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# Daphne Caruana Galizia's assassination and the rule of law in Malta and beyond: ensuring that the whole truth emerges

**Report**[1]
Committee on Legal Affairs and Human Rights
Rapporteur: Mr Pieter OMTZIGT, Netherlands, Group of the European People's Party

*Summary*

Daphne Caruana Galizia, Malta's leading investigative journalist, was assassinated on 16 October 2017. This murder and the continuing failure of the Maltese authorities to bring the suspected killers to trial or identify those who ordered the assassination raise serious questions about the rule of law in Malta.

The Committee on Legal Affairs and Human Rights notes a series of fundamental weaknesses in Malta's system of checks and balances which have allowed numerous major scandals to arise and go unchecked in recent years, seriously undermining the rule of law. Despite certain recent steps, Malta still needs fundamental, holistic reform, including subjecting the office of Prime Minister to effective checks and balances, ensuring judicial independence and strengthening law enforcement and other rule of law bodies.

The Maltese authorities are therefore called upon to take a series of steps, including implementing the reform packages recommended by the Venice Commission and GRECO and ending the prevailing climate of impunity.

The committee considers that the above issues are also directly relevant to its analysis of the authorities' response to the assassination of Ms Caruana Galizia. The report identifies a series of concerns relating to the murder investigation, and Malta is called upon to establish an independent public inquiry within three months.

1. Reference to committee: Doc. 14479, Reference 4366 of 16 March 2018.

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## A. Draft resolution[2]

1. Daphne Caruana Galizia, Malta's best known and most widely-read investigative journalist, whose work focused on corruption amongst Maltese politicians and public officials, was assassinated by a car bomb close to her home on 16 October 2017. The response of the international community was immediate. Within the Council of Europe, the President of the Parliamentary Assembly, the Secretary General and the Commissioner for Human Rights all called for a thorough investigation into the murder. Ms Caruana Galizia's murder and the continuing failure of the Maltese authorities to bring the suspected killers to trial or identify those who ordered her assassination raise serious questions about the rule of law in Malta.

2. Recalling the recent conclusions of the European Commission for Democracy through Law (Venice Commission) and of the Group of States against Corruption (GRECO) concerning Malta, the Assembly notes the following:

2.1. the Prime Minister of Malta is predominant in Malta's constitutional arrangements, sitting at the centre of political power, with extensive powers of appointment;

2.2. the Office of the Prime Minister has taken over responsibility for various areas of activity that present particular risks of money laundering, including online gaming, investment migration ("golden passports") and regulation of financial services, including cryptocurrencies;

2.3. senior officials in the civil service are appointed by the Prime Minister, which is problematic from the perspective of checks and balances. Large numbers of "persons of trust" are appointed to public posts through non-transparent procedures that provide for exceptions to merit-based appointments, which may be illegal, and is a danger to the quality of the civil service;

2.4. Malta's unicameral parliament consists of poorly remunerated part-time members, to many of whom (notably from the governing party) the government has given well-paid positions as contractors, as persons of trust or on public bodies, which – along with the fact that almost half of the governing party members are also ministers – contributes to the parliament as a whole failing to assure an effective control over the executive;

2.5. judges and magistrates are appointed by the Prime Minister, who exercises an unfettered discretion to choose from amongst formally qualified candidates and may even disregard the advice of the body established to determine whether candidates are qualified. This allows for potential political influence, which is incompatible with judicial independence and the rule of law;

2.6. the Attorney General is appointed by the Prime Minister and both provides legal advice to the government and prosecutes criminal offences, which is problematic from the perspective of democratic checks and balances and the separation of powers;

2.7. the Commissioner of Police is appointed and can be dismissed by the Prime Minister, who dismissed or saw resign four Commissioners between 2013 and 2016. This contributes to a public perception that the police force is not politically neutral in the service of the State when enforcing the law and protecting citizens;

2.8. magisterial inquests as a means of investigating criminal offences improperly allow victims and alleged perpetrators of crimes to choose an avenue of investigation. They are poorly co-ordinated with police investigations, take an inordinately long time and tend towards confusion, inefficiency and ineffectiveness;

2.9. the procedure for committing criminal cases to trial may be extremely slow, with serious consequences if it results in suspects being released on bail upon expiry of the preventive custody time limit;

2.10. the effectiveness of the office of Parliamentary Ombudsman is undermined by the government's failure to provide information necessary for his work and the parliament's failure to act on cases where public authorities have rejected his recommendations;

2.11. the effectiveness of the office of Auditor General is undermined by a lack of means, resulting in delays to important audits;

2. Draft resolution adopted by the committee on 29 May 2019.

2.12. the Financial Intelligence Analysis Unit, Malta's specialist anti-money laundering body, has had its authority and reputation damaged through its role in various recent scandals. The European Banking Authority (EBA) found that the Financial Intelligence Analysis Unit breached European Union anti-money laundering standards in a way that pointed to general and systemic shortcomings;

2.13. the office of Commissioner for Standards in Public Life, intended to prevent conflicts of interest among politicians and State officials, appears to lack the necessary means, including powers of investigation and sanction, to fulfil its role effectively;

2.14. the Freedom of Information Act is undermined by many exceptions to the principle of access to official documents, with the result that public authorities systematically obstruct requests for official documents and the transparency of the administration is not guaranteed;

2.15. the Protection of the Whistle-blower Act, although in many ways laudable, is undermined by a lack of protection for whistle-blowers who report to the media, by the role of the Attorney General and Commissioner of Police in granting immunity to potential whistle-blowers and by the fact that the reporting channel for external whistle-blowers is the Cabinet Office;

2.16. The Permanent Commission Against Corruption is structurally flawed, utterly ineffective in practice and could be abolished, providing other necessary reforms are introduced.

3. The Assembly notes that these fundamental weaknesses have allowed numerous major scandals to arise and go unchecked in Malta in recent years, including the following:

3.1. the Panama Papers revelations concerning several senior government figures and their associates, which have still not been investigated, other than by a magisterial inquiry primarily into the Prime Minister and his wife, whose full results have not been made public;

3.2. the Electrogas affair, in which the Energy Minister, Dr Konrad Mizzi, supervised a highly irregular procedure whereby a major public contract was awarded to a consortium. The consortium included the Azerbaijani State energy company, which also made large profits from a related contract to supply liquid natural gas at a price well above the market rate. Another member of the consortium owned a secret Dubai company, 17 Black, that was expected to make large monthly payments to secret Panama companies owned by Dr Mizzi and Mr Schembri, Chief of Staff of the Prime Minister. 17 Black received large sums of money from an Azerbaijani national and a company owned by a third member of the consortium. Despite being officially informed about the case by the Financial Intelligence Analysis Unit, the police have taken no action against Dr Mizzi or Mr Schembri;

3.3. the Egrant affair, in which, nine months after presenting a report said to exculpate the Prime Minister, the inquiring magistrate, who had been appointed by the Prime Minister, was promoted to judge by the same Prime Minister. The Assembly calls on the Prime Minister to make good on his promise to publish the full inquiry report without further delay;

3.4. the Hillman affair, in which Mr Schembri was allegedly involved in money laundering with Adrian Hillman, then managing director of Allied Newspapers. The police failed to act, despite a Financial Intelligence Analysis Unit report, and a magisterial inquiry is still ongoing two years later;

3.5. the "golden passports" affair, in which Mr Schembri received €100 000 from his long-standing associate Brian Tonna, owner of the accountancy firm Nexia BT, an agent for "golden passport" applicants. The Financial Intelligence Analysis Unit found that Mr Tonna had received this money from three applicants for golden passports. The police have declined to investigate and a magisterial inquiry is still ongoing two years later;

3.6. the Vitals Global Healthcare affair, in which the Health Minister, Dr Mizzi, awarded a major hospitals contract to a consortium with no prior experience in the field and to which the government had allegedly promised the contract before the bidding process began. Vitals Global Healthcare may have received as much as €150 million from the government, yet made negligible progress with promised investments in the hospitals, before being sold to a United States health-care company. The Auditor General is currently investigating this affair;

3.7. the fact that Mr Tonna and his firm Nexia BT, who played key roles in the Panama Papers, Electrogas, Egrant, Hillman and "golden passports" affairs, both received numerous lucrative government contracts, including after Mr Tonna came under investigation. The Accountancy Board has declined to take disciplinary action against them;

3.8. the role of Pilatus Bank, which was rapidly licenced by the Maltese Financial Services Authority (MFSA), leading to significant concerns on the part of the European Banking Authority; whose clients included mainly "politically exposed persons", including Mr Schembri and companies owned by the daughters of the President of Azerbaijan; whose owner was connected to the Prime Minister and Mr Schembri, and was arrested by the United States authorities and charged with violating sanctions against Iran; and which was subsequently closed by the Maltese Financial Services Authority and the European Central Bank.

4. The Assembly concludes that the rule of law in Malta is seriously undermined by the extreme weakness of its system of checks and balances. Noting that individuals such as Dr Mizzi, Mr Schembri and Mr Tonna seem to enjoy impunity, under the personal protection of Prime Minister Muscat, for their involvement in the above affairs, the Assembly considers that recent events in Malta illustrate the serious damage that can result from its dysfunctional system. Despite certain recent steps, Malta still needs fundamental, holistic reform, including subjecting the office of Prime Minister to effective checks and balances, ensuring judicial independence and strengthening law enforcement and other rule of law bodies. Malta's weaknesses are a source of vulnerability for all of Europe: Maltese citizenship is European Union citizenship, a Maltese visa is a Schengen visa, and a Maltese bank gives access to the European banking system. If Malta cannot or will not correct its weaknesses, European institutions must intervene.

5. The Assembly therefore:

5.1. calls on Malta to implement as a matter of urgency the reform packages recommended by the Venice Commission and GRECO, in their entirety. Reforms should be designed and implemented as a coherent, co-ordinated package, through an open, widely inclusive and transparent process;

5.2. welcomes the Prime Minister's initial pledge to implement all of the Venice Commission's recommendations and encourages him to take a similarly positive approach to those of GRECO;

5.3. encourages the Prime Minister to refrain from making further judicial appointments until the procedure has been reformed in line with the Venice Commission's recommendations;

5.4. welcomes the Maltese authorities' co-operation with the Council of Europe on reform of the committal procedure;

5.5. urges the Maltese law-enforcement bodies to end the prevailing climate of impunity by robustly investigating and prosecuting those suspected of being involved in or benefiting from the scandals exposed by Daphne Caruana Galizia and her colleagues;

5.6. recalls that evidence is not a precondition for launching a criminal investigation, but its possible result. To prevent impunity, investigations must be launched as soon as there is credible information, such as the Panama Papers, indicating that a criminal offence may have been committed.

6. The Assembly considers that the weaknesses of the rule of law in general and the criminal justice system in particular are also directly relevant to its analysis of the authorities' response to the assassination of Daphne Caruana Galizia. It recalls that 18 months after they were brought to court, the three men suspected of killing Ms Caruana Galizia have still not been put on trial. The custody time limit expires in two months, after which they will have to be released. No-one has been arrested for ordering the assassination. A magisterial inquiry is still ongoing, with no news on its progress.

7. The Assembly notes a series of serious concerns over the investigation into the murder, including:

7.1. the need to recuse a series of magistrates from various roles because of conflicts of interest;

7.2. the need to remove the investigating police officer because of a conflict of interest;

7.3. the Prime Minister's removal of the inquiring magistrate after months of work;

7.4. the failure of the authorities to request possible evidence from the German police;

7.5. the failure of the police to interrogate Economy Minister Chris Cardona, despite claims that he had had contacts with the suspects;

7.6. the allegation that a police officer warned the suspects before they were arrested;

7.7. false claims by the Minister of the Interior about progress in the investigation;

7.8. inflammatory and misleading statements by persons close to the Prime Minister;

7.9. the possibility that the Maltese security service may have had prior intelligence about the murder plot;

7.10. the Director of Europol's complaint about co-operation with the Maltese police on the case.

8. In these circumstances, the Assembly calls on Malta to establish at the earliest opportunity, within three months, an independent public inquiry in order to ensure fulfilment of its obligations under Article 2 of the European Convention on Human Rights.

9. The Assembly resolves to continue following developments in Malta in relation to the above issues and encourages its Committee on the Honouring of Obligations and Commitments by Member States of the Council of Europe (Monitoring Committee) to address them in its periodic review of Malta.

## B. Explanatory memorandum by Mr Pieter Omtzigt, rapporteur

### 1. Introduction

1. Daphne Caruana Galizia, Malta's best-known and most widely-read investigative journalist, whose work focused on corruption amongst Maltese politicians and public officials, was assassinated by a car bomb close to her home on 16 October 2017.

2. The response of the international community was immediate. Within the Council of Europe, Stella Kyriakides, then President of the Parliamentary Assembly, condemned the murder in the strongest possible terms and called on the Maltese authorities to thoroughly investigate the case. The Secretary General of the Council of Europe also stressed the need for a thorough investigation to find those responsible for her death, in doing so referring to her investigation of and reporting on cases of alleged corruption. The then Council of Europe Commissioner for Human Rights, Nils Muižnieks, likewise called on Malta's authorities to thoroughly investigate the murder. The European Federation of Journalists posted an alert on the Council of Europe's Platform to promote the protection of journalism and the safety of journalists.

3. On 19 January 2018, the Partner Organisations to the Platform issued a statement in which they noted that "[m]ore than three months after the journalist's brutal murder there are no public indications to suggest that the authorities have identified the people who commissioned, planned or orchestrated the murder … We believe that, given the profile of the crime and the issues of corruption Daphne Caruana Galizia had worked to uncover, the investigation into her assassination demands the continued scrutiny of the international community. We join Daphne Caruana Galizia's family in calling on the Parliamentary Assembly of the Council of Europe to appoint a special rapporteur to monitor the ongoing murder investigation and make an assessment of the contextual circumstances that led to her murder".

4. On 23 January 2018, I tabled a motion for a resolution, signed by well over one hundred Assembly members from across Europe. The motion noted that three Maltese men had been charged with the murder but the instigators remained at large. Furthermore, the Maltese authorities appeared unwilling to hold a public inquiry into whether the assassination could have been avoided. There was accordingly a need to monitor the ongoing investigation, in co-operation with the Maltese authorities, so as to ensure that it examined all aspects of the case, including the wider context, without political interference, with a view to the Assembly shedding light on the background to the crime. Following its reference to the Committee on Legal Affairs and Human Rights for report, I take the motion as defining the scope of my report.

5. During the preparation of this report, I visited Malta from 22 to 24 October 2018, when I met the Prime Minister, Mr Joseph Muscat, and the Minister of Justice, Dr Owen Bonnici;[3] the Chief Justice, Hon. Joseph Azzopardi; the Attorney General, Dr Peter Grech; the Commissioner of Police, Mr Lawrence Cutajar; the Ombudsman, Dr Anthony Mifsud; the Director, Mr Kenneth Farrugia, and other representatives of the Financial Intelligence Analysis Unit (FIAU); the Chairperson, Professor John Mamo, and other representatives of the Malta Financial Services Authority (MFSA); members of the Permanent Commission against Corruption; representatives of the Malta Police Association; Dr Simon Busuttil MP, former leader of the opposition; independent experts on the rule of law and constitutional reform; representatives of civil society; journalists and bloggers; and Dr Peter Caruana Galizia, the journalist's widower. In addition, the committee held two hearings: the first, on 8 October 2018, with Mr Jonathan Price, a British barrister, and Mr Tony Murphy, his instructing solicitor, legal representative of the Caruana Galizia family, along with Mr Jules Giraudat, journalist, of the Daphne Project; and the second, on 9 April 2019, with Dr Bonnici, Dr Grech and Dr Martin Kuijer, substitute member of the European Commission for Democracy through Law (Venice Commission). I would like to thank all those concerned for their constructive engagement. For the record, I also requested meetings with Dr Konrad Mizzi, former energy and health minister and current tourism minister, Mr Keith Schembri, the Prime Minister's Chief of Staff, and Mr Chris Cardona, the economy minister; alternatively, I asked if the three would answer my questions in writing. I received no response to these requests. I also travelled to Berlin, where I met representatives of the BKA (the federal police) and the Ministry of the Interior, and met representatives of Europol in The Hague.

3. Mr Keith Schembri, the Prime Minister's Chief of Staff, was also present at the meeting with Mr Muscat and Dr Bonnici. Having previously received no affirmative response to my repeated requests to meet him, I had not prepared specific questions for him and focused on the Prime Minister and the Minister of Justice. His contribution to the conversation was minimal and uninformative.

6. My report also draws on the opinion of the European Commission for Democracy through Law (Venice Commission) on Malta's constitutional arrangements and separation of powers and the independence of the judiciary and law enforcement,[4] which the committee requested on 10 October 2018;[5] and the 5th Evaluation Report on preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies in Malta by the Council of Europe's Group of States against Corruption (GRECO).[6]

## 2. Malta's Constitution: checks and balances

### *2.1. The branches of government*

7. Malta is a republic. Its President, elected by a simple majority of the House of Representatives, plays a largely ceremonial role. Although formally exercising extensive powers of appointment, in most cases the President is constitutionally obliged to act in accordance with advice given by the Cabinet or a Minister. GRECO thus considers that the President is not a "person entrusted with top executive functions".

8. Although the Constitution states that the executive authority of Malta is vested in and shall be exercised by the President, it is the Cabinet, consisting of the Prime Minister (since 2013, Mr Joseph Muscat) and the ministers, that has the "general direction and control of the Government of Malta". The powers of the Prime Minister – described by the Venice Commission as "clearly the centre of political power" – are extremely wide-ranging and include:

– appointing government ministers from amongst members of the House of Representatives;

– assigning Permanent Secretaries to government ministries and giving instructions to the Principal Permanent Secretary;

– appointing judges and magistrates, including the Chief Justice;

– appointing the Attorney General;

– appointing the Commissioner of Police and the members of the Police Governance Board, which defines the police force's long-term strategy;

– appointing the Security Commissioner responsible for supervising the Maltese Security Service; the Security Commissioner reports to a Security Committee, composed of the Prime Minister, two other ministers and the leader of the opposition;

– appointing the Data Protection Commissioner;

– appointing members of the Electoral Commission, the Public Service Commission, the Broadcasting Authority, the Malta Financial Services Authority and the Internal Audit and Investigations Department, as well as the Permanent Commission Against Corruption (in the latter case after consulting the leader of the opposition).

9. Under the current government, additional areas of activity have been placed directly under the Office of the Prime Minister. These include: i) both regulation and promotion of Malta's gaming industry (consisting mainly of online gaming and lottery companies licenced in Malta), which contributes 12% of gross domestic product (GDP) and is an area of activity particularly vulnerable to infiltration by organised crime and money-laundering;[7] ii) Malta's "golden passport" (Individual Investor Programme) and "golden visa" (Malta Visa Residence Programme by Investment) schemes, said to generate over €200 million per year,[8] which have been described as posing a high money-laundering risk;[9] and iii) the Malta Financial Services Authority, which regulates the financial sector, described as "large compared to the rest of the economy [12% of GDP] … the associated risks, especially related to money laundering and terrorist financing, need to be closely monitored and addressed",[10] and which includes a growing cryptocurrency sector, another area of particular money-

4. CDL-AD(2018)028, adopted on 15 December 2018.
5. A similar request was also made by the Maltese Minister of Justice on 13 October 2018; the Venice Commission's opinion responds to both requests.
6. GrecoEval5Rep(2018)6, adopted on 22 March 2019 and published on 3 April.
7. See, for example, "How Maltese Online Gambling Became an ATM for the Italian Mafia", Organised Crime and Corruption Reporting Project, 10 May 2018.
8. "European Getaway: Inside the Murky World of Golden Visas", Transparency International/Global Witness, 2018.
9. "Residence/Citizenship by investment schemes", Organisation for Economic Co-operation and Development (OECD), 20 November 2018.
10. "Malta: Selected Issues", International Monetary Fund Country Report No. 19/69, February 2019.

laundering risk.[11] Even setting aside the serious, multiple, long-standing allegations of money-laundering surrounding the Prime Minister and his associates (see below), including his Chief of Staff, Mr Keith Schembri, this arrangement risks giving rise to institutional conflicts of interest and thus undermining Malta's overall anti-money laundering (AML) efforts. Furthermore, leading officials in other regulatory and law-enforcement bodies whose positions depend on the Prime Minister may be discouraged from investigating areas of activity that are directly associated with him: a "hands off" signal, whether intentional or not.

10. As noted above, senior appointments in the civil service – notably the Permanent Secretaries holding the highest administrative office within each ministry – are made by the Prime Minister. The Venice Commission considers that "[i]t is striking that while a Minister has responsibility for his or her department, it is the Prime Minister who appoints the Permanent Secretary for that department. The Prime Minister thus has a very strong impact on the work of his or her Ministers. From a viewpoint of check and balances, the role of the Prime Minister in deciding on Permanent Secretaries in all Ministries seems problematic … Permanent Secretaries should not be political appointees, but independent and permanent, high-level, civil servants, who should be able to serve any Government".

11. In addition to regular civil servants, appointed in accordance with constitutional rules, there are also some 700 persons employed on "positions of trust" or as "persons of trust", appointed through arbitrary and irregular procedures. According to the 2018 Standards in Public Life Act, a Minister or Parliamentary Secretary (deputy minister) may employ a "person of trust" as an adviser or consultant. The Maltese Public Service Commission has noted abuse of the practice in order to fill administrative, managerial or technical positions, violating the constitutional requirement to make such appointments on the basis of merit. The Ombudsman told me that many "persons of trust" are MPs and that party canvassers have been given jobs as drivers. This suggests abuse of ministerial authority and public funds to ensure MPs' loyalty or reward individuals for party political activity. The Venice Commission, citing its Rule of Law Checklist, recalls that "any exception to procedures that provide for appointments on merits are a danger to the quality of the civil service, which is the backbone of a democratic state under the rule of law. … without a constitutional and real legal basis this practice is illegal".

12. The Prime Minister's power to appoint the most senior civil servants, combined with over-extensive and abusive recourse to appointment of "persons of trust", seriously undermines the independence, quality and integrity of Malta's civil service. In a well-functioning democracy governed by the rule of law, the civil service should be politically impartial, provide independent advice to ministers and ensure continuity across administrations. The Maltese civil service overall falls short of these requirements and is ineffective as a constitutional restraint on improper exercise of executive power.

13. The House of Representatives is Malta's unicameral parliament. The Venice Commission notes that "[t]he impact of having only one legislative chamber is significant from a constitutional perspective, because it prevents the upper house from providing a check to the legislature's decision-making and enables the Prime Minister to exercise greater power through enforcing party discipline on parliamentarians". There are 67 members of parliament: currently, 37 from the Labour Party, 28 from the Nationalist Party (the official opposition) and 2 from the Democratic Party. An MP's part-time salary is too low to live off and MPs therefore depend on outside income. All 15 government ministers are Labour MPs, and many other Labour MPs have been appointed as "persons of trust" or to well-paid posts on public bodies, often by the Prime Minister, or hold opaque government contracts. The Venice Commission concluded that "the possibilities of backbenchers controlling Government are seriously reduced if MPs have a financial incentive to seek offices at the disposal of the administration that they are supposed to control". MPs who receive additional income for undemanding tasks will have relatively more time available for parliamentary business – and, in the case of Labour MPs, the exclusive beneficiaries of such generosity,[12] for supporting the government. There are undoubtedly many serious, principled, independent-minded MPs. Nevertheless, the House of Representatives as a whole, in its current state, does not assure effective control over the government.

14. As noted above, members of the judiciary (24 judges and 22 magistrates) are appointed by the President on the mandatory advice of the Prime Minister. A Judicial Appointments Commission (JAC) was established in 2016, consisting of the Chief Justice and the Attorney General (both appointed by the Prime Minister), the Auditor General and the Ombudsman (both appointed by a two-thirds majority of parliament) and the President of the Chamber of Advocates. The Venice Commission considers that this composition "is not in conformity with European standards". The Venice Commission describes the JAC's role as being "to

11. See "EBA Opinion on 'virtual currencies'", European Banking Authority, 4 July 2014.

12. I understand that whilst certain opposition MPs have jobs in the public sector, these concern long-standing careers that are not comparable to arbitrarily awarded positions of trust or ad hoc government contracts.

identify a pool of candidates for the judiciary from whom the Prime Minister has an uncircumscribed statutory discretion to appoint judges and magistrates". The JAC's already limited role is further weakened by the Prime Minister's power to ignore its advice and appoint unapproved candidates. Somewhat surprisingly, the Maltese authorities have justified this by saying that it would allow the Prime Minister to overrule discriminatory acts by the JAC. As the Venice Commission points out, "[t]he principle of independence of the judiciary requires that the selection of judges and magistrates be made upon merit and any undue political influence should be excluded. The Prime Minister should not have the power to influence the appointment of Justices and Judges-Magistrates. This would open the door to potential political influence, which is not compatible with modern notions of independence of the judiciary".

15. In recent years, the Prime Minister has made a series of controversial judicial appointments of persons with close connections to the ruling Labour Party. These include a former Labour Party deputy leader, a former Labour MP, three former Labour candidates, the chief of staff of a Labour minister, the husband of a Labour MEP, the sister of a Labour minister (previously considered unsuitable by the Commission for the Administration of Justice, the JAC's predecessor, over concerns relating to unprofessional conduct), two daughters of former Labour MPs, and the daughter-in-law of the lawyer of the Labour Party and the Prime Minister. The nomination as magistrate of the daughter of a Labour Party branch secretary was cancelled only after the Commission for the Administration of Justice found it to be unconstitutional.[13] I make no comment on these individuals' fitness for or performance in office. The European Court of Human Rights requires that the composition of a court offers "sufficient guarantees to exclude any legitimate doubt in respect of its impartiality".[14] There must be serious doubts as to whether the Maltese judiciary meets this test, especially when called upon to deal with politically sensitive cases.

16. The Venice Commission calls for extensive reform of Malta's judicial appointments procedure. On 14 April 2019, the Maltese civil society movement Repubblika asked the courts to order the government to freeze appointments to and promotions within the judiciary "until measures to ensure judicial independence are properly introduced". Repubblika noted that "[s]ince the government has had to acknowledge that a reform is necessary after the Venice Commission report, it should roll out the process of that reform first and allow judicial appointments to be made under a new, fair, democratic and independent system". On 25 April 2019, just days before Repubblika's case was due to be heard, the Prime Minister went ahead and appointed three new magistrates and three new judges. This shows contempt for the courts and is entirely at odds with the Prime Minister's promise to implement the Venice Commission's recommendations. President George Vella, who was constitutionally obliged to give effect to these appointments, used his speech on that occasion to call for implementation of the Venice Commission reforms "as soon as possible". The new judges include one of the former Labour candidates who was made a magistrate by Prime Minister Muscat. Another was the magistrate who rejected a separate inquiry into the secret offshore company 17 Black (see below). The third was the magistrate, also appointed by Prime Minister Muscat, who conducted the "Egrant inquiry" that the Prime Minister claims exonerates himself and his wife of corruption and money laundering (see below). This state of affairs is fundamentally incompatible with the idea of judicial independence.

17. The Attorney General is also appointed by the Prime Minister and is involved in both providing legal advice to the government and prosecuting criminal offences. The Venice Commission observes that "[t]he concentration of the powers of adviser to the Government and prosecutor in one institution makes the office very powerful. This is problematic from the viewpoint of the principle of democratic checks and balances and the separation of powers". It is also problematic in relation to investigation and prosecution of allegations of criminal conduct by politicians, as will be illustrated below. The advisory role includes representing the government in judicial proceedings and assisting in the drafting of laws and regulations. The Venice Commission has recommended splitting the Attorney General's functions and creating a separate "Prosecutor General" or "Director of Public Prosecutions", whose office would also absorb the embryonic prosecution department of the police force (see below). On 2 May 2019, the Minister of Justice tabled a bill before parliament to create a State Advocate, replacing the Attorney General as the government's legal advisor. The office of the Attorney General would remain, with a role only in the criminal justice system, able to instruct the police to conduct investigations and with direct responsibility for prosecutions. The proposal falls short of the Venice Commission's recommendations in several important respects: for example, it is not explicitly stated

13. See "Judiciary appointments soon despite promised reforms", *Times of Malta*, 12 April 2019; "Revealed: Doctored report shows extent of collapse of rule of law", *The Shift*, 15 April 2018; "Judicial Appointments: Choose wisely, Minister", Malta Independent, 3 March 2019; "In three years: 14 new judges and magistrates, 10 of them directly linked to the Labour Party", *Running Commentary*, 20 November 2016; "Consuelo Herrera should have been appointed judge years ago, Prime Minister says", *Malta Independent*, 25 June 2018; "Zammit Young turns down nomination after judiciary watchdog raises doubts on appointment", *Malta Today*, 5 February 2016.

14. See, for example, *Micallef v. Malta*, Application No. 17056/06, judgment of 15 October 2009 (Grand Chamber).

that the Attorney General's decisions on prosecutions would be subject to judicial review; it seems that the Attorney General would not be given responsibility for "inquests" currently undertaken by magistrates (see below); and the bill does not address the Attorney General's "problematic" position as chair of the Financial Intelligence Analysis Unit (see below). I nevertheless welcome this initiative as a significant first step and encourage both the government and the parliament to consult the Venice Commission and GRECO on its formulation, implementation and completion by other measures.

### *2.2. The criminal justice system*

18. Although the Attorney General is involved in prosecutions, it is in fact the police who initially prosecute. The Attorney General advises the police upon request, may decide on whether a case is brought in the lower or upper criminal court, supervises committal proceedings and may discontinue a prosecution.

19. The Commissioner of Police is appointed and can also be dismissed by the Prime Minister. Prime Minister Muscat is now on his fifth Commissioner of Police. The first, John Rizzo, had served for 12 years and was preparing corruption charges against disgraced former European Commissioner John Dalli. Days after Labour won the 2013 election, Mr Dalli returned to Malta, having previously been too ill to travel. Prime Minister Muscat immediately dismissed Mr Rizzo and appointed Mr Dalli as a public health consultant (see below). Mr Rizzo was succeeded by retired superintendent Peter Paul Zammit, a Labour supporter. Mr Zammit declined to take action against Mr Dalli. A year later, he was forced to resign for having ordered the withdrawal of charges against one of his former clients. No disciplinary or criminal charges were brought against Mr Zammit for this. Instead, he was given a "position of trust" in the Office of the Prime Minister, on the same salary as a police commissioner. Peter Paul Zammit was succeeded by Raymond Zammit, who was dismissed for attempting to cover up a shooting incident involving the driver of his cousin, then Interior Minister Emmanuel Mallia. Raymond Zammit was subsequently given a well-paid "position of trust" by Justice Minister Dr Bonnici.[15] His successor, Michael Cassar, resigned on health grounds after receiving a report from the Financial Intelligence Analysis Unit detailing corrupt payments to Energy Minister Konrad Mizzi (see below). Mr Cassar was subsequently re-hired by the government as a security advisor.[16] The current Commissioner, Lawrence Cutajar, was appointed in 2016 and has a background in community policing. GRECO notes that Commissioner Cutajar has been "the frequent target of public criticism for his rapid promotions, lack of leadership and sympathies for the Prime Minister expressed on his blog".

20. The police have primary responsibility for investigating suspected criminal offences. (Magistrates may also investigate in certain circumstances: see below.) The Maltese police operate according to the "legality principle", which obliges them to bring charges when there is a prima facie case. There is widespread concern about the ability and effectiveness of the Maltese Police to investigate serious crimes, including economic crimes and those involving prominent public figures. GRECO notes that "the Maltese Police is currently confronted with allegations of ineffectiveness and political obedience/subjection to the government". These include failures to act on FIAU reports detailing corrupt payments to Labour ministers and failure to take timely action to secure possible evidence at Pilatus Bank, following media reports linking it to alleged government corruption. The concerns go beyond "political" cases: it was recently reported that only seven people have been found guilty of murder in the past ten years, despite there having been 70 murders since 2008.[17] 44% of those surveyed for the 2017 Eurobarometer special report on corruption considered that bribery and abuse of power are widespread in the Maltese police force and customs, significantly higher than the 31% European Union average. The Venice Commission notes that "[i]t is important that in a democratic society the Police Force has the confidence of the general public and is perceived as politically neutral in the service of the State and the professional, unbiased, enforcement of the law and the protection of the citizen". This seems not to be the case in Malta.

21. In addition to the police, magistrates can also conduct criminal inquiries (known as "inquests" or "in genere"), at the request of a private individual, the Attorney General or even the police themselves. The original purpose of this procedure was to preserve evidence, especially that found at the scene of a crime. Requests to open inquests have, however, been rejected for lack of supporting evidence (see below). This

15. "A new police commissioner – Denis Tanti", *Times of Malta*, 15 March 2019; "Ex-police chief's son to be boarded out aged 32", *Times of Malta*, 26 April 2016; "Justice Minister's warning to Ray Zammit", *Times of Malta*, 1 August 2015.
16. GRECO.
17. "70 Murder Victims Since 2008: Just 7 People Have Been Found Guilty Of Homicide In The Last 10 Years", *Lovin Malta*, 11 April 2019. By comparison, clearance rates for homicide range between 80% and 98% in other western European countries (see "Homicide clearance in Western Europe", Marieke Liem, Karoliina Suonpää, Martti Lehti, *European Journal of Criminology,* 30 March 2018). Relatives or friends of several foreigners murdered in Malta have contacted me with stories about a lack of progress in the investigations.

has been described by Professor Kevin Aquilina as a "Catch-22" and "a disincentive for public spirited persons and honest whistle-blowers to lodge complaints of such a nature in the future".[18] An inquest results in a report ("procès-verbal"), presenting the evidence gathered and the magistrate's conclusions thereon, along with any recommendations on further action against identified individuals. The procès-verbal is presented to the Attorney General, who decides on any further action. Procès-verbaux have only very exceptionally been published. The Attorney General published two procès-verbaux in cases involving major public incidents. Prime Minister Muscat published the 55-page recommendations of a procès-verbal given to him by the Attorney General following the "Egrant inquiry" into allegations of his wife's ownership of a secret Panamanian company, that had been requested by the Prime Minister himself (see below). The Venice Commission considers that "[w]hile the rights of victims are indeed very important under the rule of law, the victim should not be able to choose an avenue of criminal investigation". The Chief Justice could not entirely dismiss the possibility of an inquest being requested in such a way that a particular duty magistrate would be appointed to conduct it.

22. In principle, although inquiring magistrates do not fulfil the same function as examining magistrates in many civil law jurisdictions, they should co-operate closely with the police when investigating the same matter. The Venice Commission has, however, noted that "there seems to be no co-ordination between inquests and police investigation. The delegation of the Venice Commission was informed that sometimes the Police and the Magistrate are not even aware that such investigations run in parallel". Magisterial inquiries can also take an inordinately long time. As the Chief Justice argued, this may in part be due to the complicated nature of the subject matter; but it cannot help that an inquiring magistrate must at the same time continue hearing cases in court and is largely dependent on action taken by the police, with whom relations are not always constructive. The result is often confusion, inefficiency and ineffectiveness. The Venice Commission has recommended that the magistrates' inquiry function be taken over by the reformed office of Attorney General/Prosecutor General.

23. Magistrates are also responsible for proceedings to commit an accused for trial in the criminal court (known as the "compilation of evidence"). The police present the evidence in support of their case, under the supervision of the Attorney General's office. In principle, only evidence presented during the compilation may be relied upon at trial, so witnesses must appear to testify to every item. The defence may contest the admissibility of evidence during the compilation procedure, including through constitutional challenges. The process may thus be extremely protracted, involving numerous separate short hearings, several weeks apart. The overall duration may become significant from the perspective of the custody time limit, which expires 20 months after a suspect has been charged. The Maltese authorities are aware of the deficiencies of the compilation of evidence procedure and are co-operating with the Council of Europe on its reform.

### *2.3. Other rule of law bodies*

24. The **Ombudsman** is elected for a five-year, renewable term by a two-thirds majority of parliament and may likewise be removed from office. The Ombudsman presents a report, at least annually, to parliament. Parliament is not, however, obliged to debate this report. The current Ombudsman, Anthony Mifsud, has demonstrated his independence and willingness to speak out. Unfortunately, neither parliament nor the government appears to be co-operating properly with the Ombudsman. The Venice Commission has noted that the Ombudsman's requests for information "are frequently not complied with. … Widespread refusal by the administration to provide the information needed for the work of the Ombudsman is inadmissible. The Ombudsman cannot be made dependent on enforcing his/her requests for information in the courts in each case". The Ombudsman recently observed that "a number of final opinions have been sent to … the House of Representatives following negative response from the public authorities to requests to implement our recommendations. … To date none of these referrals have been actively considered by the House. There has been no response whatsoever. One can safely conclude that this statutory procedure provided for in the Ombudsman Act, which was meant to be a final safeguard to provide redress against injustice to aggrieved citizens, is proving to be ineffective. This needs to be remedied".[19] The Assembly has repeatedly affirmed that "ombudsman institutions, which have the responsibility of protecting citizens against maladministration, play a crucial role in consolidating democracy, the rule of law and human rights".[20] A strong, effective Ombudsman, whose constitutional role and authority are duly respected by all other public bodies, is a crucial corrective in Malta's increasingly dysfunctional system of government.

18. "Blame the law, not the judge – Dean of Faculty of Laws", *Times of Malta*, 13 January 2019.
19. "Ombudsman tells Parliament to stop ignoring his investigations", *Times of Malta*, 10 April 2019.
20. Resolution 1959 (2013) on strengthening the institution of Ombudsman in Europe.

25. The **Auditor General** is appointed in the same way as the Ombudsman. The Auditor General heads the National Audit Office (NAO), which scrutinises expenditure by national and local public bodies, as well as other bodies that spend public funds. GRECO considers the NAO to be "a respected, independent institution whose recommendations are reportedly largely complied with and implemented". Its potential effectiveness is, however, undermined by a lack of means. GRECO notes that, "for instance, it took more than three years to audit … the controversial and overpriced deal concluded for the supply of gas to Malta" (see below).

26. The **Financial Intelligence Analysis Unit** (FIAU) is Malta's specialist anti-money laundering body. It gathers intelligence and presents analytical reports to the police that may ultimately lead to prosecutions. It is chaired by the Attorney General. The current Attorney General informed me that he was not involved in operational matters. I understand that this was not always the case, especially in the early days of the FIAU when it had far fewer personnel. Certainly, there seems to be no formal rule preventing the Attorney General from having such involvement. The Venice Commission has noted that "attributing the chair of such a body to the AG, who has a key role in prosecution, seems problematic and even any appearance of incompatibility should be avoided". The FIAU has been closely involved with several of Malta's recent scandals. Related developments have damaged the FIAU's authority and reputation. There were several leaks of related reports in 2016. Half of the FIAU's staff, including its Director, resigned between 2013 and 2017.[21] The police have repeatedly failed to act on its reports. In July 2018, the European Banking Authority (EBA) found that the FIAU had breached EU law through numerous serious failings in its supervision of Pilatus Bank (see below). The EBA considered that its findings "point to general and systemic shortcomings in the FIAU's application" of AML standards and that the FIAU's recent Action Plan was "not enough to be satisfied that the deficiencies that led to a breach of Union law have been resolved". In November 2018, the European Commission addressed an opinion to the FIAU setting out wide-ranging measures to be taken to ensure compliance with AML regulations. The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL) will also doubtless examine the FIAU closely in its own forthcoming report on Malta. Without prejudice to the work of MONEYVAL, it is already quite apparent that the FIAU's structural and operational shortcomings are a matter of serious concern.

27. The first **Commissioner for Standards in Public Life** took office in 2018 under the 2017 Standards in Public Life Act. The Commissioner examines and verifies declarations of income, assets or other interests or benefits made by persons who are required to do so under the Act. GRECO notes that "the extent of the controls, and the means allocated to the Commissioner are unclear at the moment. It would also appear that the result of a false declaration or failure to file a declaration does not trigger an investigation as is the case for breaches of ethical duties and other statutory obligations. The [relevant statutory provisions] merely refer to the issuance of "recommendations in the form of guidelines", whatever this means. None of the officials entrusted with government and control functions met during the on-site visit could clarify this. [GRECO] is concerned that effective, proportionate and dissuasive sanctions are not available to deal with the declaratory obligations. This is quite worrying given the ongoing allegations that current government officials are involved in off-shore constructions, and allegations that officials have sometimes failed to declare significant resources". It remains to be seen whether this Commissioner will be able to fulfil his intended role effectively, but the initial signs suggest that he will lack the means to do so.

28. The **Freedom of Information Act 2008** (last revised in 2012) establishes a general principle that all government documents are accessible to the public upon request. Certain public bodies are excluded, such as the Public Service Commission, the Office of the Ombudsman, the Attorney General's Office and the Security Service. The Act defines permitted grounds for refusal, along with wide-ranging circumstances in which access can be denied where the public interest in non-disclosure outweighs the public interest in disclosure. Any refusal of access must be motivated, and the applicant can appeal to the Information and Data Protection Commissioner, whose decision can in turn be appealed in the first and second instance courts. GRECO heard numerous complaints of "bad practices, systematic obstruction etc. which required too often to challenge a negative decision. … Similar observations were made [about requests for documents] concerning the negotiation/conclusion of large public contracts in particular, in the energy sector … Similar controversies arose in relation to the recent reform of Identity Malta (a company which handles citizenship matters and the sale of passports) including the appointment of the management without public calls. … The ample exceptions to the communication of information, which are drafted in broad terms … could prevent the disclosure of important information of public interest if the exceptions are not interpreted and applied in a restrictive manner, in line with the spirit and overall objectives of the freedom of information legislation". Several journalists complained bitterly also to me about the constant difficulties they encounter in obtaining

21. "FIAU staff exodus – Resignations or a purge, other questions that need answering", *Malta Independent*, 13 July 2017.

access to official documents. The Venice Commission concludes that "[t]he Freedom of Information Act should be up-dated, using available international models, to guarantee the transparency of the administration vis-à-vis the media and the citizens".

29. Malta adopted a **Protection of the Whistleblower Act** in 2013. The Act establishes a system of internal and external reporting channels to be used by persons disclosing, in good faith, corrupt practices and other suspicious behaviour from within public bodies or private companies above a certain size. Whistle-blowers from outside these bodies must report to the Cabinet Office within the office of the Prime Minister. The Act provides various forms of protection for the whistle-blower, including immunity from criminal proceedings, which may be granted by the Attorney General acting in consultation with a judge and the Police Commissioner. The Act has been widely recognised as providing some of the best whistle-blower protection in Europe.[22] It is not, however, without its faults. There is no protection for whistle-blowers who report to the media. Furthermore, the requirement for external whistle-blowers to report to the Cabinet Office in order to seek immunity from prosecution may place potential whistle-blowers in an unresolvable dilemma. For example, Jonathan Ferris, a former police officer who was dismissed from his post as an FIAU investigator shortly after the May 2017 leak of three FIAU reports, has been told that he must reveal to the Cabinet Office all of the information that he wishes to disclose in order to have the possibility of benefiting from whistle-blower protection. He has already made known that this information relates to abuse of power, corruption and money laundering at the highest levels of government, and has complained about irregular treatment of his application – asking the rhetorical question, "Who on earth would give you the opportunity to fire at him?"[23] Another government whistle-blower, Valery Atanasov, was sacked by the Maltese Gaming Authority in 2015 after repeatedly raising serious concerns about supervisory malpractice.[24] His request for whistle-blower protection was rejected. When he made his concerns public, the Maltese Gaming Authority, which comes under the Office of the Prime Minister, sued him for defamation.[25]

30. The **Permanent Commission Against Corruption** (PCAC) is supposed to advise ministerial bodies on anti-corruption matters and investigate suspicions of corruption concerning public officials (including ministers). It reports on its investigations to the Minister for Justice and presents an annual activity report, which may include recommendations to the President. The PCAC's competence is excessively narrow, covering bribery but not trading in influence or other forms of corruption. The Venice Commission concludes that the PCAC "has two structural flaws: (a) its membership depends on the Prime Minister, even if s/he has to consult with the opposition;[26] (b) [the PCAC] reports its findings to the Minister of Justice. If the PCAC, following its investigation, comes to the conclusion that corrupt practices took place, the consequence must be prosecution of the crime and not merely a report to the Minister of Justice, who has no powers of investigation". GRECO notes that "the procedure before the PCAC generates a special privilege for public officials and it gives to the executive branch of power excessive prerogatives. The PCAC can hardly be seen as a specialist body meant to facilitate the investigation of corruption". GRECO concludes that the PCAC is a "very weak body" whose "contribution … to Malta's anti-corruption efforts has been negligible". The Commission for the Holistic Reform in the Field of Justice, appointed by the Labour government and headed by former European Court of Human Rights judge, Giovanni Bonello, reported that the PCAC "hardly had any success in the fight against corruption because it is not clear … that there were any cases whereby the Police brought someone to Court on the basis of a [PCAC] report". The PCAC confirmed to me that none of its reports had ever resulted in a conviction.

31. The PCAC also told me that in January 2017, it had referred the case of former Labour Party General Secretary Jimmy Magro to the Minister of Justice – and to the police[27] – having for the first time ever concluded that an individual was engaged in corruption. Following the PCAC report, the Minister of Justice, Dr Bonnici, told parliament that the government would take disciplinary action against Mr Magro through the Public Service Commission and that the case showed how the PCAC was "functioning well".[28] One year later,

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22. See for example "Malta – Whistleblower Protection, Briefing", Blueprint for Free Speech.
23. "Jonathan Ferris will not be given whistleblower protection", *Times of Malta*, 24 March 2018.
24. These concerns have been confirmed by other former MGA employees: "A Malte, la surveillance des jeux d'argent en ligne mise en cause par un lanceur d'alerte", *Le Monde*, 24 May 2017.
25. "U.S. NGO Calls Upon GRECO to Intervene in Libel Lawsuit Filed Against Whistleblower Valery Atanasov", Whistleblower Protection Blog, 8 March 2018.
26. The PCAC was inoperative for almost a year between 2017 and 2018 because the Prime Minister and the leader of the opposition failed to appoint new members.
27. This procedure does not appear to be entirely consistent with the terms of the Permanent Commission Against Corruption Act, which provides for "the assistance of the Police in the conduct of [PCAC] investigations". GRECO notes that "the existence of parallel jurisdictions in the hands of the police and the PCAC raises a number of questions to which officials … answered mostly with personal guesses". This kind of inconsistency between law and practice and the resulting uncertainty seems to be typical of the functioning of many Maltese public bodies.

Mr Magro was allowed to retire from another public appointment with a refund of salaries that had been withheld during his suspension whilst under investigation.[29] I understand that the investigation is still ongoing. If the Magro case is an example of the system working well – as Dr Bonnici claims – then the PCAC is intended to be nothing more than a fig leaf. I agree with the Venice Commission and GRECO that it could be abolished.

### *2.4. Interim conclusions*

32. The Venice Commission notes that "In the constitutional arrangements currently in force in Malta, the Prime Minister is predominant. This, in itself, could be unproblematic if a solid system of checks and balances were in place. However, … these other actors are not sufficiently strong to contribute significantly to the system of checks and balances. The predominance of the Prime Minister and the concentration of powers enabled by the Constitution shows that the system of checks and balances needs to be reinforced". GRECO comes to similar conclusions, starting from concern over failure of the rule of law: "There is also a clear perception in Malta that political support often prevails over the enforcement of the law and the general interest. This is of course facilitated by the current institutional overweight of the government and especially the Prime Minister, in particular when it comes to appointments (and dismissals) in many essential State bodies. This is not compatible with an effective system of checks and balance."

33. Malta has long been aware of the need to modernise and strengthen its institutions. Dr Bonnici described the current government as "reformist". Some reforms have indeed been introduced, several of which are mentioned above. The fundamental, holistic reform that is really needed – including subjecting the office of Prime Minister to effective checks and balances, ensuring judicial independence and strengthening law enforcement and other rule of law bodies – has not happened. Constitutional reform was a Labour manifesto pledge at the 2013 and 2017 elections. A "steering committee" on constitutional reform, chaired by the President, was established but has produced no concrete results. A new Law Commission, intended to revise Malta's laws, has achieved nothing. The "Bonello Commission" on justice reform made hundreds of recommendations but most remain unimplemented. When the Venice Commission visited Malta, the Prime Minister promised to implement its reforms. He repeated this pledge when its opinion was published. By April 2019, however, the Prime Minister was saying that the Venice Commission's recommendations were "not binding" and did not preclude Malta from adopting "different systems to safeguard the rule of law".[30] He also refused to say when the judicial appointments procedure would be reformed. Dr Bonnici has said that he would implement GRECO's recommendations "where necessary".[31] They are all necessary. There is deep, widespread scepticism in Malta over whether and how the current government may implement constitutional reform. One fear is that the process will be handled behind closed doors between the leadership of the governing and opposition parties. This would be wrong. Legitimate constitutional reform would only result from an open, inclusive process, with consultation of the judiciary, the Ombudsman, the legal profession, academia, civil society and all other interested parties. The Maltese Government should also consult the Venice Commission. The Assembly should follow the process closely, including through the Monitoring Committee.

## 3. Respect for the rule of law in Malta today

34. The problems described above have allowed a series of major scandals to arise and go unresolved in recent years. GRECO notes the "many controversies in relation to the use of public resources, tenders, privatisations, State contracts (energy supply, privatisation of hospitals etc.), sale of land, hiring of persons etc. Many of these concern operations which were blatantly made to the detriment of the State. … [The visiting delegation] heard repeatedly that there was often a lack of courage, accountability and real means for control bodies to accomplish their duties". Whilst details of the "many controversies" fell outside the scope of GRECO's report, they are worth examining here.

35. One month after winning the 2013 election, the new Labour government began the process of finding a private company to supply natural gas and electricity to State-owned Enemata, including by building a new gas-fired power station. In October 2013, the **Electrogas** Malta Consortium was selected. Shortly thereafter, the leading member of the consortium (whose participation may have influenced the decision to award the

28. "Commission 'morally convinced' Jimmy Magro, former Labour general secretary, requested money during tenders adjudication", *Times of Malta*, 1 February 2017.
29. "Jimmy Magro corruption probe still pending after 21 months", *Times of Malta*, 14 October 2018.
30. "PM slams 'absurd' request asking for courts to be 'paralysed'", *Times of Malta*, 26 April 2019.
31. "GRECO's recommendations and not analysis is what matters, justice minister says", *Malta Today*, 4 April 2019.

contract to Electrogas) withdrew and transferred its share to the other members. The Maltese Government was subsequently required to provide bank guarantees, eventually totalling €450 million, in order to enable Electrogas to obtain financing. In July 2015, the opposition asked the Auditor General to investigate.

36. The Auditor General presented the NAO's report in November 2018.[32] The NAO found that the selection committee had been inconsistent in assessing bids: some bids were eliminated for shortcomings shared by other bids that were allowed to proceed. Changes to the parameters were made during the selection process, shifting risk from the bidders to Enemalta and the government (which could have allowed bids that were particularly exposed to such risks to be retained). Due diligence checks were insufficient. The NAO even expressed reservations about the design of the project as a whole, noting a lack of evidence that Enemalta had considered alternative energy procurement models (such as the "interconnector" linking Malta to the Italian power grid). The NAO found that the energy minister, Dr Mizzi's authorisation of a consortium member's withdrawal and transfer of shares was in breach of various contracts. The NAO calculated that electricity produced by the new power station cost €112.39/MWh, i.e. 82% more than that supplied through the interconnector (€61.75/MWh). Enemalta has nevertheless significantly decreased its reliance on energy supplied through the interconnector (presumably at least partly in favour of electricity purchased from the new power station).[33] A related contract for the Azerbaijani State energy company, SOCAR, to supply liquid natural gas (LNG) for a ten-year period was signed by Dr Mizzi personally. SOCAR is also a member of the Electrogas consortium. SOCAR itself does not produce LNG but instead buys it on the market from Shell. The contract price was fixed for the first five years. It is reportedly significantly higher than the price for similar contracts negotiated by other countries at the same time. As a result, Enemalta has been paying up to twice the market price for LNG. In 2017, SOCAR made an estimated US$40 million profit from this arrangement.[34]

37. What might at first glance be charitably dismissed as incompetence – although Dr Mizzi claims to be an expert in the energy sector – takes on a more sinister aspect when considered more closely. The committee that selected Electrogas was appointed by Enemalta, which came under Dr Mizzi's energy ministry. The Maltese Government initially refused to disclose the committee's membership. Following a freedom of information request, it emerged that three of the members had close connections to Dr Mizzi, one was a former Labour candidate, and four were staff of Nexia BT, including its managing partner, Brian Tonna, a long-standing associate of Mr Schembri (see below). Mr Tonna was also the fiduciary owner of the Maltese branch of Mossack Fonseca, the infamous "Panama Papers" firm. Shortly after the 2013 election, Nexia BT had established secret Panama companies for Dr Mizzi and Mr Schembri. Dr Mizzi and Mr Schembri's Panama companies were intended to receive €150 000 per month, up to a total of US$2 million, including from a company in Dubai called 17 Black. The FIAU reported that 17 Black was owned by Yorgen Fenech, a director of the Electrogas power station and owner of one of the consortium companies.[35] The FIAU also found that in 2015, 17 Black received US$1.4 million from a Seychelles company, Mayor Trans, owned by an Azerbaijani national; and US$200 000 from Orion Engineering, owned by Mario Pullicino, who also owns a company involved in supplying LNG to the Electrogas power station.[36] It can be noted that in December 2014, Prime Minister Muscat, Dr Mizzi and Mr Schembri visited Baku, accompanied by the Prime Minister's head of communications but no reporters. They met President Aliyev and Mr Mizzi signed two memoranda of understanding, one with the Azerbaijani energy minister, the other with the president of SOCAR.

38. These facts have given rise to widespread suspicions of corruption and money laundering. The impression is that Dr Mizzi in particular, through his associates on the selection committee, was instrumental in arranging for certain parties, notably in Azerbaijan, to profit from the construction of a new power station. These parties were then to make concealed payments (kickbacks) to the benefit of Dr Mizzi and Mr Schembri, through a network of secret offshore companies established by Mr Tonna. Whilst no criminal offence has yet been proved, the evidence is compelling, is largely uncontested on the facts and has been accumulating since Daphne Caruana Galizia first reported on the two Panama companies in February 2016. After the first reports appeared, Prime Minister Muscat took over the energy portfolio himself but kept Dr Mizzi in government as "minister within the Office of the Prime Minister", with continuing responsibility for the power station.[37] Following the June 2017 election, Dr Mizzi was made minister for tourism but retained control over Projects Malta, responsible for public–private partnerships. Mr Schembri has remained Chief of Staff throughout. In

32. "An investigation of matters relating to the contracts awarded to ElectroGas Malta Ltd by Enemalta Corporation", Auditor General, November 2018.
33. "Malta cuts reliance on interconnector for electricity", *Malta Today*, 8 October 2018.
34. "Malta losing tens of millions from 'poor' $1 billion Azerbaijani energy deal", *Times of Malta*, 25 April 2018; "Konrad Mizzi signature on hidden LNG agreement raises red flag", *Shift News*, 19 April 2018.
35. "17 Black owner identified as local power station businessman", *Times of Malta*, 9 November 2018.
36. "$1.6m wired to Mizzi and Schembri's 'target client'", *Times of Malta*, 18 April 2018.
37. "Konrad Mizzi, Keith Schembri to remain at Castille; Mallia returns to Cabinet", *Malta Independent*, 28 April 2016.

March 2018, the police received a comprehensive FIAU report on 17 Black. In November 2018, the police confirmed that they had been investigating 17 Black and related matters since receiving this report, and had requested a magisterial inquiry. They also confirmed that Dr Mizzi and Mr Schembri fell within the scope of this investigation. Dr Mizzi and Mr Schembri will not be actively investigated until other issues have been resolved, including formal proof of ownership of 17 Black. This may be difficult to achieve, since it depends on evidence from Latvia, where the relevant bank has been liquidated, and Dubai, which has previously proved unco-operative.[38] The police investigation is led by the head of the economic crimes unit, Ian Abdilla, who has repeatedly failed to investigate allegations against senior political figures (see below).

39. In fact, Nexia BT established three secret Panama companies after the 2013 election. In addition to the two mentioned above, the third was called **Egrant**. Ms Caruana Galizia reported that the ultimate beneficial owner of Egrant was Michelle Muscat, the Prime Minister's wife. Ms Caruana Galizia claimed that documents proving this were held by Pilatus Bank. In April 2017, Prime Minister Muscat reacted by asking a magistrate to conduct an inquiry, pledging to resign if the magistrate found any evidence of a link between himself or his wife and Egrant. The magistrate ordered search and seizure of evidence at numerous locations, instructed a series of experts, heard 477 witnesses and requested mutual legal assistance from five foreign jurisdictions, including Panama Papers data concerning Malta from the German police.[39] In July 2018, he presented his report to the Attorney General, who gave a copy to the Prime Minister and subsequently also to the Justice Minister, Dr Bonnici. Against the Attorney General's advice, the Prime Minister published the magistrate's conclusions. The magistrate stated that he had not found sufficient evidence to establish ownership of Egrant. He concluded that a key document was forged, since the signature it bore had been disavowed by the purported signatory, a Mossack Fonseca employee in Panama who had often worked with Mr Tonna and Nexia BT.[40] The magistrate also took special pains to reject the credibility of two key witnesses, Ms Caruana Galizia and Maria Efimova, a former Pilatus Bank employee turned whistle-blower. He did not, however, mention that Ms Caruana Galizia had been murdered in October 2017 and Ms Efimova had fled Malta in 2017, which may have impaired his ability to resolve discrepancies. He did not address the credibility of other key witnesses such as Mr Tonna or Ali Sadr Hasheminejad, owner of Pilatus Bank (see below). The Prime Minister promised to publish a redacted version of the full report, containing all the evidence. He has still not done so. He now bases his refusal on advice from the Attorney General, although he had rejected the Attorney General's previous advice not to publish the conclusions. Nine months after completing the Egrant inquiry into Prime Minister Muscat, the magistrate, who had been appointed by Prime Minister Muscat, was promoted to judge by Prime Minister Muscat.

40. Mr Schembri is also involved in allegations of bribery and money laundering relating to **Adrian Hillman**, then managing director of Allied Newspapers, owner of the *Times of Malta*. These allegations were the subject of a 2016 FIAU report on which the police economic crimes unit failed to take action. They concern a total of €650 000 in payments from Mr Schembri to Mr Hillman. The transactions took place between 2011 and 2015 via Pilatus Bank and foreign bank accounts and Mr Hillman's secret British Virgin Islands company, Lester Holdings, assisted by Mr Tonna.[41] A magisterial inquiry was opened in May 2017 at the request of Dr Busuttil, then leader of the Opposition. Two years later, this inquiry is still ongoing; by contrast, the Egrant inquiry was completed in 15 months. Despite being under magisterial inquiry for money laundering, Mr Hillman was given a position of trust on the Malta Gaming Authority (under the Office of the Prime Minister) shortly after the June 2017 election, on a salary of almost €50 000 per annum.[42] This may give the discouraging impression to the inquiring magistrate that Mr Hillman is under the Prime Minister's protection.

41. Mr Schembri is involved in a third case of alleged corruption, relating to the **golden passports** scheme. The FIAU sent a report on this case to the police economic crimes unit in May 2016. Three Russian nationals made transfers totalling €167 000 to the Pilatus Bank account of Willerby Trade Inc., a company owned by Mr Tonna. Each transfer referred to services relating to the Individual Investor Programme (IIP). Shortly afterwards, a total of €100 000 was transferred from the Willerby account to Mr Schembri's Pilatus Bank account. The FIAU concluded that "a portion of the same funds received in the account of Willerby as payments made for services provided for registration under the IIP were subsequently transferred to the personal account of Mr Keith Schembri". The report further noted that "the Office of the Prime Minister has been extensively involved in the actual establishment of the IIP and in the promotion of the scheme in different countries. The transfer of funds originating from applicants under this scheme to a personal account of an

38. "Schembri, Mizzi fall 'within scope' of 17 Black investigation", *Times of Malta*, 2 December 2018.
39. "Egrant magistrate to ask Germany for Panama Papers data", *Times of Malta*, 1 December 2017.
40. "$725 000 transferred into PM's Chief of Staff BVI company in 2014: Schembri denies", *Malta Independent*, 15 May 2016.
41. "Schembri, Hillman inquiry to be carried out by magistrate Demicoli", *Times of Malta*, 25 May 2017.
42. "Hillman put on State payroll two weeks after election", *Times of Malta*, 24 December 2017.

official holding a position of trust in the same office is seen to be a suspicious transacting warranting further investigation by the police". Pilatus Bank had not filed a suspicious transaction report, instead accepting the explanation that the €100 000 was a loan repayment from Mr Tonna to Mr Schembri. The FIAU was unable to find any trace of such a loan.[43] In May 2017, Dr Busuttil requested a magisterial inquiry into the leaked FIAU report. This inquiry, which should be relatively simple, is still ongoing two years later. In February 2018, Assistant Commissioner Ian Abdilla said the police had decided to take no further action after the magisterial inquiry was opened.[44]

42. In April 2016, the FIAU presented a report on the **Panama Papers** to the police. Soon after, the police commissioner resigned. In March 2017, the new Police Commissioner stated that there were no grounds for investigating. In July 2017, Dr Busuttil requested a magisterial inquiry into the Panama Papers. Dr Mizzi, Mr Schembri, Prime Minister Muscat, Mr Tonna, Mr Tonna's Nexia BT colleague Karl Cini, Mr Schembri's business associate Malcolm Scerri and Mr Hillman fiercely resisted this request. In January 2019, after lengthy court proceedings – including over whether the judge, the husband of a Labour MEP, should recuse himself – the appeal court ruled against Dr Busuttil. The court found that the Panama Papers themselves were not evidence on which to open an inquiry – although investigations normally arise from intelligence rather than evidence, and the Egrant inquiry, at least, had received a copy of the Panama Papers obtained from the German police (see above). In April 2019, Dr Busuttil made a fresh request to open a Panama Papers inquiry into Dr Mizzi and Mr Schembri, supported by Republikka. On 29 April 2019, a magistrate ordered that the evidence relating to the Panama Papers presented by Dr Busuttil should be preserved and considered in the magisterial inquiry into 17 Black (see above). The magistrate stated that the potential crimes revealed by this evidence were not fully covered by the 17 Black inquiry. Apart from in the context of the Egrant inquiry, Malta has not made use of the Panama Papers, unlike other countries: for example, through criminal investigations in the United Kingdom and Algeria and convictions in Germany and South Korea. Only now may Malta be beginning to take criminal action – even though the Maltese tax authorities long ago began examining cases from the Panama Papers, thereby recovering over €9 million in unpaid tax, penalties and interest.

43. There are similarities between the Electrogas deal and another involving **Vitals Global Healthcare** (VGH). In April 2013, disgraced former European Commissioner Mr Dalli returned to Malta and was appointed government consultant on health. A due diligence report, published by Ms Caruana Galizia, stated that in 2013-14, Mr Schembri, the CEO of Projects Malta (under Dr Mizzi's control) and "a very senior former Maltese minister" (whom she took to be Mr Dalli) had sought to persuade a Dubai-based health-care company to enter into a contract with VGH. The former minister was said to have "laid out the plan of action to ensure victory for their consortium". In March 2014, Prime Minister Muscat made Dr Mizzi minister for health (in addition to energy). The investors behind VGH signed a memorandum of understanding with the government in October 2014. In November 2014, the investors signed an agreement between themselves, suggesting foreknowledge of the government's call for bids. A representative of VGH was reported to be claiming, in February 2015, to have already struck a deal with the government to refurbish hospitals. In March 2015, Projects Malta issued the call for bids to develop and run three hospitals. In June 2015, Dr Mizzi confirmed that a joint bid by VGH and Bluestone Investments had been successful. The government announced that the 30-year deal, signed in September 2015, would result in a €200 million investment. Dr Mizzi's Projects Malta has refused to disclose who sat on the committee that selected the VGH bid.[45]

44. VGH had no prior experience in the health-care sector. The precise details of the maze of Maltese and offshore companies through which numerous foreign businessmen are reported to own VGH remain unclear. One of the owners is reported to have previously acted as an adviser to Prime Minister Muscat. It eventually emerged that the government was paying VGH almost €70 million a year to provide hospital beds, €1.2 million a year for the medical school and €1 million a year for an air ambulance service, as well as paying the salaries of hospital employees. It also emerged that VGH had been given the unilateral right to extend the 30-year contract to 99 years. There are suggestions that the owners of VGH awarded subcontracts to companies that they themselves owned. In November 2016, VGH appointed Armin Ernst, former CEO of United States-based Steward Medical Group, as its CEO. In October 2017, he resigned and returned to Steward as its president. In December 2017, it emerged that Steward was negotiating to buy VGH, only two years into its 30-year contract. It was later reported that VGH had been reluctantly forced to sell after failing to secure external financing. Medical sources reported that "infrastructural upgrades to the three hospitals have so far been negligible", despite the fact that VGH had committed to invest €200 million and may already have received

43. "FIAU report speaks of suspicions of money laundering", *Times of Malta*, 7 May 2017.
44. "Separation deed raises questions on Schembri-Tonna 'loan'", *Times of Malta*, 20 January 2019.
45. "'Modern-Day Piracy': Republkika Demands Criminal Inquiry Into VGH And The Three Ministers Involved With The Controversial Deal", *Lovin Malta*, 13 May 2019.

€150 million or more from the government.[46] The overall impression is that Dr Mizzi struck an inadvisable, underhand deal with a questionable group of businessmen, who subsequently made inordinate profits at the expense of the Maltese taxpayer through an unbalanced contractual relationship, before proving incapable of meeting their obligations and selling out. The Auditor General is now also investigating this affair and in mid-May 2019, Republikka asked the court to order the opening of a magisterial inquiry.

45. It is regrettable that Dr Mizzi and Mr Schembri failed to respond to my requests to ask them about the above matters. It is also regrettable that Maltese Government ministers rarely if ever make themselves available for media interviews, other than by Labour Party journalists. In 2017, Prime Minister Muscat stated that Mr Schembri would resign if a magistrate found enough evidence for a criminal investigation. This is duplicitous: the three magisterial inquiries are themselves a form of criminal investigation and alone should be far more than enough to engage political responsibility and justify resignation or dismissal. Even after the 17 Black inquiry was extended to include also the Panama Papers-related allegations against Dr Mizzi or Mr Schembri, the Prime Minister continues to insist that he will not consider taking action himself against them until the inquiries are finished. In countries including Spain, Iceland and Mongolia, politicians resigned when their names appeared in the Panama Papers. In Malta, they enjoy the protection of the Prime Minister.

46. Mr Tonna and his company **Nexia BT** were involved in most of the above scandals, usually by setting up secret offshore companies and bank accounts, often in collaboration with Mr Tonna's associates at Mossack Fonseca; sometimes by sitting on public bodies awarding major contracts. Mr Tonna has been a personal friend of Mr Schembri for over 20 years and the auditor of his companies. The Egrant inquiry report describes Nexia BT's close relationship with Pilatus Bank (see below). A leaked FIAU report described "suspicious" behaviour by Nexia BT in dealings related to Dr Mizzi and Mr Schembri's Panama companies, including possible fabrication of documents.[47] Mr Tonna and Nexia BT have nevertheless continued to enjoy close relations with the government. Justice minister Dr Bonnici employed Mr Tonna as a full-time "person of trust", paid €5 000 per month, from August 2014 to August 2016, after which he became part-time until August 2017.[48] Nexia BT was awarded at least €2.4 million in government contracts between 2013 and 2017; maybe much more, but Dr Mizzi's Projects Malta refused to disclose this information. In 2019, Nexia BT was given a contract to advise on a new public–private partnership in waste management. Nexia BT also has the exclusive concession for sales of Maltese passports to Middle Eastern investors, reportedly earning €10 000 per passport.[49] In October 2017, Mr Tonna and his Nexia BT colleague Mr Cini resigned from the Malta Institute of Accountants after it opened disciplinary proceedings against them. In April 2018, the Accountancy Board, which licences accountants, stated that it would not take disciplinary action against Nexia BT, Mr Tonna or Mr Cini until magisterial inquiries were complete.[50] It maintained this position even after David Casa MEP called for them to be struck off in June 2018.

47. The other key player in Malta's recent scandals was **Pilatus Bank**. Pilatus Bank was established by 33-year-old Mr Ali Sadr Hasheminejad, an Iranian who also held a St Kitts and Nevis "golden passport". Mr Hasheminejad applied to the Malta Financial Services Authority (MFSA) for a banking licence in October 2013. Despite Mr Hasheminejad's young age and lack of experience, the licence was granted within three months. In September 2018, the European Banking Authority found "significant concerns concerning the MFSA's authorisation and supervisory practices in relation to Pilatus Bank" and directed remedial action. Even the FIAU initially found that Pilatus Bank showed a "glaring, possibly deliberate disregard" for AML requirements – before surprisingly reversing its position, on spurious grounds, after its director had resigned and a new director been appointed. Many of Pilatus Bank's clients were "politically exposed persons", a category considered particularly risky from a money-laundering perspective. These included companies whose ultimate beneficial owners were the daughters of the President of Azerbaijan and the daughters of the Azerbaijani minister of emergency situations. Pilatus Bank was involved in the Azerbaijani Laundromat, as described in Mr Mart van de Ven's recent report.[51] Mr Schembri and Mr Dalli had Pilatus Bank accounts. Mr Hasheminejad was connected to Malta's political leadership: Prime Minister Muscat, his wife and Mr Schembri all attended Mr Hasheminejad's wedding in Italy. In March 2018, Mr Hasheminejad was arrested

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46. "Company Which Privatised Three Maltese Hospitals To Be Sold After Only Two Years", *Lovin Malta*, 21 December 2017.
47. "Konrad Mizzi's Panama company worth €9 200, not €92 – leaked report", *Shift News*, 22 April 2018.
48. "Nexia BT chief given €5 000 monthly as Justice Minister's 'person of trust'", *Times of Malta*, 6 December 2018. From May 2017 onwards, Mr Tonna was under magisterial inquiry in relation to the passports kickbacks (see above). At the hearing in April 2019, Dr Bonnici asserted that Mr Tonna had not worked for him since the June 2017 election.
49. "Probe reveals over €2million in direct orders to Panama Papers' firm in Malta", *Shift News*, 22 March 2019.
50. "Accountancy Board holds back from acting on Nexia BT", *Times of Malta*, 23 April 2018.
51. "Laundromats: responding to new challenges in the international fight against organised crime, corruption and money laundering", Doc. 14847.

in the United States and charged with violating sanctions on Iran. US prosecutors claimed that Pilatus Bank had been established using the proceeds of crime. The MFSA froze the bank's assets and suspended Mr Hasheminejad's chairmanship. In November 2018, the European Central Bank withdrew Pilatus Bank's banking licence.

48. These are not even all of the controversies that have arisen in Malta in recent years. I could also have examined the sale of part of Enemalta to a Chinese State-owned energy company, in which Dr Mizzi, Nexia BT, a BVI company and Pilatus Bank were all involved. Or the awarding of government contracts to a company owned by Mr Schembri. Or the granting of "golden passports", giving the right to live and work throughout the EU, via a non-transparent, unaccountable procedure, to persons of questionable background. Or the government's sale of a large plot of protected prime coastal land to the "American University of Malta", set up by a Jordanian construction, travel and tourism group with no prior experience in higher education, which still has very few students and sacked its teaching staff after being accredited. Or the endemic problem of land use permits and the Labour government's policy of regularising illegal constructions. Or the abuse of promotions in the armed forces. The list goes on and on.

49. As GRECO drily notes, "it is clear that Malta needs to increase its capacity to deal with allegations of corruption and other offences involving senior officials. At the moment, it would appear that most (if not all) files against [the most senior officials] and other closely related officials are stuck at an early stage of criminal proceedings … This conveys a feeling in the public that senior officials benefit from a total impunity for their actions". Malta's failures are not just a domestic matter, however; they make all of Europe vulnerable – Maltese citizenship is EU citizenship, a Maltese visa is a Schengen visa, and a Maltese bank gives access to the European banking system. If Malta cannot put its own house in order, then European institutions must intervene.

## 4. The assassination of Daphne Caruana Galizia

### *4.1. Ms Caruana Galizia's work and fears for her safety*

50. Ms Caruana Galizia led the reporting on most of Malta's recent scandals. This made her famous, revered, feared, loved and hated on the island. She was a victim of Malta's libel laws, which until recently were widely seen as unfavourable to independent journalism, with a criminal defamation offence, low court fees and no penalties for frivolous suits in civil cases. At the time of her death, Ms Caruana Galizia faced 47 libel cases, many of which are still pending against her family as heirs.[52] All of the main actors implicated in her reporting on corruption had brought cases against her. Prime Minister Muscat sued her over the report that his wife was the ultimate beneficial owner of a Panama-based company, Egrant. Dr Mizzi and Mr Schembri both brought multiple cases. Economy minister Chris Cardona sued her over a report that he visited a German brothel whilst on official business.[53] Silvio Debono, a property developer, brought 19 cases all relating to a single report. In addition, Henley and Partners, the company that administers Malta's golden passports scheme, had threatened to sue her in London, allegedly with the encouragement of Prime Minister Muscat, Mr Schembri and Dr Mizzi.[54] Pilatus Bank – ironically – sued Ms Caruana Galizia for defamation in the United States.

51. In addition to the multiplicity of lawsuits, Ms Caruana Galizia was also the subject of vituperative public statements and campaigns by the subjects of her investigations or people close to them. The government's press office had issued statements containing personal attacks on Ms Caruana Galizia's character and professionalism.[55] Glenn Bedingfield, an MP and media adviser in the office of Prime Minister Muscat, encouraged people to take photographs of Ms Caruana Galizia going about her private daily business, and then published hundreds of these pictures on his blog. In 2013, she was pursued through the streets of a

52. The Representative on the Freedom of the Media of the Organization for Security and Co-operation in Europe (OSCE), Harlem Désir, has stated that these lawsuits "continue to exert extreme financial and psychological pressure on the family" and called on the plaintiffs to drop them.

53. As part of these proceedings, in February 2017 a court ordered the freezing of Ms Caruana Galizia's bank account; in response, a group of non-governmental organisations filed an alert on the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists. The case was dismissed in May 2018 following Mr Cardona's repeated failures to appear in court, which also meant that the evidence of his location taken from his mobile phone would not be made public: "Cardona brothel case is cancelled, ministry says texts were sent from Malta not Germany", *Times of Malta*, 31 May 2018.

54. "Henley and Partners says it only sues Maltese journalists if government gives its 'OK'", *The Shift*, 7 May 2018.

55. See for example "Straight from the mouth of fascism: the Economy Minister's statement yesterday evening", *Running Commentary*, 9 February 2017.

Maltese town by a crowd led by a Labour mayor, forcing her to seek refuge in a convent. Even more chillingly, she was the subject of violent reprisals on at least two occasions: in 1995, her front door was set alight and her dog's throat was cut; and in 2006, tyres were piled by the back door of her house and set alight.[56]

52. In the immediate aftermath of Ms Caruana Galizia's death, it was reported that 15 days before her assassination, she had filed a police report stating that she had been receiving threats.[57] The police responded that no reports of threats against her had been lodged at Mosta police station in the previous two weeks.[58] Shortly thereafter, the authorities confirmed that there was no fixed-point security at her home prior to her death,[59] although an anonymous police officer was reported as saying that the police did provide either fixed-point security or mobile patrols.[60] Police Commissioner Lawrence Cutajar told the members of the European Parliament's ad hoc Delegation to Malta that "it would have been regarded as intrusive to enact … protection against her will",[61] which suggests that protective measures were not in place.

### *4.2. The requirements stemming from the obligation to protect the right to life*

53. Malta is Party to the European Convention on Human Rights (ETS No. 5, "the Convention"). Article 2 of the Convention protects the right to life. Under Article 2, States are subject to a "negative" obligation not to deprive individuals of their right to life in violation of the provisions of the article, as well as positive and procedural obligations.

54. The positive obligation under Article 2 has two aspects. The first requires the State to "put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life".[62] The second aspect arises when the authorities "knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party". In such circumstances, the authorities are required to "take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk".[63]

55. The procedural obligation requires an investigation into any suspicious death that may arguably have occurred in breach of the substantive (positive and negative) obligations. The basic requirements of the procedural obligation are that the investigation be independent, prompt and expeditious, with the capacity to establish the facts and accessible to the public and relatives of the victim.[64]

### *4.3. The investigation, charges and court proceedings*

56. Following the recusal of the magistrate initially responsible for investigating Ms Caruana Galizia's murder (see below), magistrate Anthony Vella took over. Within days, experts from Europol, the Netherlands, the United Kingdom and the United States arrived in Malta to assist the local police. The investigation produced the following evidence. Minutes before the explosion, a call was made from a location close to Ms Caruana Galizia's home by a mobile phone associated with Alfred Degiorgio to his brother George's phone. Also before the explosion, George Degiorgio used his personal phone to add credit to the account of another phone. The bomb was triggered by an SMS sent from a location out at sea by this other phone to the SIM card that formed part of the bomb's detonator. This SMS was sent from the same location as the call from George Degiorgio's phone to add credit to the other phone. George Degiorgio owned a boat that was seen leaving Valetta harbour on the morning of the murder and returning later in the afternoon. Alfred Degiorgio's DNA was found on a cigarette butt discovered on a ridge with a view overlooking Ms Caruana Galizia's home.[65]

57. Ten people were arrested on 4 December 2017. The following day, three of them were charged: brothers Alfred and George Degiorgio, along with Vince Muscat – all with long criminal records. (The other seven were released on bail without charge.) The three were arraigned that day and pleaded not guilty.

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56. "Daphne Caruana Galizia: 'Malta has made me a scapegoat'", *The Guardian*, 17 April 2018. This article was based on an interview that Ms Caruana Galizia gave to the Council of Europe shortly before her death.
57. "Daphne Caruana Galizia killed in Bidnija car blast", *Times of Malta*, 16 October 2017.
58. "Police deny receiving reports of threats against Caruana Galizia", *Times of Malta*, 17 October 2017.
59. "No fixed point police security at Caruana Galizia home since 2010", *Malta Today*, 18 October 2017.
60. "Caruana Galizia security 'relaxed' after 2013 election", *Times of Malta*, 21 October 2017.
61. "Mission Report following the ad hoc Delegation to Malta (30 November-1 December 2017", CR\1143312EN, European Parliament, 11 January 2018 ("EP Mission Report").
62. *Kolyadenko and others v. Russia*, Application No. 17423/05 et al, judgment of 28 February 2012.
63. *Osman v. United Kingdom*, Application No. 23452/94, judgment of 28 October 1998.
64. *Edwards v. United Kingdom*, Application No. 46477/99, judgment of 14 March 2002.
65. "The silencing of Daphne", Reuters, 17 April 2018.

Maltese law states that if a magistrate does not find justification for the Attorney General to issue a bill of indictment within 30 days of the suspects being charged, they must be discharged unconditionally. The relevant procedure, or "compilation of evidence", was supposed to begin on 14 December. The first magistrate appointed to the case, Donatella Frendo Dimech, recused herself following a request by the defence based on her having been to school with one of Ms Caruana Galizia's sisters. On 18 December, a second magistrate, Charmaine Galea, also recused herself on the basis that Ms Caruana Galizia had mentioned her in blog posts. A third magistrate, Claire Stafrace Zammit, rejected a further recusal request. On 21 December, Ms Zammit concluded that there was enough evidence for the Attorney General to issue a bill of indictment. Since then, progress has been extremely slow, with hearings lasting a couple of hours, on average perhaps once a month. The defence has raised a succession of challenges to the admissibility of evidence, including constitutional cases. The last hearing in the compilation of evidence proceedings was on 12 April 2019, when the case was adjourned. It is now 17 months since the suspects were charged. The Attorney General has still not issued an indictment. If the suspects are not indicted by August 2019, they must be released on bail.

58. The Degiorgio brothers have also been charged with money laundering on the basis of evidence emerging through the investigation of the murder. On 15 April 2019, they were given bail on these charges, even though the risks of flight, reoffending or witness tampering must surely be the same in both cases. Since they are now technically on bail for the money laundering charges, if the custody time limit expires in the murder case, they will be released.

### *4.4. Concerns relating to the investigation and the possibility of political influence*

59. Immediately after Ms Caruana Galizia's death, responsibility for the crucial first stages of the investigation was given to Duty Magistrate Consuelo Scerri Herrera. Ms Caruana Galizia had published highly critical articles about Ms Scerri Herrera since at least 2010, most recently a January 2017 article entitled "Scerri Herrera has been ruled unfit to be a judge. It follows that she is unfit to be a magistrate". On learning of her involvement, the Caruana Galizia family filed a court request that Ms Scerri Herrera recuse herself; the following day, she was replaced by Magistrate Anthony Vella. Mr Vella seemed to be investigating vigorously. Reportedly, he even requested copies of Prime Minister Muscat's mobile phone records. In June 2018, the Prime Minister promoted Mr Vella to judge. The Prime Minister said that Mr Vella was promoted because he was "next in line". The Chief Justice told me that he had advised Mr Vella to accept, as the opportunity might not arise for him again. In retrospect, neither of these things is true: there was another round of promotions in April 2019, during which one magistrate was promoted ahead of several others more senior than him.

60. Concerns have been expressed about the police. The Caruana Galizia family requested the removal of the Deputy Chief of the Police, Mr Silvio Valletta, from the investigation on the grounds that he had a conflict of interest due to his wife being a minister in the current government. In response, the Deputy Police Chief denied such conflict and stressed the independence of his professional activities from those of his wife. Nevertheless, on 12 June 2018, a Maltese judge ruled that Mr Valletta should not be involved in the investigation due to this potential conflict of interest, and also that his involvement should itself be investigated by his replacement; Mr Valletta then suspended himself from the investigation.[66] Other concerns relate to whether the authorities could have had prior knowledge of the plot. When interviewing George Degiorgio, one of the suspects, the police played a recording of the call he had made to add credit to the phone used to trigger the bomb.[67] The security service also revealed that it had been monitoring George Degiorgio's boat prior to the murder.[68] This has raised questions as to what the Maltese police and security services might have known prior to the murder. The security service "categorically denies" any prior knowledge of the murder plot. By mid-June 2018, the records of surveillance of George Degiorgio's phone had still not been provided to the investigating magistrate.[69] It has also been alleged that police sergeant Aldo Cassar of the Criminal Intelligence Unit tipped off the three suspects prior to their arrest. Shortly after their arrest, Mr Cassar was transferred to a different police unit. The police have denied that Mr Cassar had knowledge of the impending arrests or that his transfer was related to any leak of information.[70] On 26 April 2018, Rob Wainwright, Executive Director of Europol, wrote to Ana Gomes MEP, chair of the European Parliament's ad hoc

66. "Silvio Valletta pulls out of Caruana Galizia murder case after court ruling", *Malta Today*, 13 June 2018.
67. "Phones of man accused of Daphne Caruana Galizia murder tapped for weeks before assassination", *The Shift*, 18 April 2018.
68. "The silencing of Daphne," Reuters, 17 April 2018.
69. "Caruana Galizia murder suspect's surveillance records have yet to reach inquiring magistrate, MEPs say", *Times of Malta*, 12 June 2018.
70. "Security service 'categorically denies' prior knowledge of Caruana Galizia murder plot", *Times of Malta*, 30 April 2018.

delegation, about Europol's role in the Caruana Galizia investigation in Malta. The letter included the following comment, which has raised widespread concern: "While we will continue to work closely with the Maltese authorities, there is some room for improvement in this co-operation and we are actively seeking to address this." Police Commissioner Cutajar tried to convince me that Mr Wainwright was in fact not referring to co-operation on the murder investigation but on a border control operation. I was not convinced and Mr Wainwright has since confirmed to me that his letter to Ms Gomes referred to a lack of co-operation over the Caruana Galizia case, not border patrol.

61. The authorities have failed to make the investigation accessible to the Caruana Galizia family. Developments were announced, often by the Prime Minister or Home Affairs Minister rather than the Police Commissioner, without the police having first informed the family. On 27 November 2017, Home Affairs Minister Michael Farrugia made an announcement to parliament that the investigating magistrate had access to certain personal items belonging to Ms Caruana Galizia; her widower, Peter, complained to Mr Farrugia that his statement risked compromising the investigation and was in breach of his public duties. The police also failed to respond to repeated requests by the family for information and protection.[71]

62. Statements by persons close to the Prime Minister have raised concerns in relation to the investigation. Prime Minister Muscat's communications aide, Josef Caruana, posted a statement on Facebook insinuating that Ms Caruana Galizia's own family were implicated in her murder,[72] although he later apologised "to anyone I might have hurt" (without, however, withdrawing his earlier statement).[73] A few days later, another of the Prime Minister's communications aides, Labour MP Glenn Bedingfield,[74] posted on his blog a call on the Civil Society Network that had campaigned for justice in the Caruana Galizia case to make her family hand over her laptop, which the family had declined to do out of mistrust of the authorities and fear of exposing her journalistic sources. Within hours, professionally prepared banners appeared around Malta, reading "Why is someone hiding Daphne's laptop?".[75]

63. Shortly afterwards, on 27 April 2018, the Caruana Galizia family handed two of Daphne's laptops, along with three disc drives, to the German police for safekeeping. Within the context of existing official contacts, the German prosecutor informed the Egrant inquiring magistrate, Aaron Bugeja, that the laptop was in his possession and that Mr Bugeja could request copies of data.[76] The prosecutor also stated that other Maltese authorities could request copies of data for other purposes.[77] In July, it emerged that the magistrate inquiring into the murder, Anthony Vella, had travelled to Germany where he accessed the Panama Papers (which the German police had obtained from other sources) but not, apparently, data from the laptops or disc drives.[78] In September 2018, the German authorities confirmed that the Maltese authorities had still not formally requested this data.[79] The Maltese authorities' failure, over four months, to request access to what could be crucial evidence leading to identification of those who ordered the murder, is inexcusable – especially since in October 2017, police Inspector Arnaud, who leads the murder investigation, had formally requested Magistrate Vella to use his authority to secure the laptop,[80] and in May 2018, Maltese Home Affairs Minister Michael Farrugia announced that the Maltese police would be receiving data from the laptops.[81]

64. Witnesses have reported seeing Mr Cardona, the economy minister, drinking at the same bar as Alfred Degiorgio, one of the three arrested suspects – and in one account, speaking to him for some time and walking outside the bar with him – in November 2017, shortly after the murder of Ms Caruana Galizia.[82] Another witness claimed to have seen Mr Cardona speaking to the suspects before the murder.[83] Mr Cardona

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71. See the Caruana Galizia family's barristers' "Urgent advice", op. cit.
72. "Prime Minister's Communications Aide Stirs Rumour Of Caruana Galizia Family's Involvement In Assassination", *Lovin Malta*, 13 April 2018.
73. "Prime Minister's Communications Aide Apologises For Linking Caruana Galizia Family To Murder", *Lovin Malta*, 13 April 2018.
74. Mr Bedingfield had earlier encouraged people to photograph Ms Caruana Galizia in public: see paragraph 51.
75. "Banners Demanding Daphne's Laptop Pop Up Around Malta Moments After Call From Prime Minister's Office", *Lovin Malta*, 17 April 2018.
76. "Caruana Galizia's laptops handed to German police", *Times of Malta*, 23 May 2018.
77. "Laptops of slain Maltese reporter handed to German police", *Deutsche Welle*, 24 May 2018.
78. "Caruana Galizia laptops: Magistrate Vella travelled to Germany with lead investigator", *Malta Independent*, 15 July 2018.
79. "German Police: Still No Request From Malta For Daphne Caruana Galizia's Laptops", *Lovin Malta*, 2 September 2018.
80. "Just seven days after Daphne Caruana Galizia's murder police asked magistrate to take possession of her laptop", *Malta Today*, 18 April 2018.
81. "Minister says police will request Germans to pass on Carauna Galizia laptops", *Malta Today*, 25 May 2018.
82. "Chris Cardona's presence at bar 'frequented by murder suspect' flagged to magistrate", *Times of Malta*, 17 April 2018.

responded by stating that "I do not … recall having any discussions with any of these individuals, and have definitely never had any meetings with them. Anything else is baseless rumour and speculation".[84] Mr Cardona gave a voluntary statement, not under caution, to the police, but has not been further investigated. He refused to meet me or answer my written questions. It has been reported that Mr Cardona attended the bachelor party of one of the three suspects, Alfred Degiorgio, a few months before the assassination; also, that a ship owner, to whom Ms Caruana Galizia had spoken in October 2016 about his alleged links to fuel smuggling, had afterwards contacted both Mr Cardona and Mr Degiorgio.[85]

65. In November 2018, the Interior Minister appeared to confirm detailed reports that the police had identified two suspected masterminds behind the murder. He added that he hoped they would soon be arrested. This followed a statement by the Police Commissioner that the investigation had reached a "delicate stage". The Interior Ministry was later forced to correct the minister's statement. No masterminds were arrested. There has been no explanation of why such false claims were made. In February 2019, an "overseas source close to the investigation" was reported as saying that foreign investigators "believe there is the basis to move ahead with the arrest and interrogation of certain individuals and we are working with the Maltese police to understand what is holding them back".[86]

66. Given all of these concerns, I was surprised by the attitude of the Attorney General, who has the authority to ask questions of the inquiring magistrate. Dr Grech told the committee that he had not done so because the family's lawyers had not responded when he had asked them whether he should. This did not strike me as the attitude of someone who took his responsibilities as a central actor in the criminal justice system, or the gravity of the situation surrounding the assassination of Ms Caruana Galizia, seriously enough.

67. Even after her death, there remains an appearance of government hostility towards Ms Caruana Galizia. People outraged by her assassination, who were determined to keep her memory alive and campaign for the masterminds to be brought to justice, began placing flowers, candles and written messages as an informal memorial at the symbolic site of the "Great Siege Monument" opposite the Court of Justice. Dr Bonnici, in his capacity as Minister for Culture, ordered that the memorial be removed every night, and closed the monument for three months for restoration work (compare that to the 11 days it took to restore the Arc de Triomphe in Paris after it was extensively vandalised during "gilets jaunes" demonstrations). One is left with the impression that the government would prefer that Ms Caruana Galizia was erased from the public memory.

### *4.5. The need for an independent public inquiry*

68. Lawyers instructed by the Caruana Galizia family – two of whom participated in the committee's hearing in October 2018 – have made repeated requests to the Maltese authorities to open an independent public inquiry into the murder and related circumstances. As noted above, Malta is subject to a range of obligations relating to the right to life, as protected under Article 2 of the European Convention on Human Rights. These include the need for an independent and effective investigation into suspicious deaths. The investigation must be hierarchically, institutionally and practically independent of anyone who may have an interest in its outcome. Effectiveness includes being prompt, open to public scrutiny, accessible to the victim's next of kin, capable of securing all relevant evidence and resulting in appropriate measures. The family's lawyers argue that these requirements are not met for the investigation into the wider circumstances of the death, including identification of those who ordered it. They argue that an inquiry should also look at whether deficiencies in Malta's protection of freedom of speech and of the media under article 10 of the Convention (freedom of expression), including abuse of journalists by political figures, created a culture of impunity that encouraged her killers. The Attorney General has consistently rejected the family's requests, mainly on the basis that a parallel independent inquiry is unnecessary and would complicate the work of the police and inquiring magistrate.

69. If the investigations into the wider circumstances had produced results, I could have been more sympathetic to the Attorney General's position, even if it does not address the need to consider the issues relating to freedom of speech and of the media. Instead, those investigations are proceeding at a glacial pace.

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83. "Witness saw Chris Cardona chatting with Caruana Galizia murder suspect in Siggiewi bar", *Malta Today*, 17 April 2018.
84. "Chris Cardona: 'Highly Defamatory' Allegations Of The Daphne Project 'Have No Foundation Of Truth'", *Lovin Malta*, 17 April 2018.
85. "Daphne Project: Cardona denies 'false smears' linking him to alleged Caruana Galizia killer", *Times of Malta*, 8 October 2018.
86. "3 to 5 other potential suspects in Caruana Galizia murder probe but…", *Times of Malta*, 17 February 2019.

If the three suspects are not indicted soon, they will have to be released, without ever having given evidence in court. No-one has been arrested for ordering the assassination. Magistrates lack safeguards of independence from the government, including persons who may have an interest in the outcome of the inquiry. Magisterial inquiries seem ill-suited to complex investigations, due to the limited availability of the magistrate, who retains other judicial responsibilities at the same time. The magisterial inquiry into the murder of Ms Caruana Galizia was further delayed by an unnecessary change of magistrate. Magisterial inquiries are also reliant on police assistance. The police commissioner is appointed and can be removed by the Prime Minister. The police investigation was delayed by the authorities' refusal to remove an officer with a conflict of interest. The police failed to obtain information from Ms Caruana Galizia's laptop when it was offered to them. The police have consistently failed to investigate persons such as Dr Mizzi and Mr Schembri, who were the frequent subjects of Ms Caruana Galizia's reporting. I can fully understand why the Caruana Galizia family has no confidence in the ability of the Maltese authorities to investigate the murder effectively. I agree that there is now a clear need for an independent inquiry.

70. Prime Minister Muscat promised me that all of the evidence would be preserved indefinitely. This must include the evidence gathered through the interception by the Maltese secret service of George Degiorgio's mobile phone calls. It is essential that this is done and that all evidence is made available to a future independent inquiry.

## 5. Conclusions and recommendations

71. As the title of this report and the original motion indicate, the Caruana Galizia case is of huge importance not only in its own right but because of what it may signify for the rule of law in Malta. I recall the contribution of Ms Caruana Galizia's sons, Matthew, Andrew and Paul, to the GRECO 18th General Activity Report (2017):

> *"In countries where there's no will or capacity to prosecute the corrupt figures they expose, journalists often become the targets themselves. The State's full force is brought down not on the corrupt, but on the journalists and whistleblowers who bring their corruption to light. When the first Panama Papers reports broke in some countries …, journalists working on the Panama Papers were hit with vexatious lawsuits, financial threats, targeted tax investigations, and physical harassment … Some of those journalists are likely to be murdered: since 1992 two thirds of all murdered journalists were covering politics and corruption. This statistic shows us that a journalist is murdered when institutions fail to investigate corruption, when they fail to prosecute it, and when they fail to deter it in the first place. The murder of journalists betrays institutional failure and extreme levels of corruption."*

72. This is largely borne out by the facts – established, uncontested facts, not just speculation or allegations. The Venice Commission opinion and GRECO report authoritatively conclude that Malta's government institutions, criminal justice system and law-enforcement bodies do not comply with European standards on the rule of law. This has allowed allegations of rampant corruption to fester. There is compelling evidence that Mr Schembri and Dr Mizzi in particular are involved in several serious cases of abuse of office, corruption and money laundering. They have refused to take political responsibility by resigning. They continue to benefit from the protection of Prime Minister Muscat. The allegations against Prime Minister Muscat himself were dismissed through a procedure that lacked guarantees of independence, in circumstances that invite suspicion of political influence. It is not my job to say whether these people are criminals or not. I merely note the existence of clear evidence and well-founded suspicions, that have not been properly investigated. It is in the first place the job of the Maltese authorities to investigate these suspicions and collect and examine the evidence, and in this they are manifestly failing. Those at the heart of Malta's Government, and others such as Mr Tonna who are closely associated with them, enjoy impunity. At the same time, the Maltese authorities are unable to conduct timely proceedings even against the suspected hitmen who killed Ms Caruana Galizia, let alone whomever ordered the assassination.

73. The Maltese authorities must implement all of the recommendations of the Venice Commission and of GRECO, and those of MONEYVAL once made, as a matter of urgency. These recommendations form a coherent package and their implementation must form part of a holistic process of reform. A pick-and-choose approach will not achieve the necessary results. The reform process itself must be open and inclusive. The Maltese authorities must also ensure that the police and magisterial inquiries into the cases of corruption and money laundering concerning prominent public figures, and into the wider circumstances of the murder of Ms Caruana Galizia, are expedited. They should establish an independent public inquiry into the murder and related issues. The Assembly should follow the situation in Malta closely until it reaches a satisfactory conclusion in all the above respects.

**Appendix – Dissenting Opinion[87] by Mr Emmanuel Mallia (Malta, SOC), member of the Committee on Legal Affairs and Human Rights**

1. Further to my letter of 27 May 2019 addressed to the rapporteur and circulated to the Committee for Legal Affairs and Human Rights and my statement at the committee meeting on the 29 May, I should like to set out the reasons for my dissent hereunder.

**Public inquiry**

2. Conclusions are being reached without a full understanding of the progress and conduct of the ongoing criminal investigations. No questions have been put to (or asked to be put to) the Magistrate, despite the Attorney General seeking to engage on this point. The rapporteur's heavy reliance instead on newspaper reporting of allegations made by unidentified sources is of particular concern.

3. The rapporteur has not explained whether he considers that an inquiry into the identification of any person who ordered this murder should now take over and take the place of a proper criminal investigation into the identification and punishment of any perpetrators, and how this would be consistent with Malta's obligations under Article 2 of the European Convention on Human Rights. I too am concerned to ensure that any "masterminds" are properly brought to justice but that should be justice before the criminal courts of Malta. The effectiveness of those criminal proceedings should not be jeopardised by parallel action.

4. The rapporteur fails to recognise that it is, in the first instance, a matter for the courts of Malta to rule on whether Article 2 is being complied with.

**Process**

5. There are serious concerns about the process followed in the preparation of the report. The Government of Malta was not given adequate time in which to review and comment upon its contents. I have identified and brought to the rapporteur's attention numerous inaccuracies, plus adverse findings not put to relevant persons for comment. Basic fairness has been disregarded. This, alongside the rapporteur's close contact with certain Maltese opposition politicians, raises serious concerns about his loss of objectivity.

**Scope of the report**

6. The scope of the draft resolution and explanatory memorandum exceeds the rapporteur's terms of reference. They purport to draw wide-ranging conclusions about Malta's constitutional structures, divorced from the context of the investigations into Ms Caruana Galizia's murder. For example, the resolution (paragraphs 3-4) purports to draw conclusions about eight different cases and investigations, and three unconnected individuals. It encourages Malta to refrain from making further judicial appointments until reforms are implemented (paragraph 5.3). Yet questions of when and how constitutional change should be implemented – including questions of what transitional measures, if any, are required – demand detailed consideration as part of an open and inclusive process including consultation with all interested parties.

87. Rule 50.4 of the Assembly's Rules of Procedure: "The report of a committee shall also contain an explanatory memorandum by the rapporteur. The committee shall take note of it. Any dissenting opinions expressed in the committee shall be included therein at the request of their authors, preferably in the body of the explanatory memorandum, but otherwise in an appendix or footnote."