



Office for Democratic Institutions and Human Rights

# REPUBLIC OF MALTA

## EARLY PARLIAMENTARY ELECTIONS

26 March 2022

ODIHR Election Expert Team  
Final Report



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**I. EXECUTIVE SUMMARY**

Following an invitation from the Maltese authorities to observe the 26 March 2022 early parliamentary elections, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET). The EET focused on the administration of the elections, the conduct and financing of the electoral campaign and related oversight mechanisms, and the regulatory framework for electoral coverage in the media.

Elections were organized efficiently and professionally by the Electoral Commission (EC) and stakeholders expressed confidence in most stages of the process, but the limited access to the activities of the EC for the public and some contestants as well as the lack of regulations allowing for citizen and international observation diminished the transparency of the process. The use of public resources by the governing party, limited access to information on party and campaign income and expenditure, and the limited oversight of campaign financing further reduced the transparency of the process and created, in some areas, an unlevel playing field. The media market is dominated by two commercial TV stations each owned by the Labour Party (PL) and the Nationalist Party (PN), which advantaged these parties in terms of media coverage and many ODIHR EET interlocutors also highlighting that the governing party further benefited from favourable coverage by the Public Broadcasting Services (PBS).

Malta is a parliamentary republic with legislative power vested in a single chamber. The 65 members of the House of the Representatives are elected to a five-year term through a single transferable vote system in 13 multi-mandate electoral districts. A constitutional mechanism allows for allocation of additional parliamentary seats in order to ensure that the house reflects the overall vote across the country and to increase women's representation. The parliament was dissolved by the president at the proposal of the prime minister on 20 February and early elections were called for 26 March.

Several amendments to the electoral legislation were introduced since the 2017 parliamentary elections including the lowering of the voting age from 18 to 16 years, granting new possibilities for early voting and arrangements for voters affected by COVID-19 to cast their ballots, the possibility to submit nominations electronically and the introduction of electronic counting of votes. The number of EC members was increased from eight to ten, with a quota of at least four members of each gender introduced. The Constitution was amended, putting in place a gender quota for the allocation of parliamentary seats. The new Media and Defamation Act of 24 April 2018 decriminalized defamation, which addressed a previous ODIHR recommendation. Several prior ODIHR recommendations remain unaddressed, including those relating to campaign finance and election observation.

The elections were well managed by the EC and Assistant Electoral Commissioners (AECs) deployed in 741 polling stations. The EC held its meetings in closed sessions, with minutes and decisions not published, which diminished the transparency of the EC's decision-making processes.

Voter registration is passive, administered by the EC, which regularly receives information from the various government registries. Voters aged 16 or older are eligible to vote, unless they are declared

incapacitated by a court decision, deemed to be of “unsound mind” by a medical board, or serving a prison sentence of more than one year. While most stakeholders expressed confidence in the voter registration process, some raised concerns over its accuracy and the potential for abuse of voters’ personal data by political parties. Some ODIHR EET interlocutors perceived the use of mandatory voter cards as an additional hurdle to voter participation.

Of the 177 candidates who contested these elections, only 41 (23 per cent) were women, 22 of whom took parliamentary seats. Special temporary measures were introduced granting additional seats where the underrepresented sex obtains less than 40 per cent of available seats, which increased the number of women in the parliament by 12 to the total of 22 (27.85 per cent). The special measures, which only apply in the case that two parties obtain seats, were challenged in the First Hall of the Civil Court and were criticized by some ODIHR EET interlocutors as only serving to further entrench the domination of the two main parties.

The Financing of Political Parties Act (FPPA) was introduced in 2015 and addresses some of the previous ODIHR and Group of States against Corruption (GRECO) recommendations, however the law was partially challenged by the Constitutional Court in 2018 which ruled that the EC does not have the power to adjudicate or to impose administrative fines and sanctions. Further to these limitations, the EC does not have the capacity to act as an effective regulator, and the transparency of party and campaign finance was hampered by the fact that financial reports for 2019 and 2020 had not been published by the time these elections were held. Most of the previous ODIHR recommendations to enhance transparency and improve disclosure remain unaddressed, including lowering the disclosure threshold, recording of all donations, timely reporting deadlines and giving more independence and additional resources to the oversight body.

The media landscape is dominated by the PBS, which due to the appointment procedure of its management, its financing and reports of interference in editorial policy lacks independence from the government, and two commercial TV stations, which are owned by the PL and PN respectively. This gave the ruling party undue advantage and the free airtime provided to all contestants was not sufficient to provide for equal opportunities to campaign in media. While the constitution and legislation oblige impartial reporting in public and commercial broadcasting, the Broadcasting Authority did not effectively monitor or enforce this requirement with respect to the TV stations owned by the political parties as they interpret these as balancing each other out. Independent media outlets generally face financial difficulties and journalists report significant problems with access to public information as well as the prevalence of civil defamation claims, including cases of strategic litigation against public participation.

In line with ODIHR’s standard methodology, the EET did not undertake comprehensive and systematic observation of electoral proceedings. The limited number of polling stations visited by the EET during early voting and on election day were well equipped and organized, though the assisted voting method compromised secrecy. COVID-19 standards were implemented in a satisfactory manner. Election observation is not permitted and no comprehensive monitoring activities were organized by civil society organizations. Electronic counting took place at the national counting complex and ensured efficient and transparent proceedings. Results were not disaggregated by polling station, which negatively affected transparency. The voter turnout of 85.6 per cent while relatively high was the lowest since Malta obtained its independence.

This report offers a number of recommendations to support efforts to bring elections in the Republic of Malta closer in line with OSCE commitments and other international obligations and standards for democratic elections. Priority recommendations relate to the transparency of decision making within the EC, suffrage rights, campaign finance oversight, and the accuracy and

impartiality of broadcast media and citizen and international election observation. ODIHR stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

## II. INTRODUCTION AND ACKNOWLEDGMENTS

Following an invitation from the Permanent Mission of Malta to the OSCE to observe the 26 March 2022 early parliamentary elections and based on the recommendation of the Needs Assessment Mission (NAM) conducted between 28 February and 4 March, the OSCE Office for Democratic Institutions and Human Rights (ODIHR) deployed an Election Expert Team (EET). The ODIHR EET, based in Valletta, was deployed between 15 and 30 March 2022.

The ODIHR EET examined the administration of the elections, the financing of the electoral campaign and oversight mechanisms, as well as the media landscape and the regulatory framework for electoral coverage in the media. The ODIHR EET assessed these aspects of the elections in relation to OSCE commitments and other international obligations and standards for democratic elections, as well as with national legislation. In line with ODIHR methodology, the EET did not conduct a systematic observation of the voting procedures, but visited a limited number of polling stations. Additional details on the electoral processes are provided by the report of the ODIHR NAM and the previous ODIHR reports on Malta.<sup>1</sup>

The ODIHR EET wishes to thank the Ministry for Foreign and European Affairs (MFEA) and the Electoral Commission (EC) for their support and assistance. The ODIHR EET also expresses its gratitude to the state authorities and institutions, representatives of political parties, candidates, media, civil society and other interlocutors for sharing their views.

## III. BACKGROUND AND POLITICAL CONTEXT

Malta is a parliamentary republic with legislative power residing in the House of Representatives whose members are elected for a five-year term. The government is led by the prime minister and exercises executive power. The president whose functions include appointing the prime minister, dissolving the parliament, promulgating laws and appointing members to constitutional bodies, is elected by a two thirds majority vote in the parliament.

Upon the proposal of the prime minister, the president dissolved the parliament on 20 February and early elections were called for 26 March. A total of 173 candidates, representing six political parties, and four independent candidates contested the elections. Women made up 23 per cent (41 in total) of the contestants.<sup>2</sup>

The political party system is dominated by the Labour Party (PL), which won the last two elections, and the Nationalist Party (PN). The two parties have alternated in governance since Malta's independence in 1964. The structure and composition of several state institutions, including those involved in election administration and regulation, reflect the dominance of the PL and PN.

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<sup>1</sup> See previous [ODIHR election reports on Malta](#). The full list of recommendations can be consulted on ODIHR Election Recommendations Database.

<sup>2</sup> Of the 177 candidates, 135 were males, 41 females and 1 Gender X. The following parties contested these elections: ABBA (14), Democratic Alternative + Democratic Party (AD+PD) (10), Labour Party (69), Nationalist Party (70), People's Party (8), and Volt Malta (2). In the 2017 elections, 19 per cent of the candidates were women.

The main political issues ahead of the elections were the government's response to the ongoing COVID-19 pandemic, a series of constitutional reforms, and a number of corruption scandals involving government ministers. Most notable among the latter was the December 2019 resignation of Prime Minister Joseph Muscat following the implication of members of his office and the arrest of a government contractor in connection with the death of investigative journalist Daphne Caruana Galizia in October 2017.<sup>3</sup>

#### IV. LEGAL FRAMEWORK AND ELECTORAL SYSTEM

The legal framework for elections comprises the 1964 Constitution (last amended in 2021), the 1991 General Elections Act (GEA, last amended in 2022) and the 1939 Electoral Polling Ordinance (last amended in 2007), as well as the 2015 Financing of Political Parties Act (FPPA). Several amendments to the electoral legislation were introduced following the 2017 parliamentary elections, including the introduction, in 2019, of an electronic counting system, which was piloted during that year's European Parliament elections. On 20 April 2021, amendments to the Constitution introduced a gender quota for seat allocation and changes to the GEA increased the number of members of the EC from eight to ten, not counting among them the Chief Electoral Commissioner, and introduced a requirement that at least four members of the EC be of each sex. On 25 January 2022, in order to facilitate voting by persons affected by the COVID-19 pandemic, amendments to the GEA introduced procedures for voting by persons affected by certain diseases or who are in mandatory quarantine. Positive efforts were made to address certain previous ODIHR recommendations, such as the decriminalization of defamation in accordance with the Media and Defamation Act of 24 April 2018. However, several recommendations remain unaddressed, including those related to the oversight of political and campaign finance.

The 65 members of parliament are elected to five-year terms in 13 multi-mandate electoral districts, through a ranked preference single transferable vote system. Voters indicate their preferred candidates in numerical order and may include as many candidates from all party lists as they wish. At counting, candidates are deemed elected should they reach or surpass the vote quota and the surplus of votes over the quota is distributed to the second preference candidates.<sup>4</sup> Counting continues through additional rounds with the consequently ranked preferences on the ballots counted for candidates deemed elected, with surpluses transferred through each progressive round until all five seats in each constituency are filled by candidates reaching the vote quota. Some ODIHR EET interlocutors expressed concerns that the quota constitutes a threshold that limits access to smaller parties and independent candidates.

The Constitution requires that the number of seats allocated to each party be proportional to the number of votes received nationwide and that a party that obtains more than 50 per cent of first-

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<sup>3</sup> The [2021 report of the Public Inquiry Board](#) concluded that “the State should bear the responsibility for the assassination by creating a climate of impunity, generated from the levels at the core of the administration at Castille”. Furthermore, “it was Daphne Caruana Galizia’s writings regarding the intricacies between big business and politics which led to the assassination” and noted the “nonchalant and confident manner in which all those who were allegedly involved in the actual execution of the murder, were openly displaying the contacts they had with ministers, the Chief of Staff and other individuals at the centre of power”. Also see European Parliament Resolutions [2019/2954\(RSP\)](#) of 18 December 2019 and [2021/2611\(RSP\)](#) of 29 April 2021, as well as [Resolution 2293\(2019\)](#) of the Parliamentary Assembly of the Council of Europe of 26 June 2019

<sup>4</sup> The quota is calculated by dividing the number of valid votes per district by the number of seats to be allocated plus one seat and adding one to the result.

preference votes receive additional seats, if necessary, to ensure an absolute majority.<sup>5</sup> Several ODIHR EET interlocutors noted that these measures further advantage the two major parties diminishing the likelihood of candidates from smaller parties or of independent candidates being elected.

On 20 April 2021, the Constitution was amended to introduce temporary special measures through which up to 12 additional seats may be allocated to candidates of the underrepresented sex. However, the mechanism only applies where two parties are elected to parliament with the seats shared between them. Several ODIHR EET interlocutors noted that the measures serve to reinforce the two-party dominance in the legislature while failing to address structural barriers to the representation of women in parliament and their participation in political life.<sup>6</sup>

*The mechanism for enhancing women's representation could be revisited and revised, in consultation with stakeholders, well in advance of the next elections.*

*Political parties should also be encouraged to strengthen their efforts to support women's participation through internal party policies and the integration of gender equality considerations in their platforms.*

The EC is constitutionally mandated to review and alter electoral district boundaries. The most recent revision was unanimously adopted by parliament and published in the Government Gazette on 16 March 2021.<sup>7</sup>

## V. ELECTION ADMINISTRATION

The EC is a permanent body responsible for the overall organization of elections and the oversight of campaign finance and is composed of ten members and the Chief Electoral Commissioner.<sup>8</sup> Members are appointed for a renewable three-year mandate by the president, at the proposal of the prime minister and in consultation with the leader of the opposition. In practice, the members are nominated equally by the two parliamentary political parties, which many ODIHR EET interlocutors noted calls into question the independence of the EC from these parties. The Chief Electoral Commissioner is appointed by the prime minister in agreement with the opposition party and heads both the EC and Electoral Office (EO).<sup>9</sup>

The GEA establishes that parties represented in parliament may nominate two delegates to the EC, who should be informed in writing about all EC decisions, can request information about the work

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<sup>5</sup> Article 52 was amended in 1987, 1996 and 2007 to include several provisions to ensure proportionality, but only when two political parties are elected.

<sup>6</sup> The independent candidate Arnold Cassola [filed a complaint in 2021](#) against the regulations. The First Hall of the Civil Court dismissed the case due to lack of standing. Its decision was annulled by an appeal to the Constitutional Court and the case was returned to the Civil Court.

<sup>7</sup> A review of constituency boundaries is required every five years, ensuring no district deviates in population by more than five per cent of the average. For these elections a total of 1,320 voters were moved from the 7<sup>th</sup> to 6<sup>th</sup> district and 1,219 voters moved from the 12<sup>th</sup> to 10<sup>th</sup> district. The published revision of the electoral districts is available [here](#).

<sup>8</sup> The current EC is composed of four women and six men, the Chief Electoral Commissioner is a man and woman serves at EC secretary. While the secretary of the previous structure was a women, no women served as commissioners.

<sup>9</sup> The EO is composed of 40 employees, with supplementary staff employed during the electoral period and is charged with organizational and operational aspects of elections, including implementing changes in the Electoral Register, hosting the EC website, training electoral staff, providing manuals, and implementing early voting or counting procedures.



of the EO and be invited to EC meetings and file complaints. The limiting of EC members and delegates to representatives of the parliamentary parties further engrains two party dominance and excludes smaller parties from the electoral institutions.

For the election day, there were 741 polling stations in 116 polling centres. Elections were managed at polling station level by 3,937 Assistant Electoral Commissioners (AECs) and 110 Polling Place Officers (PPOs), who were selected by public call.<sup>10</sup> The EC also employed 844 counting staff. Briefing sessions were organized for the AECs, their substitutes and PPOs, as well as for the counting staff, who participated in practical sessions with the equipment. While the ODIHR EET noted a strong representation of women as poll workers in the limited number of polling stations visited, gender-disaggregated data relating to AECs is not available.<sup>11</sup>

*In line with international standards, the Electoral Commission should provide gender-disaggregated data related to the election administration.*

Parties contesting the elections can nominate party agents to represent them during the opening and closing of voting, delivery, transport, and counting stages of the process and district agents to communicate with the EC. AECs can also be nominated as party agents, which has the potential to create a conflict of interest. Smaller parties and independent candidates noted that they often lack the capacity to nominate representatives for all stages of the electoral process.

*Consideration could be given to reviewing legal provisions for the appointment of individuals as both Assistant Electoral Commissioners and party agents to avoid any conflict of interest.*

During the election period, the EC met in person at least once per week, with additional meetings taking place online.<sup>12</sup> The EC meetings were held in closed sessions and the meeting minutes were not published, which significantly limited transparency and is not in line with international standards.<sup>13</sup> The Constitution stipulates that EC decisions should be taken by majority vote, though EC members informed the ODIHR EET that no formal voting procedure was followed and decisions were made by consensus.

The EC organised and administered the elections efficiently and professionally, generally enjoying the confidence of stakeholders. However, the partisan nature of the EC's appointment, and the lack

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<sup>10</sup> The chairperson is nominated by the EC, while other political parties contesting a district can nominate one AEC each plus reserves. At least three AECs should be present in the polling station. The list of the AECs was not published in the online version of the Government Gazette as required by the law, due to data protection reasons, however a notice in this sense was available.

<sup>11</sup> Paragraph 40.13 of the [1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#), stipulates that participating States will “ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women”. Article 48d of the [1997 UN Committee on the Elimination of Discrimination Against Women](#) General Recommendation No. 23 states that parties should collect “statistical data, disaggregated by sex, showing the percentage of women relative to men who enjoy those rights”.

<sup>12</sup> Meetings were also organized with other institutions involved in the electoral process and the media.

<sup>13</sup> The EC publishes press releases and notices in the Government Gazette on procedural issues and results on its website. Paragraph II.3.1.81 of the [2002 Venice Commission's Code of Good Practice in Electoral Matters](#) Explanatory report states that the “meetings of the central electoral commission should be open to everyone, including the media”. Paragraph 19 of [General Comment 34 by the UN Human Rights Committee on Article 19 of the International Covenant on Civil and Political Rights \(ICCPR\)](#) states that “to give effect to the right of access to information, States parties should proactively put in the public domain Government information of public interest. State parties should make every effort to ensure easy, prompt, effective and practical access to such information”.



of transparency in its decision-making procedures reflect the entrenched dominance of the two main parties to the detriment of smaller parties and independent candidates.

*To enhance transparency and public confidence, consideration could be given to ensuring access to the meetings of the Electoral Commission for all stakeholders and to publishing the minutes of all meetings. Furthermore, all regulations and clarifications on electoral procedures should be adopted in formal sessions of the Electoral Commission by vote and duly published.*

Complaints can be submitted to the EC, generally in writing, for voter registration, candidate nomination and procedural issues. Other general complaints related to elections are accepted on a rolling basis with no deadlines for decisions, which is not in line with international standards.<sup>14</sup> There is no public record of how many complaints were received, though the EC informed the ODIHR EET that only four official complaints were received for these elections.<sup>15</sup> Several interlocutors stated that in some cases the EC failed to provide responses or the responses were delayed.

## VI. VOTER REGISTRATION

Following the constitutional amendment of 9 March 2018, citizens who have reached the age of 16 on the day preceding election day are eligible to vote. Citizens who have had their voting rights revoked by a court decision, including on the basis of legal incapacity due to intellectual or psychosocial disability or are declared to be “of unsound mind”, or who are serving a prison sentence of more than one year regardless of the gravity of the crime, are ineligible to vote, despite previous ODIHR recommendations.<sup>16</sup> In order to be included in voter lists, citizens must have been resident in the country for at least 6 of the 18 months preceding the elections, though ODIHR EET interlocutors noted that this requirement is difficult to enforce given that Malta is a Schengen Area country.

*The legal framework should be harmonized with the objectives of the Convention on the Rights of Persons with Disabilities by removing all restrictions on voting rights on the basis of any kind of disability. The limitations imposed on convicted citizens should be reviewed in order to ensure proportionality with the committed crime.*

Voter registration is passive, based on the voter’s habitual residence, and voters can only cast their ballots at their assigned polling station. The Electoral Register is administered by the EC and is based on information provided by Identity Malta, the agency responsible for the issuance of

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<sup>14</sup> Paragraph II.3.3.g of the [Venice Commission Code of Good Practice in Electoral Matters](#) states that “time-limits for lodging and deciding appeals must be short”.

<sup>15</sup> ODIHR EET was informed the EO has no legal remit to investigate and the EC forwards all complaints to other authorities. No such complaints were filed to Malta Police. A complaint submitted by a contestant regarding the use of governmental checks (*see Campaign Finance*) during the campaign was treated as an observation.

<sup>16</sup> A voter can be declared of “unsound mind” by the unanimous decision of a medical board, composed of representatives nominated by the EC and the parliamentary parties and the EC may not refuse to register voters or remove their name from the Register without such decision. The provisions preventing citizens with psychosocial disabilities from voting are not in line with Articles 12 and 29 of the [2006 United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#). Furthermore, Paragraph 9.4 of the [2013 CRPD Committee Communication No. 4/2011](#) underlines that “an exclusion of the right to vote on the basis of a perceived or actual psychosocial or intellectual disability, including a restriction pursuant to an individualized assessment, constitutes discrimination on the basis of disability, within the meaning of article 2 of the Convention”. Also see paragraphs of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#).

identification cards, which is updated on a monthly basis using information from various civil registries. Outside the electoral period, the Register is published on the EC website twice a year, while a revised Electoral Register is published on the EC website and the Government Gazette, within five days of the announcement of elections. The Electoral Register publicly displays the names, addresses and ID number of all voters, which could run contrary to international standards relating to the private data of citizens.<sup>17</sup> In January 2022, the Information and Data Protection Commissioner (IDPC) fined a private company which processed and publicly exposed data due to security breaches on a database with the majority of voters from the 2013 parliamentary elections including their political options.<sup>18</sup>

*In line with international standards and regulations, consideration should be given to safeguarding voter data privacy, while maintaining the ability for voters to verify their registration and for the independent scrutiny of voter lists.*

Voters who are not included in the Register or who need to correct their information may lodge an appeal to a Revising Officer.<sup>19</sup> The deadline for the submission of revision requests was 12 March and 33 pending cases of revisions were halted without resolution, contrary to OSCE Commitments.<sup>20</sup> Some 355,075 voters were included in the Electoral Register. The registration of voters was inclusive and generally enjoyed the confidence of the ODIHR EET interlocutors, while some interlocutors raised concerns regarding its accuracy.

The EC distributed Voting Cards (VCs) with the support of police officers who, in some cases, were accompanied by party agents.<sup>21</sup> By law, those not reached at home had the option to collect their VCs from police stations or from the counting complex in Malta or Gozo, before 24 March. Some 14,473 voting cards remained uncollected.<sup>22</sup> The use of VCs is generally perceived as adding to the integrity of the electoral process, however most stakeholders considered the procedure to be burdensome, expensive and redundant as voters could use their biometric national identity cards. Although the general distribution process did not raise issues, concerns were expressed regarding the issuing of VCs to some interdicted voters and that parties could use the data collected on the undistributed VCs to pressure voters. The PN filed a complaint to the EC to rerun the voting for prisoners, claiming that some voters sentenced for more than a year had been allowed to vote, in spite of legal interdictions to do so.<sup>23</sup>

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<sup>17</sup> A notice was published on 25 February in the Government Gazette, while [the register was available](#) for individual search and displayed by locality on the EC [website](#). According to Paragraph 24 of the [1991 OSCE Moscow Document](#), the OSCE participating States “reconfirm the right to the protection of private and family life, domicile, correspondence and electronic communications”.

<sup>18</sup> Complaints were submitted to the IDPC in 2020 by several civic organizations. The processing of political opinions is prohibited by Article 9.1 of the [EU Regulation 2016/679 \(General Data Protection Regulation\)](#).

<sup>19</sup> The decisions of the Revising Officers can be appealed in the Court of Appeal. A number of 60 additions and 12 corrections were published in the Government Gazette on 22 March. Some 161 voters deceased as of the announcement of elections.

<sup>20</sup> Paragraph 18.2 of the [1991 Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE](#) states that “everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity”.

<sup>21</sup> In some cases, there were no party representatives delegated or only one delegate was involved. AD+PD did not deploy such delegates.

<sup>22</sup> A total number of 355,075 ordinary voting cards and 113 special voting cards [were printed](#). The list of voters with uncollected VCs was not published in the online version of the Government Gazette due to data protection reasons, but a notice was available.

<sup>23</sup> The EC rejected the complaint which was then appealed to the Constitutional Court, which declined its jurisdiction. The Constitutional Court ascertained that the EC could not have refused to issue VCs to voters, as their acceptance in the Electoral Register was not contested. The Registrar of Courts failed to transmit the monthly list of convicted persons as of June 2021, despite requests by the EC. Some 180 prisoners were registered to vote in prison.

## VII. POLITICAL PARTY AND CAMPAIGN FINANCE

The main laws regulating political party and campaign financing are the FPPA, the GEA, Electoral (Polling) Ordinance, and the 1982 Malta Foreign Interference Act. While the passing of the FPPA strengthened the legal framework for the regulation of campaign finance, several concerns remain, including the high thresholds for mandatory disclosure, delayed publication of parties' financial reports, and the limited enforcement of political finance regulation resulting from the low capacity of the EC to implement existing provisions. The majority of ODIHR's previous recommendations related to campaign finance remain unaddressed.

During the election campaign, the government distributed tax refund and stimulus cheques, accompanied by a personalised letter signed by the Prime Minister and Minister of Finance, both of whom were contesting in the elections.<sup>24</sup> Such actions could blur the line between party and state and do not conform to international standards and good practice and most ODIHR EET interlocutors questioned the unusual timing of this year's tax refund.<sup>25</sup> Additionally, the regular use of their social media channels by ministers and parliamentary secretaries to publicise their personal and political profiles could be interpreted as a misuse of official resources.<sup>26</sup>

*In order to prevent the misuse of administrative resources, no major announcements of financial allocations which might create a favourable perception of a given party or candidate should occur during campaign periods.*

### A. POLITICAL PARTY AND CAMPAIGN INCOME

There is no provision of direct public funding.<sup>27</sup> The PL and PN, as parliamentary parties are vastly better resourced than the smaller parties, possessing significant business interests including real estate and media outlets, resulting in an imbalance in campaign funding available to the various

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<sup>24</sup> The value of the 2022 Tax refund cheques [announced](#) on 11 October 2021 was in a range of between EUR 60 to EUR 140 and their distribution came earlier than in the previous years. As reported by the [media](#), the Stimulus Cheque was announced on 3 February 2022, 17 days before the elections. The government proceeded with the disbursement of cheques worth between EUR 100 up to EUR 200 as an incentive to boost the economy and counter the rising cost-of-living.

<sup>25</sup> Paragraph 5.4 of the [1990 OSCE Copenhagen Document](#) calls for "a clear separation between the State and political parties; in particular, political parties will not be merged with the State". The abuse of state resources is universally condemned by international norms, such as Article 9 of the United Nations Convention against Corruption. See also section B.1.3. of the [2016 ODIHR and Venice Commission Joint Guidelines for Preventing and Responding to Misuse of Administrative Resources in Electoral Processes](#) states that "In order to prevent the misuse of administrative resources to imbalance the level playing field during electoral competitions, the legal framework should state that no major announcements linked to or aimed at creating a favourable perception towards a given party or candidate should occur during campaigns". Also see paragraph 251 of the ODIHR-Venice Commission Guidelines on Political Party Regulation.

<sup>26</sup> In 2020, the Commissioner for Standards in Public Life published Case Report No [K/010 "Use of public funds for the promotion of personal social media pages of Ministers and Parliamentary Secretaries"](#). The Commissioner issued the Draft [Guidelines on Government Advertising and Promotional Material](#) on 22 June 2021 recommending that government advertisements and promotional material should not be produced to serve private or partisan political purposes.

<sup>27</sup> Since 1994, based on the agreements pertaining to the parliamentary political parties, political groupings in the Parliament have received financial compensations for various services and consultancies, which does not explicitly exclude political campaigning, which lack transparency. The 2018 House of Representatives budgetary allocation for line item 5298 "Development of relations with E.U. and the Mediterranean region by Political Grouping in Parliament" amounted to EUR 200,000, which was split equally between the two main political parties. See the 2018 NAO Report on the Public Accounts, pp. 59-60.

parties.<sup>28</sup> Several ODIHR EET interlocutors emphasized the need for introducing adequately regulated and transparent public funding system, in line with the international standards.<sup>29</sup>

*To further facilitate political pluralism, consideration could be given to the introduction of a meaningful public funding system for political parties, based on fair and reasonable criteria.*

Political parties are mostly funded through private contributions in the form of money or property, sponsorships, loans, donations to cover expenditure incurred by the party, dues from its members or private funding by candidates, and commercial discounts. Legal entities and individuals are permitted to donate up to EUR 25,000 per calendar year. Anonymous donations, funding by a foundation, trust or corporation where the ultimate beneficial owner is not identifiable, as well as those from any company or entity in which the state has a controlling interest are prohibited. Foreign funding is restricted by law.<sup>30</sup>

Donations can be collected by a party, a member on behalf of the party, candidate, or any organisation, whether corporate or otherwise, in which the party, directly or indirectly exercises effective management. The broad variety of eligible recipients, the fact that donations can be collected through a broad range of options and the lack of thresholds requiring use of bank accounts in the case of cash donations, reduce the transparency and capacity for effective oversight. Restrictions concerning donations do not apply to media outlets and other companies that are owned by political parties, potentially enabling political parties to use those entities to run financial operations outside public control.<sup>31</sup>

*To foster transparency, party-controlled entities should be subject to the same rules that govern the funding of the political parties.*

Both parliamentary parties rely on their media interests to collect contributions through so-called ‘telethons’, television entertainment programmes during which parties fundraise by asking people to call and make donations. Some ODIHR EET interlocutors noted that these telethons have the potential to conceal real sources of funding.

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<sup>28</sup> According to parties’ [2018 annual financial statements](#), the value of the PL assets exceeded EUR 23 million and the PN assets were worth EUR 16.5 million. By comparison, the reported assets of the AD which received the third highest share of votes in 2017 were only EUR 500.

<sup>29</sup> Paragraph 232 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#) state that “Such systems of funding should also aim to ensure that all parties, including opposition parties, small parties and new parties, are able to compete in elections in accordance with the principle of equal opportunities, thereby strengthening political pluralism and helping to ensure the proper functioning of democratic institutions”. Also see Paragraph 58 of [the 2014 Joint Opinion on the Draft Act to Regulate the Formation, the Inner Structures, Functioning and Financing of Political Parties and Their Participation in Elections of Malta](#).

<sup>30</sup> The Monitoring Committee established by the 1982 Foreign Interference Act may permit foreign funding, in line with Sections 3 (2b) and 6 (5) of the Act, which state that the Committee “shall not authorise the receipt of any money, equipment or other material by any political party unless it is appropriately balanced by similar or equivalent contribution to the other political parties, taking into account the size of their representation in Parliament, and the decision shall be taken by a unanimous vote.” ODIHR EET interlocutors were not concerned with foreign donations influencing the elections.

<sup>31</sup> Article 6 of the Council of Europe Committee of Ministers [Recommendation Rec\(2003\)4](#) states that “rules concerning donations to political parties, (...) should also apply, as appropriate, to all entities which are related, directly or indirectly, to a political party or are otherwise under the control of a political party”.

## B. CAMPAIGN EXPENDITURE

The spending limit for candidates is EUR 20,000 per district.<sup>32</sup> There are no separate rules for campaign spending or a ceiling on overall party expenditure, and campaigning by third parties is not regulated.<sup>33</sup> Many ODIHR EET interlocutors suggested that campaign costs are much higher than what is usually reported by candidates and parties.<sup>34</sup> The PL dominated the campaign advertising with a large number of billboards and online ads.<sup>35</sup> In addition, both major parties, organised costly rallies with high attendances.<sup>36</sup> ODIHR EET interlocutors underlined that this led to a distorted electoral campaign that disproportionately favoured well-resourced parties.<sup>37</sup> The Commissioner for Standards in Public Life received complaints in relation to the practice of offering material incentives for people to vote.<sup>38</sup> At times, there was a lack of information about who ordered and paid for the production and display of electoral materials which limited transparency and did not provide sufficient safeguard against excessive spending.

*Consideration could be given to introducing measures to establishing limits on party's campaign expenditure and regulating financing by third parties.*

*To enhance transparency and enable voters to make informed choices, all election-related campaign materials should contain imprint data.*

## C. DISCLOSURE, REPORTING AND OVERSIGHT

Disclosure of income or expenditure is not required before election day. Party candidates report on their income and expenditure within 31 days following the publication of election results, while those candidates who obtain seats are required to report within 10 days from the date on which they were declared elected. Independent candidates are required to submit a comprehensive donation report to the EC within 60 days from election day, and failure to comply is subject to higher sanctions than those meted out to candidates nominated by parties.<sup>39</sup> According to the FPPA, an independent candidate might be liable to administrative fines of up to EUR 20,000 while

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<sup>32</sup> This limit has been increased from the previous cap of EUR 1,400. If one candidate is contesting two electoral districts, she/he can decide how to allocate the permissible expenditure of EUR 40,000.

<sup>33</sup> Paragraph 256 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#), recommends that “some forms of regulation, with comparable obligations and restrictions as apply to parties and party candidates, be extended to third parties that are involved in the campaign, to ensure transparency and accountability”.

<sup>34</sup> In their reports for the 2017 elections, PL and PN reported their expenditure at the level of EUR 1,222,000 and EUR 1,326,466, respectively.

<sup>35</sup> See [reports](#) by *The Shift* investigating the advertising on major platforms and online, as well as media reports that PL and PN were spending up to EUR 670,000 on political advertising.

<sup>36</sup> See various media [reports](#), [analyses](#), and [articles presenting some of the campaign events](#).

<sup>37</sup> Paragraph 19 of the [General Comment No. 25 to Article 25 of the International Covenant on Civil and Political Rights \(ICCPR\)](#) provides for reasonable limitations on campaign expenditures “where this is necessary to ensure that the free choice of voters is not undermined or the democratic process distorted by disproportionate expenditure on behalf of any candidate or party”.

<sup>38</sup> Such an offence is defined as treating - corrupt practice of providing food, drink, entertainment, before, during or after the elections, “for the purpose of corruptly influencing that person or any other person to give or refrain from giving his vote at the election” and punishable under Article 54. (1) of the Fourteen Schedule of GEA. The Commissioner for Standards in Public Life informed the ODIHR EET about an upcoming report looking into these allegations.

<sup>39</sup> The [1990 Copenhagen Document](#) guarantees the “right of citizens to seek political or public office, individually or as representatives of political parties or organizations, without discrimination”



candidates nominated by parties can be fined up to EUR 465 for submitting false reports or exceeding the spending ceiling.<sup>40</sup>

*Campaign finance regulations, and sanctions should be equally applied to all candidates. In order to increase the transparency of campaign funding, the law should be reviewed to unify reporting obligations for all the candidates.*

Political parties are required to submit externally audited annual reports to the EC within four months following the end of their financial year. External auditors appointed by the EC perform the audit of party annual accounts and the audited statements must be published on the EC website within one month. Ahead of these elections the EC had not published party account audits since 2018, which stands contrary to legal obligations, international standards and good practice, and reflects a lack effective oversight.<sup>41</sup>

*In order to maintain transparency in campaign financing and expenditure the Electoral Commission should publish all financial reports within legal deadlines and address the existing delays.*

Details of parties' donations exceeding EUR 7,000 are required to be posted on the EC website, while contributions above EUR 500 are reported only to the EC and are not publicly disclosed. Political parties are required to register donations over EUR 50, and can remain confidential unless the party is challenged by the EC. Donation reports are required to be posted on the EC website as soon as they are made accessible to the public. In practice, this publication was significantly delayed denying the possibility of reviewing parties' finances in a timely and detailed manner.<sup>42</sup>

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<sup>40</sup> Sanctions of exclusion from voting or standing as a candidate for four years may be imposed and a successful candidate can be deprived of parliamentary seat if the Constitutional Court decides that an elected candidate has given information which is false in the return of election expenses or that an elected candidate has incurred election expenses in an amount exceeding the amount permissible by law. See paragraph 13 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#) stating that "In all cases, sanctions should be proportionate to the nature of the violation." Paragraph 7.5 of the 1990 OSCE Copenhagen Document specifically requires participating States to "respect the right of citizens to seek political or public office, individually or as representatives of political parties or organisations, without discrimination"; paragraph 185 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#) explains that "this commitment prohibits discrimination in the exercise of the right to stand for public office, between candidates who are affiliated to political parties and candidates who are not. Independent candidates should therefore be permitted to run for elections according to the same conditions applicable to candidates nominated by political parties.

<sup>41</sup> The latest reports published on the EC [website](#) are from 2018. The 2019 reports were published after the 2022 election. The 2020 reports remain to be published as political parties were given an extension to the deadline for submission of their reports due to the constraints imposed on public gatherings, and, therefore, the convening of meetings or conferences to approve financial reports was not possible as a result of the COVID-19 pandemic. See Article 7.3 of the [2003 UN Convention against Corruption](#) obliges states to "consider taking appropriate legislative and administrative measures... to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties" See also paragraph 259 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#). "(...) it is good practice for such financial reports to be made available on publicly available resources in a coherent, comprehensive and timely manner over an extended period of time."

<sup>42</sup> The most recent reports showing that between 90% to 99% of all donations received by main parties are below EUR 7,000 limit, thus showing little details. As observed by paragraph 263 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#): "Transparency in reporting requires the timely publication of parties' financial reports; the reports need to remain public for an appropriate amount of time, to allow for proper public scrutiny. The fulfilment of this requirement means that reports need to contain enough details to be useful and understandable for the general public and can be facilitated through digitalization of the process".

*To enhance transparency and facilitate oversight, consideration could be given to lowering the public disclosure threshold on large donations and requiring donations above the threshold to be made through a designated bank account.*

The EC lacks sufficient expertise and human resources to monitor and investigate potential violations of campaign finance regulations and its partisan membership may undermine its capacity to act impartially in dealing with party and campaign finance. Several ODIHR EET interlocutors also pointed to the lack of political will as an obstacle to adequate and effective oversight.<sup>43</sup>

On 8 October 2018, the Constitutional Court judged certain provisions of the FPPA as unconstitutional and ruled that the EC has neither the power to adjudicate nor to impose administrative fines and sanctions.<sup>44</sup> The Parliament has not amended the provisions which were deemed unconstitutional, thereby creating legal uncertainty when it comes to future enforcement actions of the EC and leaving important adjudicatory and enforcement functions unfulfilled. No campaign finance-related proceedings or investigations were instituted against candidates or political parties during these elections.<sup>45</sup>

*The legal framework should be reviewed to enhance the oversight system, including by providing the Electoral Commission with adequate powers and resources to carry out pro-active and efficient supervision, investigation and enforcement of political finance regulations. The Auditor General could be empowered to carry out pro-active investigations, and publish findings on the misuse of public resources for campaign purposes.*

## VIII. MEDIA

Television remains the main source of national political information, despite the Internet being increasingly used as source of information. The media market, allows for a diversity of views with some small privately owned TV stations providing political coverage, though it is dominated by the Public Broadcasting Services (PBS) and two commercial TV stations which are owned by the main political parties. Several Internet based media outlets and newspapers provide more independent coverage.

The murder of investigative journalist Daphne Caruana Galizia in October 2017 and the apparent delays in investigating and prosecuting the crime by public authorities tarnished the media landscape. Although the assassination shed a light on the safety of journalists in Malta, civil society representatives and journalists reported that they continue to be victimized for their work.<sup>46</sup> Several journalists working with different media outlets observed that the lack of implementation of the Freedom of Information requests to obtain publicly relevant information constitutes a major impediment in their daily work.<sup>47</sup> Information on the amount and allocation of state support to the

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<sup>43</sup> The EC has neither dedicated staff nor a budget to implement the existing campaign finance provisions. Paragraph 276 of the 2020 [ODIHR-Venice Commission Guidelines on Political Party Regulation](#) , recommends that “effective measures should be taken in legislation and in practice to ensure the respective body’s independence from political pressure and commitment to impartiality. Such independence and impartiality are fundamental to its proper functioning”.

<sup>44</sup> See the Constitutional Court [Ruling](#), Application number 25/17 JZM.

<sup>45</sup> In 2017, the EC appointed a three-member committee, tasked with investigating allegations of violations of the FPPA. The investigation was stopped when one of the parties complained to the CC.

<sup>46</sup> On 2 March 2022, the Institute of Maltese Journalists condemned the PL singling out the journalist Manuel Delia and implying his association with the PN on their election campaign billboard..

<sup>47</sup> Revisions of the Freedom of Information Act (FOIA) have already been called for by the [Information and Data Protection Commissioner](#) and the independent board of the [Public Inquiry into the murder of Daphne](#)



media during the COVID-19 pandemic is not publicly accessible.<sup>48</sup> Despite the decriminalization of defamation, journalists and media outlets still face civil defamation claims, including cases of Strategic Litigation against Public Participation (SLAPP), abusive legal proceedings aimed at inhibiting critical reporting.<sup>49</sup>

## A. LEGAL FRAMEWORK AND OVERSIGHT

The 1964 Constitution guarantees freedom of expression and freedom of information and requires impartial broadcasting and fair allocation of coverage of political parties and establishes the Broadcasting Authority (BA) as the body tasked with enforcing these provisions. Additionally, the 1991 Broadcasting Act requires all broadcasters to adhere to “due accuracy” in news and “due impartiality” in political coverage. The requirements for accuracy and impartiality in broadcasting are further regulated in subsidiary legislation and during each election these are supplemented by a Directive issued by the BA. The 2008 Freedom of Information Act (FOIA) provides for the right to access public information. In 2018 and following a repeated ODIHR recommendation, the new Media and Defamation Act decriminalized defamation and amended a civil defamation procedure.<sup>50</sup>

Following the publication of the Public Inquiry Report on the assassination of Ms. Caruana Galizia two draft laws related to freedom of expression and the protection of journalists were presented in January 2022 though they have yet to be brought before parliament.<sup>51</sup> The laws proposed reforms strengthening the constitutional guarantee of freedom of expression, amended provisions on the liability of editors and publishers in defamation cases in the event of death of the original author and provisions regarding the recognition and enforcement of foreign judgements in defamation cases.<sup>52</sup> However, representatives of media and civil society criticized the lack of consultation in drafting these laws.

As provided for in the Constitution, members of the BA are appointed by the President, upon the advice of the Prime Minister and in consultation with the leader of the opposition. In practice, the two major political parties each appoint two members, whilst the chairperson is generally chosen by mutual agreement between the Prime Minister and the leader of the opposition. EET interlocutors reported a generally low trust in the institution’s active enforcement of legal requirements citing that the appointment procedures for the BA’s membership, while bipartisan, may undermine the independence of the membership.<sup>53</sup> The board of directors and the editorial

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[Caruana Galizia](#). Similar concerns have also been raised by the Venice Commission and the Special Rapporteur for the [Parliamentary Assembly](#) of the Council of Europe (PACE).

<sup>48</sup> Journalists reported to the ODIHR EET that despite official FOIA requests they could not obtain information on the amount of subsidies and its allocation. See Paragraph 1. d) of the 2010 Joint Declaration on Ten Key Challenges to Freedom of Expression in the Next Decade.

<sup>49</sup> According to the Coalition against Slapps in Europe at the start of 2022, three defamation cases were filed by public officials against newsrooms and journalists in Malta.

<sup>50</sup> See OSCE Representative on Freedom of the Media [press release](#) of 15 May 2018.

<sup>51</sup> See the [Public Inquiry Report](#) published on 29 July 2021. The draft Bill of the Act “to amend the Constitution and various other laws to strengthen the right to freedom of expression and the right to privacy and to implement various measures for the protection of the media and of journalists” and the draft Bill of the Act “to provide for the establishment of structures for the protection of democratic society including the protection of journalists, other persons with a role in the media and in non-governmental organisations and persons in public life”.

<sup>52</sup> The OSCE Representative on Freedom of the Media (RFoM) conducted [a legal analysis](#) of both draft laws recommending *inter alia*, in cases of decease of the original author, to guarantee that proceedings against editors and publishers can only be pursued when legal liability can properly be established and to eliminate provisions regarding the recognition and enforcement of foreign judgements in defamation cases.

<sup>53</sup> The [CoE Recommendation Rec\(2000\)23](#) on the independence and functions of regulatory authorities for the broadcasting sector states that “The rules governing regulatory authorities for the broadcasting sector,

board of PBS are appointed by a government minister and its budget is determined by the government at its discretion which stands contrary to international commitments.<sup>54</sup>

*The appointment procedure for the members of the governing boards of the Broadcasting Authority and the Public Broadcasting Services should be brought in line with international standards and good practice to provide for independence and transparency.*

*To ensure the public broadcaster's editorial independence, the management should be selected through a transparent, competitive process and legal safeguards for its financial sustainability and autonomy should be enacted.*

## **B. COVERAGE OF THE ELECTION CAMPAIGN**

Despite the constitutional obligation for due impartiality in public and commercial broadcasting no measures were taken by the BA to enforce this obligation during the campaign period. The BA informed the ODIHR EET that the requirement for impartial coverage outlined in the Broadcasting Act only applied to the PBS and not the two major private TV stations which are owned by the PL and PN. This interpretation of the law is based on a provision in Article 13 of the Broadcasting Act which holds that, with exception of the PBS, when assessing the impartiality requirement, the Authority, “shall be able to consider the general output of programmes provided by the various broadcasting licensees [...], together as a whole”.<sup>55</sup> ODIHR interlocutors reported that interference with editorial autonomy by the ownership of the media houses resulted in a lack of pluralistic information offered in broadcasting which benefitted the parliamentary parties and ultimately the ruling party. This could not be counter-balanced by the limited amount of free airtime provided to smaller parties and independent candidates.

The BA does not conduct systematic quantitative analysis of the coverage either between or during election campaigns. It informed the ODIHR EET that it conducted qualitative monitoring, assessing the extent to which contestants are fairly covered in news and current affairs programmes outside of campaign periods with a more rigorous analysis conducted during the election period.<sup>56</sup> However, neither the monitoring methodology nor the results are published, which limits the effectiveness and transparency of its monitoring.

The BA has *ex officio* authority to investigate media-related violations. The BA issued a directive for the period between 28 February and 26 March, stating that complaints had to be filed directly with the BA instead with the respective broadcaster. The directive provided for an expedited financial sanctioning procedure, in which broadcasters have to reply to the BA within a day and the

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especially their membership, are a key element of their independence. Therefore, they should be defined so as to protect them against any interference, in particular by political forces or economic interests.” Paragraph 1.b.ii. of the [2020 Joint Declaration on Freedom of Expression and Elections in the Digital Age](#) recommends that “any administrative body which has the power to oversee rules relating to the media during election periods should be independent of the government.” See also [Monitoring Media Pluralism in the Digital Era by the European University Institute 2021](#), p. 11.

<sup>54</sup> The [CoE Recommendation CM/Rec \(2012\)1 on public service media governance](#) stipulates that “securing and safeguarding independence is ... a primary role of any framework of public service media governance”. See also Paragraph 16 of the 2011 CCPR General Comment No.34 to the ICCPR which requires States parties to provide funding in a manner that does not undermine the independence of public broadcasters.

<sup>55</sup> However, Article 4.4 of Subsidiary Legislation 350.14 stipulates that it “shall not be permissible for the broadcaster to claim that news bulletins on other channels will ensure that opposing views will be heard.” On 1 February 2021 the online media outlet Lovin Malta filed a complaint with a civil court challenging the constitutionality of Article 13 of the Broadcasting Act.

<sup>56</sup> In general, no systematic quantitative and qualitative monitoring results on the independence of broadcasters are available in the country.

BA makes a decision within two days. However, no complaints and decisions made during the provided period were published on the BA website.<sup>57</sup> ODIHR EET interlocutors reported a lack of enforcement of the impartiality requirement by the BA.<sup>58</sup>

*The Broadcasting Authority should monitor and enforce legal obligations for impartiality and accuracy in broadcasting and provide due remedies.*

Paid political advertising is prohibited in public and commercial broadcast media. The BA provided the PL and PN a total of 120 minutes free airtime respectively for campaign advertising for the period 7 to 24 March on TVM, the primary station of PBS. Other political parties received two minutes respectively per district in which they were contesting, while independent candidates received ten minutes of interview and three minutes of advertising time. In addition, the BA provided the PL and PN with three debates between themselves and two news conferences, while other parties received one debate between themselves and an address by their respective leaders. Independent candidates could participate in one interview and one public address. A final debate between the Prime Minister Robert Abela and the leader of the opposition Bernard Grech was aired on 23 March on TVM. The other parties and independent candidates complained that they did not have the opportunity to challenge the government and the main opposition party in the debates. Moreover, during the debates candidates replied to questions by the journalist instead of confronting each other which limited the opportunity for voters to scrutinize their policies.

ODIHR EET interlocutors noted that coverage of political parties in news and current affairs programmes on PBS was generally in favour of the ruling party both in terms of time and tone. Some ODIHR EET interlocutors also reported the direct interference into the choice and coverage of topics and guests in current affairs and discussion programmes. In addition, ODIHR EET interlocutors criticized the fact that in August 2021, several current affairs programmes were reassigned from TVM to TVM News+, a station with significantly lower audience share rates.

## IX. CITIZEN AND INTERNATIONAL ELECTION OBSERVATION

Election observation is not regulated by the legal framework and is not allowed in practice, contrary to international standards and previous ODIHR recommendations. ODIHR EET observers were provided with accreditation and well received by the EC and other interlocutors. On election day, access to polling stations was provided only in the presence of a member of the EC and notwithstanding a burdensome procedure, access for ODIHR EET observers was widely ensured. No civil society organizations undertook comprehensive election observation activities but some focused on specific topics.<sup>59</sup>

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<sup>57</sup> An independent candidate Arnold Cassola informed the ODIHR EET that he made a number of complaints to the BA and PBS during the campaign, *inter alia* on the lack of coverage of his press conferences and press releases.

<sup>58</sup> See also [Council of Europe \(CoE\) Recommendation CM/Rec\(2007\)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns](#) which *inter alia* requires “where self-regulation does not provide for this, member states should adopt measures whereby public service media and private broadcasters, during the election period, should in particular be fair, balanced and impartial in their news and current affairs programmes, including discussion programmes such as interviews or debates.”

<sup>59</sup> The Daphne Caruana Galizia Foundation published a [report](#) reflecting the main issues during the 2022 elections, highlighting topics such as violation of private data, campaign finance and misuse of state resources, media and the implementation of the two constitutional correctional mechanisms. Repubblika runs actions directed to increase integrity in elections and politics and in 2021 [released a report](#) focusing on fighting corruption in elections, including recommendations.

*To provide for the effective implementation of OSCE commitments, the legal framework should be revised to guarantee the access of citizen and international observers to all stages of the electoral process.*

## **X. VOTING, COUNTING AND ANNOUNCEMENT OF RESULTS**

In line with the ODIHR's standard methodology, the ODIHR EET did not undertake a comprehensive and systematic observation of election-day procedures. Members of the ODIHR EET visited the premises of the counting complex during the first early voting day and several localities in Malta on election day. The EET also observed preparations made for counting and the electronic counting procedures at the EC counting complex in Naxxar.

### **A. EARLY VOTING**

Early voting was organized on three non-consecutive days prior to election day and the arrangements were generally trusted by ODIHR EET interlocutors. Voters residing abroad or who would not be present in the country on election day or who had planned hospitalizations, were in retirement homes, imprisoned or members of the EC could vote on 19 March. AECs and their reserves, PPOs and police officers voted on 22 March, while voters in hospitals could cast ballots on 24 March.<sup>60</sup> According to an amendment approved on 25 January 2022, some 2,300 police officers were required, for the first time, to vote in advance and were not be able to vote on election day.

Voters residing abroad and wishing to vote must return to the country in order to cast their ballots, either in early voting or on election day. Voters residing outside Malta and their families are provided with the possibility to acquire state-subsidized EUR 90 tickets through the dedicated AirMalta hotline system that verifies the eligibility of the voter in the Electoral Register. Several interlocutors raised the issue of burdensome procedures and the need to introduce alternative methods for voting abroad.<sup>61</sup>

The legal framework was amended on 25 January 2022 to allow voters affected by certain contagious diseases or who are in quarantine to cast ballots in dedicated spaces.<sup>62</sup> Four drive-through polling stations were made available for the three days dedicated to early voting and this number increased to eight for election day, including one in a hospital, and 4,456 voters cast ballots in total.

For some cases of early voting, votes were cast in mixed ballot boxes at retirement homes, hospitals and COVID-19 centres rather than in separate boxes for each constituency. These mixed ballot boxes were unsealed on the Wednesday and Friday before election day and the votes were kept in a safe room within the EC premises.<sup>63</sup> The law does not prescribe the advanced opening of the ballot boxes and the activities were carried out according to an EC administrative decision. The EC justified opening some of the ballot boxes earlier to reduce time to prepare the counting process,

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<sup>60</sup> Voter turnout was published for each early voting day. The total number for 19 March was revised by the EC through [a press release](#) due to a miscalculation.

<sup>61</sup> A total of 691 voters and 285 dependants booked seats until 26 March. AirMalta operated flights from 13 European cities, and the highest number of reservations were registered from London (522), Brussels (228) and Amsterdam (53).

<sup>62</sup> Additionally, the Superintendent for Public Health and the EC issued on 12 March standards on COVID-19 to be implemented in different stages of the voting and counting process.

<sup>63</sup> Early voting ballots which were cast by voters at the EC complex in Malta and in Gozo island were opened on election day.

while some of the ballots cast by voters who tested positive for COVID-19 were quarantined for decontamination ahead of the prescribed day of counting.

## B. ELECTION DAY

In the polling stations in which the ODIHR EET was present, voting started at 7:00 and ended at 22:00 and was conducted in an orderly manner, with procedures efficiently administered. The voter turnout reached 85.6 per cent, the lowest since Malta's independence.<sup>64</sup> In the polling stations visited by the ODIHR EET, COVID-19 safety measures were generally followed. Some interlocutors pointed out that the design of the ballot may be discriminatory as the GEA provides for the political parties that contest the elections in all divisions and have at least four candidates in each division to print their names in different colours while other party logos remain monochrome.

Homebound voting is not regulated and voters with disabilities are required to vote in polling stations. Voters in need of assistance are required to express their options aloud in the front of the at least two AECs and without any other voters in the polling station, which may affect the secrecy of voting.<sup>65</sup> Braille templates and audio equipment were available for voters with visual impairments and the majority of observed polling stations were accessible for voters with physical disabilities.

*Consideration could be given to amending the legal framework in order to ensure the secrecy of voting for assisted voting and to adopt additional alternative voting methods.*

## C. COUNTING AND TABULATION

Following the closing of the polls all the ballot boxes were transported to the counting complex situated in Naxxar, where they were reconciled with the protocols compiled in polling stations. Counting started on 27 March at 9:30 and was broadcast by a range of media outlets. Completed ballots on which the voter's selections were not clear, were adjudicated by commissions for each district, and their decisions could immediately be appealed to the EC.<sup>66</sup>

These elections were the first parliamentary elections in which the EC used an electronic counting system. Representatives of all contestants could observe scanning of ballots for the districts they contested, while only the PL and PN received an electronic database with the voters' selections on the ballots, which could be verified against their own software tools.<sup>67</sup> The system generally enjoyed the confidence of interlocutors and its use is considered to significantly shorten the counting process and publication of results. Procedures observed by the EET were organized diligently and in a professional manner though some contestants noted limited access to the counting procedures.

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<sup>64</sup> The EC [published](#) turnout statistics twice a day per district and included early voting data.

<sup>65</sup> Article 29 of the [2006 United Nations Convention on the Rights of Persons with Disabilities \(CRPD\)](#) requires State Parties should ensure "ii. Protecting the right of persons with disabilities to vote by secret ballot in elections and public referendums without intimidation". Furthermore, the [1996 UN HRC General Comment No. 25](#), paragraph 20 establishes that "voters should be protected from any form of coercion or compulsion to disclose how they intend to vote or how they voted, and from any unlawful or arbitrary interference with the voting process."

<sup>66</sup> Fifty-one per cent of the votes were adjudicated and the number of invalid votes increased to 8,802 compared to 4,031 votes adjudicated in the 2017 elections. The adjudication was performed on screens by commissions composed of representatives of the EC and political parties contesting the elections in the district that compared the scanned version of the ballot with the digital interpretation and made corrections to the digitalized data. The high sensitivity of scanners determined some ballots to be verified even if minor marks were detected. In total, 1,933 ballots were adjudicated by the EC.

<sup>67</sup> AD+PD requested the EC to receive access to the electronic data, but it was not provided.



*In order to ensure transparency and equal access to the counting process, the full electronic database with voters' selections could be provided to all contestants.*

#### **D. ANNOUNCEMENT OF RESULTS**

National and district level results were made available in the Governmental Gazette and on the EC website.<sup>68</sup> However, the GEA does not require the EC to publish detailed results per polling station, although the new e-counting system produces disaggregated reports which are provided to political parties.

*Consideration could be given to publishing disaggregated data on results per polling station.*

One hour after the start of counting, based on a sample of votes, the PL announced its victory and PN conceded. The PL obtained an advantage of 39,474 votes and obtained 38 seats, while the PN received 27 seats. Two additional seats were allocated to the PN according to the constitutional procedure prescribed in Article 52(1) and six seats to each party as a result of application of Article 52A(1). A total of 22 seats were attributed to women, representing 28 per cent of the total number of 79 members of the parliament, which is the highest percentage since Malta's independence.<sup>69</sup>

Candidates could contest elections in two districts and are required to choose one of the districts if elected in both. This led to eight PL and seven PN candidates being elected through casual elections, on 7 and 12 April respectively, which involved the recount of subsequent preferences on the ballots of withdrawn candidates and allocation of seats to registered candidates consenting to participate<sup>70</sup>. According to the GEA, one member of the Parliament was co-opted by PL in spite of not being registered as candidate in these elections.<sup>71</sup> On 30 March, the Democratic Alternative + Democratic Party (AD+PD) challenged in the First Hall of the Civil Court the application of the two constitutional correctional mechanisms used to allocate extra seats, invoking discriminatory practices.<sup>72</sup>

## **XI. RECOMMENDATIONS**

The recommendations provided by the EET have the purpose to enhance the conduct of elections in Malta and to support efforts to bring them fully in line with OSCE commitments and other international obligations and standards. These recommendations need to be seen in conjunction with previous recommendations made by ODIHR within the 2013 and 2017 reports<sup>73</sup>. ODIHR

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<sup>68</sup> The list of elected candidates and election results per district were published in the Government Gazette on 28 March and [1 April](#) respectively, while summaries were also available on the [EC website](#), by district.

<sup>69</sup> Four women were elected through first preference votes, six by casual elections and 12 through the constitutional underrepresented sex correction mechanism.

<sup>70</sup> The statute of the PN states that the district with the lowest result is dropped, while the executive committee of the PL decides the candidates. The [2017 ODIHR EAM final report](#) recommended the review of this practice as it "may distort competition and produce results that do not fully reflect the voters' will."

<sup>71</sup> Co-option is applied by political parties when a seat is not occupied through elections or when is vacated.

<sup>72</sup> AD+PD argued that the 4,747 first preference votes received nationwide by the party were dismissed by the current threshold used to allocate seats.

<sup>73</sup> In Paragraph 25 of the [1999 OSCE Istanbul Document](#), OSCE participating States committed themselves "to follow up promptly the ODIHR's election assessment and recommendations." The follow-up of prior recommendations is assessed by the ODIHR EET as follows: number 2 from the final report on the 2017 elections is fully implemented. Recommendation 12 from the final report on the 2017 elections is mostly implemented. Recommendations 1, 4, 6 of the 2017 reports are partially implemented. Recommendations 3, 5,

stands ready to assist the authorities to further improve the electoral process and to address the recommendations contained in this and previous reports.

**A. PRIORITY RECOMMENDATIONS**

1. To enhance transparency and public confidence, consideration could be given to ensuring access to the meetings of the Electoral Commission for all stakeholders and to publishing the minutes of all meetings. Furthermore, all regulations and clarifications on electoral procedures should be adopted in formal sessions of the Electoral Commission by vote and duly published.
2. The legal framework should be harmonized with the objectives of the Convention on the Rights of Persons with Disabilities by removing all restrictions on voting rights on the basis of any kind of disability. The limitations imposed on convicted citizens should be reviewed in order to ensure proportionality with the committed crime.
3. In line with international standards and regulations, consideration should be given to safeguarding voter data privacy, while maintaining the ability for voters to verify their registration and for the independent scrutiny of voter lists.
4. The legal framework should be reviewed to enhance the oversight system, including by providing the Electoral Commission with adequate powers and resources to carry out a pro-active and efficient supervision, investigation and enforcement of political finance regulations. The Auditor General could be empowered to carry out pro-active investigations, and publish findings on the misuse of public resources for campaign purposes.
5. The Broadcasting Authority should monitor and enforce legal obligations for impartiality and accuracy in broadcasting and provide due remedies.
6. The appointment procedure for the members of the governing boards of the Broadcasting Authority and the Public Broadcasting Services should be brought in line with international standards and good practice to provide for independence and transparency. To ensure the public broadcaster's editorial independence, the management should be selected through a transparent, competitive process and legal safeguards for its financial sustainability and autonomy should be enacted.
7. Consideration could be given to amending the legal framework in order to ensure the secrecy of voting for assisted voting and to adopt additional alternative voting methods.
8. In order to ensure transparency and equal access to the counting process, the full electronic database with voters' selections could be provided to all contestants.
9. To provide for the effective implementation of OSCE commitments, the legal framework should be revised to guarantee the access of citizen and international observers to all stages of the electoral process.



## **B. OTHER RECOMMENDATIONS**

### **Legal framework**

10. The mechanism for enhancing women's representation could be revisited and revised, in consultation with stakeholders, well in advance of the next elections.
11. Political parties should also be encouraged to strengthen their efforts to support women's participation through internal party policies and the integration of gender equality considerations in their platforms.

### **Election administration**

12. In line with international standards the Electoral Commission should provide sex-disaggregated data related to the election administration.
13. Consideration should be given to reviewing legal provisions for the appointment of individuals as both Assistant Electoral Commissioners and party agents to avoid any conflict of interest.
14. Consideration could be given to publishing disaggregated data on results per polling station.

### **Campaign finance**

15. To further facilitate political pluralism consideration could be given to the introduction of a meaningful public funding system for political parties, based on fair and reasonable criteria.
16. To foster transparency, party-controlled entities should be subject to the same rules that govern the funding of the political parties.
17. Consideration could be given to introducing measures to prevent disproportionate spending of political parties, such as, establishing limits on party's campaign expenditure and regulating financing by third parties.
18. To enhance transparency and enable voters to make informed choices, all election-related campaign materials should contain imprint data.
19. Campaign finance regulations, and sanctions should be equally applied to all candidates. In order to increase the transparency of campaign funding, the law should be reviewed to unify reporting obligations for all the candidates.
20. In order to maintain transparency in campaign financing and expenditure the Electoral Commission should publish all financial reports within legal deadlines and address the existing delays.
21. To enhance transparency and facilitate oversight, consideration could be given to lowering the public disclosure threshold on large donations and requiring donations above the threshold to be made through a designated bank account.

**ANNEX: FINAL ELECTION RESULTS**

	FIRST PREFERENCE VOTES														Total Valid Ballots	Invalid ballots	Invalid Ballots Cast per cent	Total Ballots Cast	Registered Voters	Turnout (per cent)
	PL		PN		AD+PD		People's Party		ABBA		Volt Malta		Independent							
	Votes	Total seats	Votes	Total seats	Votes	Total seats	Votes	Total seats	Votes	Total seats	Votes	Total seats	Votes	Total seats						
District 1	13,025	3	8,144	2	244	-	138	-	104	-	-	-	29	-	21,684	545	2.5	22,229	25,862	86.0
District 2	16,243	4	5,995	1	311	-	115	-	134	-	-	-	18	-	22,816	651	2.8	23,467	26,940	87.1
District 3	15,950	4	6,409	1	378	-	104	-	107	-	-	-	158	-	23,106	700	2.9	23,806	27,566	86.4
District 4	15,219	4	6,638	1	391	-	122	-	136	-	-	-	-	-	22,506	679	2.9	23,185	26,688	86.9
District 5	14,865	4	7,244	1	409	-	154	-	117	-	-	-	-	-	22,789	847	3.6	23,636	27,056	87.4
District 6	14,106	3	8,677	2	320	-	96	-	86	-	-	-	-	-	23,285	629	2.6	23,914	27,321	87.5
District 7	13,084	3	9,754	2	510	-	112	-	99	-	-	-	-	-	23,559	901	3.7	24,460	27,923	87.6
District 8	9,807	2	11,514	3	415	-	137	-	91	-	112	-	-	-	22,076	606	2.7	22,682	26,360	86.0
District 9	8,626	2	11,871	3	439	-	97	-	87	-	102	-	-	-	21,222	546	2.5	21,768	26,007	83.7
District 10	7,839	2	12,415	3	203	-	126	-	86	-	72	-	427	-	21,168	499	2.3	21,667	26,777	80.9
District 11	9,588	2	12,163	3	269	-	102	-	106	-	96	-	477	-	22,801	650	2.8	23,451	27,401	85.6
District 12	10,245	2	10,829	3	527	-	142	-	122	-	-	-	16	-	21,881	705	3.1	22,586	28,249	80.0
District 13	14,110	3	11,580	2	331	-	88	-	89	-	-	-	157	-	26,355	844	3.1	27,199	30,925	88.0
<b>Total</b>	<b>162,707</b>	<b>38*</b>	<b>123,233</b>	<b>27*</b>	<b>4,747</b>	<b>0</b>	<b>1,533</b>	<b>0</b>	<b>1,364</b>	<b>0</b>	<b>382</b>	<b>0</b>	<b>1,282</b>	<b>0</b>	<b>295,248</b>	<b>8,802</b>	<b>2.9 per cent</b>	<b>304,050</b>	<b>355,075</b>	<b>85.6 per cent</b>
per cent	55.11		41.74		1.61		0.52		0.46		0.13		0.43							

\* Additionally, two additional seats were allocated to the PN in accordance with Article 52(1) and six seats for PL and PN according to Article 52A(1) of the Constitution. Source: [EC website](#)

## ABOUT ODIHR

The Office for Democratic Institutions and Human Rights (ODIHR) is OSCE's principal institution to assist participating States "to ensure full respect for human rights and fundamental freedoms, to abide by the rule of law, to promote principles of democracy and (...) to build, strengthen and protect democratic institutions, as well as promote tolerance throughout society" (1992 Helsinki Summit Document). This is referred to as the OSCE human dimension.

ODIHR, based in Warsaw (Poland) was created as the Office for Free Elections at the 1990 Paris Summit and started operating in May 1991. One year later, the name of the Office was changed to reflect an expanded mandate to include human rights and democratization. Today it employs over 150 staff.

ODIHR is the lead agency in Europe in the field of **election observation**. Every year, it coordinates and organizes the deployment of thousands of observers to assess whether elections in the OSCE region are conducted in line with OSCE commitments, other international obligations and standards for democratic elections and with national legislation. Its unique methodology provides an in-depth insight into the electoral process in its entirety. Through assistance projects, ODIHR helps participating States to improve their electoral framework.

The Office's **democratization** activities include: rule of law, legislative support, democratic governance, migration and freedom of movement, and gender equality. ODIHR implements a number of targeted assistance programmes annually, seeking to develop democratic structures.

ODIHR also assists participating States' in fulfilling their obligations to promote and protect **human rights and fundamental freedoms** consistent with OSCE human dimension commitments. This is achieved by working with a variety of partners to foster collaboration, build capacity and provide expertise in thematic areas, including human rights in the fight against terrorism, enhancing the human rights protection of trafficked people, human rights education and training, human rights monitoring and reporting, and women's human rights and security.

Within the field of **tolerance** and **non-discrimination**, ODIHR provides support to the participating States in strengthening their response to hate crimes and incidents of racism, xenophobia, anti-Semitism and other forms of intolerance. ODIHR's activities related to tolerance and non-discrimination are focused on the following areas: legislation; law enforcement training; monitoring, reporting on, and following up on responses to hate-motivated crimes and incidents; as well as educational activities to promote tolerance, respect, and mutual understanding.

ODIHR provides advice to participating States on their policies on **Roma and Sinti**. It promotes capacity-building and networking among Roma and Sinti communities, and encourages the participation of Roma and Sinti representatives in policy-making bodies.

All ODIHR activities are carried out in close co-ordination and co-operation with OSCE participating States, OSCE institutions and field operations, as well as with other international organizations.

More information is available on the ODIHR website ([www.osce.org/odihr](http://www.osce.org/odihr)).