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ANNEX 18

**ANNEX**

**MALTA**

*to the*

**EU Anti-Corruption Report**

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# MALTA

## 1. INTRODUCTION – MAIN FEATURES AND CONTEXT

### *Anti-corruption framework*

**Strategic approach.** In 2008, Malta adopted a National Anti-Fraud and Corruption Strategy, aiming to set up a normative, institutional and operational framework, reflecting local requirements and international obligations. The strategy was drafted by the Ministry of Finance's Financial Management Monitoring Unit and the Internal Audit Investigations Directorate, designated as the implementing body for the strategy. The document had four main objectives: capacity building, communication, national cooperation and international cooperation. The Ministry of Finance is currently updating the strategy. However, various policy areas have attracted attention due to corruption allegations. The management of public funds by local councils and the issuing of building and land development permits have also shown vulnerabilities.<sup>1</sup> Reforms already undertaken to address these areas are an encouraging development, but it is still too early to evaluate their effectiveness. A corruption allegation that led to the resignation of Malta's European Commissioner in 2012 has intensified the debate on corruption in Maltese politics.

**Legal framework.** Criminal Code provisions on corruption, in particular those introduced more recently, such as international bribery offences, private sector bribery and trading in influence are in line with the OECD Criminal Law Convention on Corruption. The definition of public officials is sufficiently broad, including public servants with delegated powers.<sup>2</sup> The Public Administration Act contains a code of ethics applicable to public employees.<sup>3</sup> The Freedom of Information Act aims to promote transparency and accountability in government.<sup>4</sup>

**Institutional framework.** Parliament set up a Select Committee on Strengthening Democracy in 2008 to consider transparency and accountability, public financing of political parties, and conflicts of interest of the Members of Parliament, parliamentary secretaries and ministers.<sup>5</sup> The Economic Crime Unit of the Malta Police Force, set up in 1987, investigates corruption offences and produces annual statistics on its investigations. Police officers are subject to disciplinary rules and a code of ethics applicable to all public officials. The Anti-Fraud and Corruption Unit within the Internal Audit and Investigations Department (IAID) examines government activities and provides internal financial investigative services, separate from criminal investigations.<sup>6</sup> The National Audit Office (NAO) has a mandate to promote accountability of public officers and to contribute to better management of public resources. It has access to all documents and records relating to the accounts of the bodies audited.<sup>7</sup> However, investigative institutions face obstacles

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1 In 2012, a former mayor was found guilty of soliciting a bribe and sentenced to one year in prison.

2 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)2\\_Malta\\_One\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)2_Malta_One_EN.pdf).

3 Chapter 497, First Schedule. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963>.

4 Chapter 496, <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8962>.

5 <http://www.parlament.mt/selectcommittee>.

6 The Internal Audit and Investigations Directorate carries out internal audits and its Director provides a report to the Permanent Secretary under whose supervision the auditee falls. Within one month of receipt of such report, the Permanent Secretary must give instructions to the auditee to remedy any shortcomings and inform the Director accordingly. The Director conducts follow-up reports. Any suspicion of irregularity or fraud must be referred to the Director and if the Director is of the opinion that the irregularity constitutes a criminal offence, he is obliged to inform the Attorney General. If on the other hand, the irregularity is of an administrative nature, the Director must inform the auditee's Permanent Secretary. In the fulfilment of their functions, the Director and the officers of the Directorate shall not be subject to any direct or indirect influence or control by the auditee and shall not themselves influence or control the auditee. The Internal Audit and Investigations Board oversees the work of the Directorate and safeguards its independence. Chapter 461 of the Laws of Malta. Subsidiary Legislation 461.02.

7 The National Audit Office is headed by the Auditor General, appointed by the President acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two thirds of all the members of the House. In the

in collecting evidence such as witness testimony, and often rely on the police to take corruption allegations forward. The Permanent Commission against Corruption (PCAC) and Ombudsman also play a role, as detailed in a subsequent section of this chapter.

### *Opinion polling*

**Perception surveys.** In the 2013 Special Eurobarometer Survey on corruption, 83 % of respondents consider corruption to be a widespread problem in Malta (EU average 76 %) and 29 % say it affects their daily lives (EU average 26 %). 53 % say corruption is particularly widespread among officials issuing building permits (EU average 43 %).

**Experience of corruption.** According to the 2013 Special Eurobarometer, 2 % of respondents have been asked or expected to pay a bribe over the previous 12 months (EU average 4 %).

**Business surveys.** In the Eurobarometer business survey, 43 % of companies that competed for public contracts in the last three years say that corruption prevented them from winning (EU average 32 %).<sup>8</sup> Maltese respondents from the business sector perceive the following practices as widespread in public procurement: involvement of bidders in the design of specifications (48 %), unclear selection or evaluation criteria (48 %), conflicts of interest in bid evaluation (58 %), specifications tailor-made for particular companies (64 %), abuse of emergency grounds to justify the use of non-competitive or fast-track procedures (40 %) and collusive bidding (48 %). 57 % considered that corruption is widespread in public procurement managed by national authorities (EU average: 56 %) and 50 % in the case of local authorities (EU average: 60 %). These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerability to corruption in public procurement procedures.

### *Background issues*

**Public procurement.** Public procurement regulations cover contracts awarded by central or local authorities and bodies governed by public law.<sup>9</sup> The Department of Contracts is responsible for the administration of procurement procedures. Its Director is assisted by the General Contracts Committee and, in cases that require specialised expertise, the Special Contracts Committee. The two committees are required to report any irregularities detected in the tendering process, and to make relevant recommendations. In the context of the 2013 European Semester of economic policy coordination, the Council recommended that Malta improve the efficiency and reduce the length of public procurement procedures.<sup>10</sup> Public procurement in the energy field has attracted attention due to a recent corruption controversy, and the Maltese government has plans for reforms in this area. A July 2013 report by the National Audit Office raised concerns regarding oil contracts extended by state utility corporation Enemalta and an increase in the rates payable to the contractor.<sup>11</sup> Following this report, the Energy Minister asked the Police Commissioner to investigate Enemalta's fuel procurement since 2008. The Public Accounts Committee discussed the matter and the government appointed a former judge to investigate claims that fuel purchased by Enemalta did not meet contract specifications.

**Private sector.** In the 2013 Eurobarometer business survey, 53 % report corruption as a problem when doing business in Malta (EU average 43 %). In the Global Competitiveness Index, Malta

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exercise of his functions, the Auditor General is not subject to the authority or control of any person. Constitution, Article 108(12).

8 2013 Flash Eurobarometer 374.

9 Subsidiary Legislation 174.04.

10 Council recommendation 2013/C 217/15 of 9 July 2013.

11 National Audit Office, *Performance Audit Report: An Analysis of the Effectiveness of Enemalta Corporation's Fuel Procurement*. 16 July 2013. <http://www.nao.gov.mt/loadfile.ashx?id=e5b06974-1496-4414-8304-cc66f270aaed>

ranks 41st out of 148 countries.<sup>12</sup> Malta partly transposed the provisions of Framework Decision 2003/568/JHA concerning the liability of legal persons, and fully complied with the requirements regarding passive corruption. The position of Maltese law regarding the inclusion of non-profit entities remains unclear.<sup>13</sup> The size of the shadow economy was estimated at 25.3 % of GDP in 2012.<sup>14</sup>

**Conflicts of interests and asset disclosure.** The Public Administration Act contains provisions on conflicts of interest and acceptance of gifts and benefits.<sup>15</sup> In July 2013, ministers and parliamentary secretaries submitted to Parliament their asset declarations, following the code of ethics applying to them.<sup>16</sup> However, there is no monitoring mechanism to ensure compliance with the code of ethics for ministers and parliamentary secretaries, or to verify declarations. Concerns have also been raised about the 'revolving door' between the public and private sectors, giving rise to potential conflicts of interest. The government pledged to set up a Parliamentary Commissioner for Standards who would be appointed by Parliament to independently monitor the behaviour and declarations of assets and interests of MPs (including the Cabinet), as well as to carry out investigations where appropriate.<sup>17</sup> Such measures aim to address concerns that the issue of conflict of interest has not been dealt with sufficiently. In July 2013, Parliament adopted amendments to allow ministers, parliamentary secretaries and MPs to sit on government boards.<sup>18</sup>

**Whistleblowing.** It is a criminal offence to victimise a person for having disclosed illegal or corrupt practices under the Employment and Industrial Relations Act.<sup>19</sup> The Protection of the Whistleblower Act came into force in September 2013. Applying to the public sector and larger private companies, it aims to incentivise employees to report wrongdoing, including their own.<sup>20</sup>

**Transparency of lobbying.** Lobbying is not regulated in Malta. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. A code of ethics requires Members of the House of Representatives to declare connections with persons that have a direct interest in legislation before the House.<sup>21</sup>

## 2. ISSUES IN FOCUS

### *Financing of political parties*

Transparency of political financing is almost non-existent in Malta.<sup>22</sup> In the 2013 Eurobarometer business survey, Malta has the EU's second highest percentage (44 %) of companies who believe funding political parties in exchange for public contracts or influence over policy making is widespread. No specific rules apply regarding the financing of political parties. Anonymous

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12 [http://www3.weforum.org/docs/GCR2013-14/GCR\\_Rankings\\_2013-14.pdf](http://www3.weforum.org/docs/GCR2013-14/GCR_Rankings_2013-14.pdf).

13 COM(2011) 309 final, Brussels, 6.6.2011; [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report\\_corruption\\_private\\_sector\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf).

14 [http://ec.europa.eu/europe2020/pdf/themes/07\\_shadow\\_economy.pdf](http://ec.europa.eu/europe2020/pdf/themes/07_shadow_economy.pdf).

15 Chapter 497, First Schedule. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8963>.

16 Some ministers subsequently amended their declarations. Parliament ta' Malta, Code of Ethics for Ministers and Parliamentary Secretaries <http://www.parlament.mt/codeofethics-ministers?l=1> Paper Laid No: 982 — Declaration of assets for 2012 made in accordance with paragraphs 48 and 49 of the Code of Ethics for Ministers and Parliamentary Secretaries of Governments of the Eleventh and Twelfth Legislatures, 17 July 2013 <http://www.parlament.mt/file.aspx?f=42424>.

17 In October 2013, Parliament (Motion No 77) appointed a select committee to make recommendations to Parliament on the setting up of a Commissioner for standards, ethics and good behaviour in public life. On 16 December 2013, the select committee presented a draft bill. <http://www.parlament.mt/file.aspx?f=45245>.

18 Bill 9 of 2013, Functions of Members of Parliament (Various Laws) Amendment Bill. <http://www.parlament.mt/billdetails?bid=431&l=1&legcat=13>.

19 Chapter 452. Article 28. <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8918&l=1>.

20 Protection of the Whistleblower Act

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25151&l=1>.

21 Code of Ethics of Members of the House of Representatives. <http://www.parlament.mt/codeofethics-mp?l=1>.

22 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292\\_Malta\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292_Malta_Two_EN.pdf) point 65.

donations to parties and electoral campaigns, irrespective of the amount, can be made without restriction. Each party represented in Parliament receives EUR 100 000 annually as a direct grant to develop international relations. This is the only public funding for political parties apart from indirect support such as tax exemption and media access. Party expenditure is not limited. The caps on candidate expenditure are low (EUR 1 400) and reports by candidates are often considered not to reflect reality, generating confusion about whether donations to candidates are reported and what counts as a donation for these purposes.<sup>23</sup> Malta also lacks proper accounting requirements for political parties and electoral campaigns as well as requirements for publication of accounts that would allow for public scrutiny. The Electoral Commission is composed of members nominated by the two main political parties and is thus seen as lacking independence.<sup>24</sup>

The absence of legislation in this area has long been the subject of debate in Malta and the Council of Europe's Group of States against Corruption (GRECO) highlighted it as a shortcoming.<sup>25</sup> It recommended revising spending limits for election candidates and introducing a general requirement for political parties and election candidates to disclose all individual donations (including of a non-monetary nature) above a certain threshold along with the identity of the donor. GRECO further recommended banning anonymous donations and requiring political parties to keep proper books and accounts, to be reported at appropriate intervals in a coordinated way and audited independently. It also recommended independent monitoring of the funding of political parties and electoral campaigns, and application of effective, proportionate and dissuasive sanctions.<sup>26</sup> A draft Political Parties Act only partially addressed these recommendations, but this Act was not adopted.<sup>27</sup> A January 2012 private member's draft bill to regulate the formation, inner structures, functioning and financing of political parties and their participation in elections automatically lapsed with the dissolution of Parliament in January 2013. The government is drafting a new version aiming to address GRECO recommendations.

### ***Prosecution of corruption***

While the police have successfully prosecuted some cases, other organisations have faced challenges in conducting thorough investigations because they lack the necessary means, powers or resources. The Ombudsman reports to the House of Representatives but his/her recommendations are not binding.<sup>28</sup> The Internal Audit and Investigations Department carries out financial investigations of suspected corruption of public officers but it is not empowered to conduct criminal investigations. The Public Accounts Committee (PAC), a standing parliamentary committee, may ask the National Audit Office to investigate and report back but it is understaffed and challenged by uncooperative witnesses. The Committee consists of up to seven members, chosen to fairly represent the proportion of opposition members. If the Committee suspects a criminal offence, the findings are reported to the Attorney General and to the Commissioner of Police for further investigation.<sup>29</sup>

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23 Paragraph 61.

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292\\_Malta\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292_Malta_Two_EN.pdf).

24 According to Article 60 of the Constitution, members of the Electoral Commission are appointed by the President, acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition. 'In the exercise of its functions under this Constitution the Electoral Commission shall not be subject to the direction or control of any other person or authority'. <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566>.

25 Council of Europe, Group of States against corruption (2011) *Fighting Corruption: Political Funding: Thematic Review of GRECO's Third Evaluation Round*. Strasbourg: GRECO, 57212, pp. 9-10, paragraph 14. [http://www.coe.int/t/dghl/monitoring/greco/general/DOUBLET\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/general/DOUBLET_EN.pdf).

26 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292\\_Malta\\_Two\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%292_Malta_Two_EN.pdf).

27 [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282011%2911\\_Malta\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282011%2911_Malta_EN.pdf).

28 The Ombudsman investigates and resolves citizens' grievances about public bodies, and contributes to an improvement in the quality of public administration. <http://www.ombudsman.org.mt/index.asp?pg=missionstatement>.

29 Article 120E of the Standing Orders of the House of Representatives.

In addition, the absence of established procedures to ensure efficient coordination in responding to corruption allegations makes institutions more liable to executive discretion, resulting in similar cases being treated differently. On one occasion, the government asked the NAO to investigate possible irregularities in the award of a contract for the extension of a power station. The NAO lacked the powers necessary to conduct such an investigation in the face of a reluctant key witness.<sup>30</sup> The government is not bound to follow up on the Auditor's conclusions. On another occasion, the government asked the police to investigate allegations of procurement corruption at a hospital, resulting in a prison sentence for fabrication of the report alleging corruption.<sup>31</sup>

The 2008 National Anti-Fraud and Corruption Strategy envisaged the setting up of a Coordination Committee that would consist of representatives from authorities involved in the fight against corruption and would review the existing mechanisms to identify gaps in coordination.<sup>32</sup> Neither the Committee nor the IAID, which is the implementing body for the strategy, appear to be playing an internal coordination role. Apart from cases where the police or an agency initiate their own investigations, it is also common practice for ministers to task a particular agency or the police with an investigation, without standard guidelines for this decision. Alternatively, a minister may appoint a magistrate or an *ad hoc* commission to conduct an inquiry.<sup>33</sup> These options also involve ministerial discretion in nominating the members of the *ad hoc* commission and establishing its remit.

The Maltese judiciary has traditionally enjoyed trust and confidence. A code of ethics for the Judiciary is in place and a Commission for the Administration of Justice has the authority to enforce it.<sup>34</sup> However, a high-profile bribery case in 2002 dented this positive image. A former Chief Justice and another former judge sitting in the same Court of Appeal were found guilty of receiving bribes in return for lowering a sentence of a convicted drug-trafficker. Both were sentenced to prison.

The system for ensuring integrity in the judiciary requires closer attention, as indicated by the case of a judge and the magistrate who refused to resign from the Malta Olympic Committee after the Commission for the Administration of Justice ordered them to do so.<sup>35</sup> The issue sparked a broader debate on integrity and conflicts of interest in the judiciary, and a possible revision of the current appointment mechanism by which the President, acting in accordance with the advice of the Prime Minister, nominates persons to the bench in line with certain basic criteria with the option of consulting the Commission for the Administration of Justice.

In May 2013, the Commission for the Holistic Reform of the Justice System ('Reform Commission') suggested setting up a Judicial Appointments Commission (to be appointed by the President) to recommend to government the appointment or promotion of members of the judiciary, on the basis of qualitative criteria including integrity, subject to a call for applications, followed by a competition consisting of written and oral examinations to be held in public.<sup>36</sup> A

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30 The Electoral Manifesto of the new government in power since March 2013 promises to increase the investigative powers of the Auditor General especially in relation to uncooperative witnesses and to possibly use such powers also to re-open past cases that could not be investigated further due to lack of cooperation from witnesses.

31 Investigations by the NAO or others do not preclude the police from conducting its own investigation or prosecuting suspects.

32 L-Istrateġija Nazzjonali kontra l-Frodi u l-Korruzzjoni (National strategy against fraud and corruption), pp. 39-41.

33 Inquiries Act, Chapter 273. <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8763>.

34 When so requested by the Prime Minister, the Commission for the Administration of Justice advises on appointments of judges and magistrates. The Commission also decides whether there is a *prima facie* case to impeach a judge or magistrate when a motion for impeachment has been presented in Parliament.

35 However, the judge decided not to re-contest for president of the Olympic committee when his term expired. The magistrate in question was sworn in as a judge in June 2013.

36 Commission for the Holistic Reform of the Justice System, First Document for Public Consultation. May 2013.

<http://mhas.gov.mt/en/MHAS-Information/KRHG/Documents/Document%20for%20Public%20Consultation%20by%20the%20Commission%20for%20the%20Holistic%20Reform%20of%20the%20Justice%20System.pdf>.

separate Judicial Discipline Commission (also to be appointed by the President) would examine cases of punishment or removal of members of the judiciary. The judiciary opposes these proposals as they reach beyond the Reform Commission's terms of reference. According to the judiciary, these proposals would infringe on judicial independence. Instead, the judiciary advocates authorising the Commission for the Administration of Justice to take the initiative, rather than wait for a removal motion to be put before Parliament.<sup>37</sup> The Reform Commission published its final report in November 2013.<sup>38</sup>

GRECO has recommended removing certain discrepancies within Maltese law such as a harsher punishment for attempted than for actual bribery.<sup>39</sup> It also recommended raising the penalty for trading in influence (one of the charges against the former Chief Justice) and recent amendments of the Criminal Code accordingly increased penalties for trading in influence substantially.<sup>40</sup> Punishments for judges were also raised.<sup>41</sup> Moreover, the amendments removed time limits for abuse of office by ministers, parliamentary secretaries, MPs, mayors, local councillors and their accomplices.<sup>42</sup>

The Permanent Commission against Corruption (PCAC), a specialised body dealing exclusively with the investigation of alleged or suspected corrupt practices within public administration, was established in 1988<sup>43</sup> and is composed of a Chair and two members appointed by the President of Malta, following the advice of the Prime Minister, given after consultation with the opposition leader. According to the law, in the exercise of its functions the PCAC is not subject to the direction or control of any other person or authority.<sup>44</sup> The PCAC's Chair must be a current or former magistrate or advocate and the members cannot have served as parliamentarians or ministers. The Chair and members are appointed for five years and cannot be removed from office except when unable to discharge their duties due to infirmity. The PCAC may investigate the conduct of any public officer, including ministers, parliamentary secretaries, as well as the practices and procedures of government departments, local authorities, statutory bodies or other bodies in which the government has a controlling interest or effective control. The PCAC also instructs, advises and assists ministers and other officials on corruption prevention. The PCAC conducts investigations on its own initiative or following reports made to it by any person and confirmed on oath. The Commission has the power to summon witnesses, request files or other documentary evidence and seek police assistance.<sup>45</sup>

The PCAC's institutional setup has been criticised. Apart from being under-resourced (with a budget of EUR 84 000), the PCAC cannot appoint specialists in its own capacity during investigations but must ask the Prime Minister to do so.<sup>46</sup> A debate about possible reforms to strengthen its role in fighting corruption has been ongoing for years. In 2007, GRECO had already noted that 'almost five years after the adoption of the [First] Evaluation Report, no decision to further empower the PCAC has been taken.'<sup>47</sup>

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37 The Judiciary Malta, Judges and Magistrates submit their views. August 2013

<http://www.judiciarymalta.gov.mt/newsdetails?id=90>.

38 <https://opm.gov.mt/en/krhg/Documents/Rapport%20Finali.pdf>.

39 Article 120 of the Criminal Code.

40 Act IV of 2013, in force since June 2013. The punishment for trading in influence was increased from 3-18 months to 3-6 years.

41 Article 117 of the Criminal Code.

42 Article 115 of the Criminal Code.

43 Act XXII of 1988.

44 Permanent Commission against Corruption Act, Chapter 326.

45 <http://mhas.gov.mt/en/MHAS-Departments/Justice/Pages/Permanent-Commission-Against-Corruption.aspx>.

46 In addition to PCAC, the Public Accounts Committee, the Police, the Attorney General's Office and the Judiciary have limited resources and staff.

47 Addendum to the Compliance Report on Malta (First Evaluation Round), adopted by GRECO at its 34th Plenary Meeting (Strasbourg, 16-19 October 2007), Greco RC-I (2005) 3E.

In July 2013, the Reform Commission proposed that the PCAC be abolished.<sup>48</sup> According to the Reform Commission, none of the 425 investigations conducted by PCAC since its creation in 1988 had resulted in criminal proceedings in court. As part of a proposed separation of the Attorney General's functions, the Reform Commission suggested entrusting the investigation and prosecution of corruption to a General Prosecutor, who would enjoy a constitutional safeguard of independence and be endowed with an investigations division, which the PCAC lacks.<sup>49</sup> It appears that the General Prosecutor, as proposed by the Reform Commission, would not specialise exclusively in corruption cases. The judiciary reacted with cautious agreement on some procedural and administrative changes proposed by the Reform Commission. However, the judiciary expressed serious concern over proposed institutional reforms, particularly those which would curtail the functions and powers of the Commission for the Administration of Justice.<sup>50</sup>

### ***Environmental planning***

The granting of planning permits, particularly to developers for large-scale projects has given rise to contention and controversy. In the 2013 Eurobarometer survey, 53 % of Maltese respondents think corruption is widespread among officials issuing building permits, the highest percentage in Malta's public institutions.<sup>51</sup>

The absence of a party financing law makes it possible for donations to remain undeclared, thereby feeding a public perception that large-scale permits are not granted on objective criteria.<sup>52</sup> While factors unrelated to corruption could also be at play in shaping negative perceptions of the Malta Environmental Planning Authority (MEPA), including discontent when permits are refused in line with established policy, negative findings by MEPA's former auditor in relation to certain MEPA decisions appear to support the public's perception.<sup>53</sup>

Rather than outright bribery of MEPA officials, corruption allegations tend to consist of other irregularities in the decision-making process.<sup>54</sup> No actual case of direct political interference or pressure has been proved thus far, although a media investigation, confirmed by MEPA's former auditor, revealed that MEPA's Development Control Commission (DCC) had processed a suspiciously large number of cases in the last week prior to the 2008 general election (three times more than the same period the year before) and in 49 of the 430 cases the DCC issued a building permit despite the case officers' recommendations against doing so.

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- 48 Kummissjoni dwar Riforma Holistika fil Qasam tal-Gustizzja, *It-Tieni Dokument għall-Konsultazzjoni Pubblika*. July 2013. <http://mhas.gov.mt/en/MHAS-Information/KRHG/Documents/00%20Consultation%20Document%2029%2007%2013%20Final%20Versionx.pdf> The final report of the Reform Commission was published in November 2013. <https://opm.gov.mt/en/krhg/Documents/Rapport%20Finali.pdf>.
- 49 Kummissjoni dwar Riforma Holistika fil Qasam tal-Gustizzja, *It-Tieni Dokument għall-Konsultazzjoni Pubblika*. July 2013. <http://mhas.gov.mt/en/MHAS-Information/KRHG/Documents/00%20Consultation%20Document%2029%2007%2013%20Final%20Versionx.pdf>, pp. 89-90.
- 50 The Judiciary Malta (2013) *Judiciary reacts to second Commission report* <http://www.judiciarymalta.gov.mt/newsdetails?id=93>.
- 51 2013 Special Eurobarometer 397.
- 52 In 2010, a public awareness survey commissioned by MEPA revealed that 63 % of Maltese believe that the applicant's choice of architect has a direct bearing on MEPA's decisions.
- 53 The cases involved mainly a failure to justify the granting of permits and setting aside established policy. Among the most well-known are the Irregular Supermarket Permits (two cases involving the same developer in different localities) which led to the resignation en masse of MEPA's Development Control Commission following the MEPA Auditor's negative opinion; the Bahrija Villa case (2009) in which the MEPA Auditor again found the DCC had ignored policies and advice from the properly constituted bodies of MEPA.
- 54 There has been only one case, still ongoing, where a MEPA official allegedly requested a bribe in exchange for issuing a compliance certificate.



***Good practice: reform to address corruption vulnerability in environmental planning and granting of development permits***

*Following the launch of a nine-month public consultation, a document proposing MEPA reform was published.<sup>55</sup> The plan was based on four key principles: consistency, efficiency, accountability, and enforcement. It resulted in the adoption of the Environment and Development Planning Act 2010, containing provisions on disclosure of conflicts of interest by MEPA members, staff and consultants. Failure to disclose an interest may result in removal from office or termination of contract.<sup>56</sup> As an additional safeguard, relevant proceedings and hearings are held in public.*

*Moreover, the Ombudsman Act was amended to allow the Ombudsman to appoint Commissioners for Administrative Investigations who are considered to be Officers of Parliament. A Commissioner for Environment and Planning was appointed to investigate complaints related to MEPA and replaced the office of Auditor of MEPA.<sup>57</sup> This structural change is significant since the Commissioner has the same powers as the Ombudsman and can, for instance, require the production of documents and summon witnesses as well as report to Parliament where necessary.<sup>58</sup> He has more resources available and is independent from MEPA. When investigating a case, MEPA will be informed and given a reasonable time to make submissions. The Ombudsman's annual report will include a section on the work of the Commissioner for Environment and Planning. The Commissioner will also publish regular case notes, similar to those published by the Ombudsman, as well as ad hoc publications on important principles.<sup>59</sup>*

*The number of complaints has reportedly decreased since the MEPA reform. The reform started by addressing long delays in processing but has also strengthened the decision-making process and made it more transparent with online accessibility of MEPA files.<sup>60</sup> One of the most important changes in the law is that third-party objectors have been given more power to challenge decisions. Increased enforcement and the possibility of withdrawing permits have increased deterrence, while stricter application of established policies has brought more consistency to the decision-making process. The new Appeals Tribunal is also full-time and is autonomous from MEPA, whereas the previous appeals system was one of reconsideration by the same Board.*

*The MEPA Board and Development Control Commissions take decisions in meetings open to the public. Applications are published in a register, posted on site, listed in the media, and made available at local councils. Decisions on each application are to be logged in real time on the MEPA website.<sup>61</sup>*

In May 2013, the government and MEPA launched a public consultation called *Semma' Leĥnek* ('Have Your Say') on how to simplify and streamline the planning system and other procedures at MEPA.<sup>62</sup> The government's reform proposals include a division of MEPA's planning and environmental permits into two separate agencies, which has not yet taken place. In October 2013, MEPA decided to improve transparency by publishing the names of those who submit representations or proposals for revision of local plans.

55 A blueprint for MEPA's reform, 9 July 2009. <https://opm.gov.mt/file.aspx?f=1224>.

56 Chapter 504, Article 16.

57 Rule 20(1) of the Commissioners for Administrative Investigations (Functions) Rules, 2012.

58 See also Article 19 of the Ombudsman Act.

59 Ibid.

60 <http://www.mepa.org.mt/permitting>.

61 <http://www.mepa.org.mt/topics-planning>

62 Malta Environment and Planning Authority, *Semma' Leĥnek* <http://www.mepa.org.mt/semma-lehnek>.

### 3. FUTURE STEPS

Preventing and addressing corruption has been a priority in Malta, leading to reforms aiming for greater transparency. However, the financing of political parties remains largely unregulated. Coordination should be improved among the institutions investigating corruption to ensure a streamlined approach and effective collection of evidence. Continued efforts are also necessary to improve the transparency of judicial appointments and of decision-making in environmental planning.

The following points require further attention:

- Introducing disclosure obligations and caps on **political donations**, a ban on anonymous donations beyond a reasonable threshold, publication of independently audited party accounts, and monitoring by the Electoral Commission of compliance with the transparency requirements.
- Defining clear standard procedures and rules on the distribution of cases of alleged corruption among the competent **anti-corruption institutions**. Improving **coordination** among these institutions to optimise the collection of evidence. Prioritising the effective **investigation and prosecution** of corruption and, should the Permanent Commission against Corruption (PCAC) be retained, widening its remit, and empowering it to appoint its own specialists.
- Strengthen the **ability of the judiciary to handle corruption cases** by revising the **appointment and dismissal procedures for judges** to ensure transparent and merit-based selection and removal, and enforcing decisions of the Commission for the Administration of Justice that find a breach of the Code of Ethics for the Judiciary.
- Continuing reforms at the **Malta Environmental Planning Authority (MEPA)** to further build public confidence in its integrity and impartiality.