article 55 shall be made available to local councils by the Minister after consultation with the Association”.

187. This means that the Local Councils’ Association shall be formally consulted by the Ministry before determining the allocation of funds to local and regional councils for ordinary administration. The rapporteurs consider that the formal provision of consultation with the Local Councils’ Association is an important step towards the establishment of a general principle of consultation with local authorities.

188. However, no reference is made to the contents and procedures of consultation, and the Association has no formal powers in the process except for the right to be consulted. In addition, interlocutors pointed out that the practice of consultation has not significantly changed from the past.

189. The rapporteurs therefore consider that Malta partly complies with Article 9.6 of the Charter.

3.8.7 Article 9.7

190. Local and regional councils receive transfers for carrying out the functions attributed to them by law, as well as specific grants for specific purposes. Article 9.7 of the Charter is concerned that the allocation of specific grants should be based on objective, transparent criteria justified by spending needs, and criteria for the allocation of general grants should be specified by law to enable local authorities to know in advance how much they are to receive.

191. Furthermore, “the Charter stresses a preference for non-earmarked grants for the simple reason that with them the local authority enjoys greater discretion to decide how to spend the money received, while in the case of earmarked grants it is required to spend the funds on the projects concerned” (Contemporary Commentary, para. 179).

192. The general system of financing, as illustrated above, is based on earmarked funds according to the formula, which establishes the amounts for each council in each of the areas of activity of local councils laid down in Article 33 LGA. Local councils therefore have no policy discretion on the use of funds within their own jurisdiction as required by Article 9.7 of the Charter.

193. Furthermore, according to Article 61 LGA, local councils are prohibited from authorising any works, the value of which exceeds the annual provision allotted to it for that financial year taking into consideration the amount forecast for payment of acts of ordinary, unless they obtain the approval of the national government (Minister for the National Heritage, the Arts and Local Government and Minister of Finance). This implies a further limitation to the spending autonomy of local councils and a corresponding increase of earmarked grants.

194. Especially after the 2019 reform, a clear trend is to be noted to move towards a funding system that privileges project-related funds over general funding schemes. Article 66A LGA, introduced with the 2019 reform, provides that “local councils shall be given precedence for the application of funds and special schemes issued from time to time by the Minister or the Local Government Division on the basis of financial indicators and results, within a period of three years. This shall be done to give note and recognition to local councils and regional councils who abide to the financial regulations”.

195. The reform formalises an overall trend towards increasing the project-based funding, provided by the government or other subjects, such as agencies or the EU. Projects can be implemented by local councils also beyond the strict list of their functions included in Article 33 LGA, meaning that only through projects local councils may pursue some degree of local policy and provide services to the community outside of the very rigid and narrow set of activities provided for in the law. For example, the mayor of Fontana (Gozo) explained to the delegation that he was able to secure a new electric minivan to transport local residents in need to several places in order to attend social activities organised by the local council.

196. The Local Government Division signs grant schemes with several local councils in order to carry out projects in their respective localities, with money coming from different ministries, from the EU or from international donors. The projects consist in earmarked funds for specific purposes. An example reported by the NAO is the Small Grant Schemes Agreement (2021) for around €690.000 with seven urban local councils aimed at establishing a skill development centre to improve job opportunities, the regeneration of a garden and playground, a mobility and accessibility service for vulnerable people, the development of an active aging day centre, the organisation of outdoor activities for the elderly, etc. Further earmarked funds are attributed for greening projects, for reducing the impact of infrastructural projects, for the implementation of sustainable projects within local communities.

197. The goal is to enhance competitiveness and to promote the most active councils. While the purpose is commendable, the effect is to further enhance earmarked grants. In this context, it must be reminded that the Charter, while welcoming project-based financing of local activities, provides that the increase of earmarked funds should not go to the detriment of basic, unconditional funding. “The ratio of conditional (earmarked) and unconditional (general) grants is considered a relevant indicator for measuring the financial autonomy of local authorities. Earmarked grants limit local autonomy, but conditionality might be part of the policy tools applied by central government to achieve nationwide policy goals. Earmarked grants are subject to tighter government control” (Contemporary Commentary, para. 181).

198. Furthermore, in meetings with the delegations, several local representatives pointed out that often the funding schemes are quite complex, deadlines are close and information about them is not regularly provided in advance by the government. Therefore, while government schemes are the only opportunity for localities to take up certain activities and to receive the necessary funds, at the same time it is difficult for local councils that are poorly equipped and funded to successfully apply for such schemes.

199. For these reasons, while welcoming the changes introduced by the 2019 reform, the rapporteurs find that Malta does not comply with Article 9.7 of the Charter.

3.8.8 Article 9.8

200. Article 9.8 of the Charter regards borrowing as a tool to finance local policies and services and provides that in principle local authorities must have the right to resort to them, although “within the limits of the law”.

201. According to para. 183 of the Contemporary Commentary, “the law may establish requirements, procedures, criteria, limits or ceilings concerning local authorities’ financial activities but in any event those standards should not deter them from borrowing on the national capital market or make it extremely difficult in practice”.

202. In Malta the law is clear in making the local and regional councils' access to the national capital market conditional upon the approval of the central government (Article 3.2 LGA). This provision establishes that local councils have no power to: "(a) borrow or lend any monies except with the authority in writing of the Minister with the concurrence of the Minister responsible for finance; (b) enter into any form of commercial partnership in furtherance of its functions or otherwise, unless authorised to do so in writing by the Minister; (c) delegate any of its functions in a manner other than that established by or under this Act". The reform of 2019 added the following further provision: "(d) a local council may enter into public private partnerships both with the private sector or with nongovernmental organisations, following approval by the Director who shall grant such approval after evaluating the request, and after having obtained the approval of the Minister responsible for Finance and of the Minister responsible for Local Government".

203. Borrowing is therefore only possible with the approval in advance of the national government. Similarly, local councils do not have the power to hold or invest in commercial undertakings any money received by way of grant by the national government without the written approval of the Minister.

204. Considering that resources for local councils come almost exclusively from the national government, that there is a tight control over local expenditures and that the activities of local councils are reduced to a minimum, it is consequent that resort to borrowings is very limited in practice, also due to the restrictive procedure that it has to follow.

205. Against this background, the rapporteurs find that Malta partly complies with the requirements of Article 9.8 of the Charter.

3.9 Article 10 – Local authorities' right to associate

Article 10 – Local authorities' right to associate

1. Local authorities shall be entitled, in exercising their powers, to co-operate and, within the framework of the law, to form consortia with other local authorities in order to carry out tasks of common interest.
2. The entitlement of local authorities to belong to an association for the protection and promotion of their common interests and to belong to an international association of local authorities shall be recognised in each State.
3. Local authorities shall be entitled, under such conditions as may be provided for by the law, to co-operate with their counterparts in other States.

206. Article 10 commits the States parties to allow local authorities to cooperate among them with a view to seeking greater efficiency (para. 1), to represent them vis-à-vis other levels of government (para. 2), including in other countries (para. 3)

3.9.1 Article 10.1

207. Local and regional councils have the right to co-operate with one another in order to deliver local services or discharge their responsibilities. Article 37.1 LGA provides that "[t]wo or more local councils may discharge any of their functions jointly and they may also arrange for the discharge of these functions by a joint committee of theirs or by an officer of one of them".

208. The law further establishes that local councils having such a cooperation arrangement "may meet in joint session to discuss the discharge of the functions to which the arrangement relates, and all councillors shall be entitled to participate and vote where required unless the arrangement otherwise provides" (Article 37.2 LGA).

209. Interlocutors met by the delegation stressed on the one hand that cooperation takes place regularly, although on a rather informal way, especially among neighbouring local councils, and that it affects all areas of activity of local councils. On the other hand, they also informed the delegation that in practice, given the limited scope of local government, cooperation agreements in the forms prescribed by the law, such as joint committees, are much less frequent.

210. In the light of the above, Malta complies with article 10.1 of the Charter.

3.9.2 Article 10.2

211. Not only is the right of local authorities to belong to an association recognised in Malta, but this is even a legal obligation. Article 37.3 LGA provides that “local councils shall form part of an association recognised as such by the government for the protection and promotion of their common interests”.

212. The Local Councils’ Association was set up in 1994 and oversees protecting and promoting the common interests of all local councils. After the establishment of the regions in 2011, the regional councils are also represented in the Association. It acts as a link between the national government and local and regional councils, keeping both formal and informal contacts with both, and fosters cooperation among local councils, by promoting meetings to exchange practices.

213. The Association is funded by the national government, and funds have been incremented over the last few years. On top of the basic funding, the Association is entitled to generate own resources, like for instance by renting its premises for conferences and other events. Own generated resources amounted to about 600.000 euros in 2022. For that matter, the Association is in a more favourable financial position than the local councils. It has 3 full-time permanent staff, while the Local Government Division of the Ministry for the National Heritage, the Arts and Local Government employs some 60 persons.

214. The Association provides technical support and expertise to the local councils on several matters, and trains members of the local councils in different subjects and sectors: courses are offered free of charge to make it easier for councillors to participate. Every year, the Association organises between 3 to 4 plenary sessions for its members, a separate plenary for the mayors only, and another plenary for the minority leaders. It also promotes awareness of the remit of local governments by the population, which is quite low according to all interlocutors.

215. The Association is consulted on most issues relevant to the local government sector and its role is increasingly reflected in the legislation. For example, in case of dissolution of a local council, the Minister appoints a committee to manage the council until new elections are held, and such committee is chaired by the President of the Association (Article 23.2 LGA).

216. All interlocutors confirmed the importance of the role played by the Association and its consideration as a key player in the local government sector in Malta, in terms of both its functions assigned by legislation and administration and of its proactive approach, which increases its presence also through informal networking.

217. While the latter role is significant and necessary in every context, and perhaps even more in a small-sized country like Malta, it is equally important not to rely too heavily on informality and to continue to strengthen the role of the Association also and foremost in formal procedures.

218. The rapporteurs consider that Malta complies with Article 10.2 of the Charter.

3.9.3 Article 10.3

219. The right for local authorities to cooperate with counterparts in other countries and to belong to international local government association is provided for in legislation, as required by Article 10.3 of the Charter. Article 37.3 LGA establishes that local councils can belong to international associations of local government authorities, and Article 79 LGA stipulates that local councils have the right to “make twinning arrangements with any city, town, village or other locality in any other country”.

220. Twinning arrangements, however, are subject to ministerial approval, to be issued after the Association has given its (non-binding) opinion. Twinning arrangements of local councils are further regulated in detail by a ministerial regulation, the Local Councils (Twinning) Regulations, S.L. 363.141, which defines a twinning as a friendship agreement, co-operation, or association between two communities in different countries. To initiate a twinning, the local council shall submit a written report to the Local Government Division which contains the objects and reasons of the proposed twinning, an estimate of the expenses related to it, the name of the councillor in charge, a declaration by the executive secretary that this report has been discussed and approved by the council and a workplan.

221. The regulation further stipulates that twinning arrangements shall be preferably concluded with local authorities in countries that are members of or candidate to join the European Union. The regulation is so detailed that it even provides specific rules on the expenses incurred for the

purpose of entering into, signing and operation of the twinning, that should be kept as low as possible, and on the travel tickets, that must be economy class. Such a narrow discipline exemplifies the overall approach of strict control by the national government over local authorities in Malta.

222. Malta has signed (in 1999) but not ratified the Madrid Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106), with a declaration stating that, in accordance with paragraph 2 of Article 3 of said Outline Convention, the application of the Convention shall be subject to the conclusion of inter-state agreements. The Convention is therefore not applicable in Malta. The rapporteurs are of the opinion that the government could consider ratifying the Madrid Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (ETS No. 106) and its additional protocols. They believe that local councils can engage in international cooperation, although such collaboration is limited by the significant burdens imposed by the national government.

223. Against this background, the rapporteurs conclude that Malta formally complies with Article 10.3 of the Charter, but they would suggest easing the procedural requirements for twinning agreements.

3.10 Article 11 – Legal protection of local self-government

Article 11 – Legal protection of local self-government

Local authorities shall have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for such principles of local self-government as are enshrined in the constitution or domestic legislation.

224. Recourse to a judicial remedy in Article 11 means access by a local authority to: (a) a properly constituted court of law, or (b) an equivalent, independent, statutory body having the power to rule and advise on the ruling respectively, as to whether any action, omission, decision, or other administrative act is in accordance with the law.

225. Under Article 38 LGA, local and regional councils have the right to challenge in court any decision which in any way interferes with the free exercise of their powers granted by the same Act. The same right is not granted to the Local Councils' Association.

226. The formulation of Article 38 LGA is intentionally broad and therefore covers all aspects that Article 11 of the Charter intends to protect. As the Contemporary Commentary specifies (paras. 210-211), recourse to judicial remedies is a right of local authorities, not a mere expectation or an interest, and such a right includes not only the ability to bring legal actions in a court of law in the same manner as any other legal entity, like for example a business, but entails the power to bring actions under public law against other levels of government. This implies, for example, that local councils are also entitled to invoke in courts the provisions of the Charter, as Malta is a signatory party (except for Article 9.3 which the State has not undertaken to accept).

227. While as a matter of law there is full compliance with Article 11, the right to a judicial remedy does not seem to be used in practice. Interlocutors just mentioned one case in ordinary courts regarding contracts for bus shelters, and, as the Constitutional Court confirmed, there have been no cases filed in the Constitutional Court dealing with local self-government since the last monitoring in 2016. Also, the wide-ranging constitutional reform introduced in July 2020 – following recommendations by the Venice Commission in 2018 in light of the need to secure proper checks and balances, and the independence and neutrality of the institutions and their staff whilst also guaranteeing their effectiveness and democratic accountability⁴ – has had no impact on local self-government.

228. The delegation has been informed that for the first two decades after local councils have been introduced, judicial litigation was more frequent and that it decreased over time until it has disappeared altogether in recent years.

229. All this proves additional evidence of the fact that local self-government in Malta is essentially an instrument to de-congestion national institutions and political representatives with regard to relations with the citizens, rather than a fully-fledged devolved institution. While nothing in the law is against the

⁴ European Commission for Democracy Through Law (Venice Commission), "Malta – Opinion on constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement" (Opinion No. 940 / 2018, 17 December 2018).

principles and rules laid down in Article 11, in practice this provision is under- or rather not used. Compliance is therefore given only in a formal sense, and the rapporteurs cannot but highlight that the absence of judicial litigation about local self-government does not speak for a good health of the local self-government but rather for its substantial irrelevance.

230. Nevertheless, the rapporteurs conclude that Malta complies with Article 11 of the Charter.

4. OTHER MATTERS RELATED TO THE FUNCTIONING OF LOCAL AND REGIONAL SELF-GOVERNMENT

231. The matters in this section are not directly raised in the text of the Charter but relate to the functioning of local self-government in general and reflect issues that were discussed during the visit. They do not affect obligations under the Charter.

232. During the Covid-19 pandemic, local and regional councils were the only public institutions in Malta, along with hospitals and schools, which were left open at all times, giving additional service and surplus to what is normally expected from them. While the management of the emergency was entirely in the hands of the national government, also due to the limited scope of local self-government as a whole, the supportive role of local councils was reportedly appreciated by the residents, especially in the area of social welfare. Local councils in fact have minor functions in the area of health district offices and homes as well as day centres for senior citizens, as part of a national scheme. It is worth noting that in 2020, on the initiative of the Local Councils' Association in partnership with all local councils in Malta and Gozo, the community support platform Yousafe was launched. The platform served the purpose to help residents, organisations and the business community to keep in contact with each other. It consisted of 68 Facebook groups (one for each local council), managed and moderated by the respective local council team, which helped to monitor the situation of all residents and to serve as online public space for dialogue between the local business community, NGOs, civil society networks and individuals on how particular issues, initiatives, ideas and solutions could be implemented for the good of the community.

233. Also, climate change is a global challenge for which local councils are way too small but can nevertheless contribute their share. On the one hand, the new national strategic vision for local government 2023-2030 includes clean environment as one of the five pillars for its development. On the other, the Local Councils' Association is focusing its efforts on increasing the efficiency of waste separation, by supporting awareness-raising campaigns and with the launch of so called "collection points". These are specifically designated areas equipped with colour-coded bins to match the garbage bags commonly used for waste disposal, made accessible to residents through personalized cards equipped with technology that allows the councils to collect data, including the bin fill levels, residents' usage patterns, and when bins need to be emptied.

234. An issue widely discussed in Malta is gender balance in the institutions. The severe underrepresentation of women in Parliament led to a momentous reform of the electoral system in 2021, which introduced Article 52A in the Constitution, providing that "[i]f at a general election ... in which only candidates of two parties are elected ... and in the event that the number of Members of Parliament of the under-represented sex ... is less than forty per cent (40%) of all the Members of Parliament, then the number of Members of Parliament shall increase by not more than twelve (12) Members of the under-represented sex". Both parties should appoint their six most voted female candidates who were not elected. The provision was adopted in order to redress the unfortunate state of female representation, which, prior to 2022, amounted to only 9 MPs out of 67. After the 2022 elections, when the new system was applied for the first time, 10 women were elected and 12 more were added thanks to the mentioned mechanism, increasing the overall number of women to 22 and the number of MPs to 79, with a ratio of 28% female MPs, Malta's highest proportion ever. This provision does not apply to local elections, but discussions are ongoing as to whether to extend it to local elections too. Interlocutors met by the delegation consider this unlikely to happen, also because the gender representation is less problematic in the local councils as the number of elected women has been proportionally higher than in Parliament, and there seems to be less consensus in the political parties for such a measure.

235. Migration was not thoroughly discussed during the visit. Despite the fact that a significant number of migrants and refugees arrive in Malta, most of the interlocutors met by the delegation did not consider this issue as part of the challenges faced by local authorities. The matter was considered as affecting

but a few localities where migrants live in significant numbers, and in general the limited political and financial power of local councils is used as an argument to consider the issue a national one only.

236. As to the language regime, Malta is officially a bilingual country: both Maltese and English are official languages, whereby Maltese is also the national language. None of the interlocutors pointed to language as a problem and in fact the attitude towards the issue is smooth. Maltese is the language used orally in all meetings of the councils and in which documents are drafted. Apparently, just some written documents produced by the local and regional councils are translated into English, normally only if there is a reason for that. In general, thus, the language regime is kept very flexible, and Maltese dominates across the board. The budgets of local and regional councils do not include expenses for translation.

237. Finally, the Ombudsman informed the delegation that cases related to local self-government in principle fall under his remit since local and regional councils are integral parts of the country's institutional and administrative system. The Ombudsman further clarified to the delegation that acts or omissions related to public administration by local governments are within his jurisdiction. He emphasised that local and regional councils, crucial to the country's institutional and administrative framework, fall under his purview. The Ombudsman is empowered to investigate complaints involving local councils, whether they arise from a direct grievance or are initiated on his own initiative. Moreover, local councils have the authority to lodge complaints against governmental entities regarding issues of maladministration. The Ombudsman highlighted typical concerns addressed in these contexts, which include, but are not limited to, maintenance, road infrastructure, and damages experienced by residents.

5. CONCLUSIONS AND RECOMMENDATIONS

238. Compared to the findings in the previous report, some important steps have been taken in Malta to improve the legislation on local self-government, in particular through the fundamental reform of 2019, which clarified several aspects and strengthened the role of the regional councils. The reform adopted in December 2023 that made it possible for mayors and vice mayors to be elected at the age of 16 represents a significant step towards broadening participation at local level. The new national strategy for local government put forward by the government for the period 2023-2030, while framed in general terms, includes elements that have the potential to reinvigorate the role of local councils.

239. At the same time, the functions of the local councils remain limited and far less significant than in most other Council of Europe Member States. Local councils are still far from enjoying the right to regulate a substantial share of public affairs as required by the Charter. Over the last decade, a series of legislative and administrative reforms have reduced the number of functions vested in the local councils, have further increased the financial dependency of localities from the government, have made the availability of financial resources increasingly dependent on projects, and have *de facto* limited the consultation of localities by outsourcing significant public functions to specialised agencies.

240. The rapporteurs consider that local councils should be endowed with further functions and responsibilities in order to enable them to regulate a more substantial share of the public affairs in their localities based on the principle of subsidiarity as enshrined in the Charter. These could include some of the activities that are closer to residents such as, inter alia, administration, use and management of parks, gardens, monuments, industrial estates. At the same time, a minimum of autonomy also requires that some fares, duties and other kinds of taxes or proceeds be collected by the local councils.

241. The importance and particular responsibilities of city of Valetta should be acknowledged. A special status for the capital city could create the grounds for a differential treatment that takes into account its administrative role and the management of a very large number of people who access it for tourism and work but do not reside there.

242. Consultation of local authorities is taking place, especially through the Local Councils' Association, and has been elevated to a general principle in legislation on local government. However, it takes place very often informally, it is often perceived as ineffective and lacking on the side of governmental agencies, whose role is growing. The effect is that there is little consultation in the areas where it would be most needed. It is advisable in particular to extend the rules on consultation to the specialised agencies, too.

243. Uniformity of rules and the consequent failure to take into account the different needs of different realities characterise the entire local government sector in Malta. While some little steps have been taken, such as overcoming the rule whereby local councils had a fixed number of employees based on the size of the respective locality, the approach remains the same in most areas. Mandatorily stipulating that all mayors must work part-time, without taking into account the different needs of their respective localities and the possibility of modulating their workload, is an example of the distorting logic to which a standardising approach can lead. Allowing the mayors to choose between a part-time or full-time engagement could meet the demand for a more differentiated approach thus enhancing the margins of autonomy of local councils.

244. Supervision by the national government over local councils is disproportionately pervasive and the role of executive secretaries significantly limits local self-government in practice. Following the recent reforms that have introduced some changes in the legal regime of executive secretaries and have expanded the powers of local councils in their choice, further steps should be taken to restrict the involvement of the national government to the notification to the Minister after the appointment or the removal of the executive secretary. Furthermore, the excessive involvement of the national government in the local affairs should be reduced and limited to the degree of ensuring the legality of the operations of the local councils, while at the same time allowing local councils to perform their administrative and regulatory functions themselves without the preventive and successive control and scrutiny of the government.

245. Financially, local and regional councils remain totally dependent on the annual government grants and cannot raise capital through the imposition and collection of taxes or charges. For proper local autonomy to be in place, it is imperative to ensure that local councils have adequate financial resources to execute their functions effectively and efficiently. Local councils should be given autonomy in deciding on the use of funds allocated to them, according to own priorities and goals. To enable local councils to make autonomous choices, it is also necessary to abolish the approval of the government prior to obtaining loans or having access to the national capital market.

APPENDIX – Programme of the Congress monitoring visit to Malta

**CONGRESS MONITORING VISIT TO MALTA
Valletta, Santa Luċija, Żurrieq, Fontana, Nadur**

PROGRAMME

(7-9 November 2023)

Congress delegation:

Rapporteurs:

Mr Matthias GYSIN
Rapporteur on local democracy
Chamber of local authorities, ILDG⁵
Member of the Congress Monitoring Committee
Municipal Councillor (Duggingen)
Switzerland

Ms Cecilia Felicztasz FRIDERICS
Rapporteur on local democracy
Chamber of local authorities, ECR⁶
Member of the Congress Monitoring Committee
Mayor (Nagyszentjanos)
Hungary

Congress secretariat:

Ms Svitlana PEREVERTEN

Co-Secretary to the Monitoring Committee

Expert:

Mr Francesco PALERMO

Member of the Group of Independent Experts on
the European Charter of Local Self-Government
(Italy)

Interpreters:

Ms Annette SCERRI

Ms Michelle VIGAR

The working language of the meeting was Maltese and interpretation from and into English was provided.

⁵ ILDG: Independent Liberal and Democratic Group.
⁶ ECR: European Conservatives and Reformists Group.

Tuesday, 7 November 2023
Valletta

NATIONAL AUDIT OFFICE

Mr Charles DEGUARA, Auditor General

Ms Tanya MERCIECA, Assistant Auditor General, Head of the Financial and Compliance Section

JOINT MEETING WITH THE NATIONAL DELEGATION OF MALTA TO THE CONGRESS AND REPRESENTATIVES OF THE LOCAL COUNCILS' ASSOCIATION

Mr Mario FAVA, Municipal Councillor of Swieqi, Head of National Delegation
Mr Jorge GRECH, Mayor of Zabbar

LOCAL COUNCILS' ASSOCIATION

Mr Mario FAVA, President

VALLETTA CITY

Mr Alfred ZAMMIT, Mayor

Mr Adrian MIFSUD

Ms Gabriella AGIUS, Executive Secretary

PARLIAMENT

Hon. Dr Anġlu FARRUGIA, Speaker of the House of Representatives

Mr Ray SCICLUNA, Clerk of the House

Ms Eleanor SCERRI, Director International Affairs

Ambassador Joe COLE, Advisor for International Relations

Mr Ancel FARRUGIA MIGNECO, Private Secretary to the Speaker

OMBUDSMAN

Judge Emeritus Joseph Zammit MCKEON, Parliamentary Ombudsman

Mr Perit Alan SALIBA, Commissioner for Environment and Planning

Dr Borg GALEA, Head of Investigations

**Wednesday, 8 November 2023
Valletta, Santa Luċija, Żurrieq**

GOZO REGIONAL COUNCIL

Dr. Samuel AZZOPARDI, President

EXPERT ON LOCAL SELF-GOVERNMENT

Dr Ian MICALLEF, Member of the Congress Group of Independent Experts on the European Charter of Local Self-Government

MINISTRY FOR THE NATIONAL HERITAGE, THE ARTS AND LOCAL GOVERNMENT

Hon. Dr Owen BONNICI, Minister

Ms Alison Zerafa CIVELLI, Parliamentary Secretary for Local Government

Ms Angele ABELA, Head of Secretariat

Mr Francis GALEA, Head of Secretariat, Parliamentary Secretariat for Local Government

Mr Natalino ATTARD, Director General (Local Government)

Mr Emile VASSALO, Designated Director General (Local Government)

PORT REGIONAL COUNCIL

Chev. Paul FARRUGIA, President

Ms Lillian CASSAR, Acting Deputy Executive Secretary

SANTA LUCIJA

Ms Charmaine ST JOHN, Mayor

Mr Frederick CUTAJAR, Vice Mayor

Mr Fabian MIZZI, Executive Secretary

ZURRIEQ

Ms Rita GRIMA, Mayor

Ms Josianne Cilia MUMFORD, Executive Secretary

Thursday, 9 November 2023
Nadur, Fontana (Gozo)

NADUR

Mr Edward SAID, Mayor

Ms Sue-Ellen BUGEJA, Executive Secretary

FONTANA

Mr Saviour BORG, Mayor

Mr Horace MICALLEF, Councillor

Mr Carmel FARRUGIA, Councillor

Ms Josianne CASSAR, Acting Executive Secretary

Ms Miriam MUSCAT, Clerk