



GOVERNMENT OF MALTA
MINISTRY FOR EQUALITY AND
CIVIL RIGHTS

Ref: CommHR/MOF/sf 132-2026

Michael O’Flaherty

Commissioner for Human Rights
Council of Europe

2nd October 2026

Dear Commissioner,

Thank you for your interest in Bill No. 3 and for sharing your observations and recommendations. The Government remains firmly committed to establishing a National Human Rights Institution (NHRI) and an Equality Body in line with the Principles relating to the Status of National Institutions (the Paris Principles). As part of the ongoing review of the Bill following stakeholder consultation, the Government is carefully considering the observations raised in your letter. I would therefore like to address the points raised in your letter.

Selection process of the Commissioner

The proposed process seeks to strike an appropriate balance between ensuring that persons considered for the office meet the required standards and preserving sufficient flexibility in the identification and nomination of suitable persons.

Experience in filling certain public offices in Malta has shown that identifying persons who are both suitably qualified and willing to serve can prove challenging. It was therefore considered important that the statutory framework should reflect the significance and responsibilities of the office without introducing requirements that are unnecessarily rigid or restrictive and could unduly narrow the pool of persons who may be considered for nomination.

Article 21 provides that the Commissioner is to be appointed by the President in accordance with a resolution of the House of Representatives. The first two votes require the support of not less than two-thirds of all members of the House, thereby seeking to ensure broad parliamentary consensus extending beyond the Government’s parliamentary majority. Before the second vote, new candidates may be nominated together with, or instead of, any candidate previously nominated, thereby facilitating further dialogue and increasing the possibility of attaining the required majority. Only after two unsuccessful votes may the anti-deadlock

mechanism apply. This mechanism is intended to avoid a prolonged vacancy that could affect the establishment or effective functioning of the Commission.

The appointment procedure should also be considered in conjunction with the safeguard governing the Commissioner's security of tenure. The Commissioner may be removed from office only by the President, upon an address of the House of Representatives supported by not less than two-thirds of all its members.

The Government recognises the importance attached by the relevant international standards to a transparent and participatory selection process. It considers that the parliamentary procedure proposed under article 21, viewed together with the applicable eligibility requirements and security-of-tenure safeguards, provides an appropriate model within the Maltese constitutional context.

Selection process of Commission members

The eligibility criteria and selection procedure applicable to members of the Commission similarly seek to ensure that suitably qualified persons may be considered while preserving sufficient flexibility in the process.

Article 21 provides that the process is initiated through a public call issued by the Appointments Commission. Where the public-call process does not produce a sufficient number of suitable candidates, the Commissioner may nominate persons to participate in the selection process. Any person so nominated must satisfy the applicable eligibility requirements and be considered by the Appointments Committee in the same manner as the other candidates. Where this mechanism is used, the Commissioner must publish a report explaining the nominations and the resulting recommendations of the Appointments Commission.

Although the Appointments Committee is formally appointed by the Minister, its composition is regulated by the Bill. As originally proposed, it would comprise the Chairperson of the Public Service Commission *ex officio*, a person having knowledge of any field within the human rights or equality sector, and a retired Judge or Magistrate.

Nevertheless, following internal and external consultation, the composition of the Appointments Committee is being reconsidered with a view to further strengthening its independence and public confidence in the process.

Definition of human rights

Following internal and external consultation, the definition of "human rights" will be revised to reflect a broader understanding of the term.

National security exclusion under Article 43

The concern regarding the exclusion of matters certified as affecting national security is duly noted. The provision was intended to recognise that, in exceptional circumstances, legitimate national security interests may require particular protection. Comparable provisions are found in other Maltese legislation governing independent institutions, including the Ombudsman Act.

The Government recognises that such an exclusion should not place broad areas of public action beyond independent human rights scrutiny and that any restriction should be narrowly and precisely defined, strictly necessary and subject to appropriate safeguards against arbitrary application. Article 43 is therefore being reconsidered to determine whether the present formulation strikes an appropriate balance between legitimate national security interests and the Commission's ability to exercise its human rights mandate effectively and independently.

Reporting and follow-up on recommendations

Article 40 requires the Commission to submit an annual report to the Speaker of the House of Representatives, while article 41 empowers the Commission to publish reports concerning the exercise of its functions and summaries of relevant cases. Article 28 further empowers the Commission to submit opinions, recommendations, proposals and reports to the Government, Parliament and public bodies, and to request information in order to monitor the implementation of its recommendations and proposals. The Government considers that these provisions establish an appropriate framework for reporting, public dissemination and follow-up on the Commission's recommendations.

I trust that the above clarifies the Government's position on the matters raised. While a number of concerns are addressed, at least in part, through safeguards already contained in the Bill, certain aspects are being reconsidered as part of the ongoing review. The Government is committed to ensuring that the Commission is established on a strong legislative basis and is able to perform its functions effectively and independently.

Once again, thank you for your constructive observations and recommendations on Bill No. 3. I will ensure that your Office is kept informed of any progress made in this regard. Moreover, once a revised draft of the Bill has been finalised, I would greatly appreciate the opportunity to share it with your Office and receive your highly valued feedback.

Sincerely,


Hon. Rosianne Cutajar MP
Minister for Equality & Civil Rights