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## TEXTS ADOPTED

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### **P8\_TA(2017)0438**

#### **Rule of law in Malta**

##### **European Parliament resolution of 15 November 2017 on the rule of law in Malta (2017/2935(RSP))**

*The European Parliament,*

- having regard to Articles 2, 4, 5, 6, 9 and 10 of the Treaty on European Union (TEU),
- having regard to Article 20 of the Treaty on the Functioning of the European Union (TFEU),
- having regard to Articles 6, 7, 8, 10, 11, 12 and 47 of the Charter of Fundamental Rights of the European Union,
- having regard to the European Convention on Human Rights (ECHR) and the related case law of the European Court of Human Rights,
- having regard to its resolution of 16 January 2014 on EU citizenship for sale<sup>1</sup>,
- having regard to the Universal Declaration of Human Rights and to the numerous UN human rights treaties which are binding on all the Member States,
- having regard to the Commission communication of 11 March 2014 entitled ‘A new EU Framework to strengthen the Rule of Law’ (COM(2014)0158),
- having regard to the plenary debate on media freedom in Malta of 24 October 2017,
- having regard to the Panama Papers and Malta Files revelations made by the International Consortium of Investigative Journalists and the European Investigative Collaborations network,
- having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights<sup>2</sup>,

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<sup>1</sup> OJ C 482, 23.12.2016, p. 117.

<sup>2</sup> Texts adopted, P8\_TA(2016)0409.

- having regard to its resolution of 24 October 2017 on legitimate measures to protect whistle-blowers acting in the public interest when disclosing the confidential information of companies and public bodies<sup>1</sup>,
  - having regard to the report and recommendations of the Committee of Inquiry to investigate alleged contraventions and maladministration in the application of Union law in relation to money laundering, tax avoidance and tax evasion (the PANA Committee), and the report's annex on the Committee's mission to Malta,
  - having regard to Rule 123(2) of its Rules of Procedure,
- A. whereas the European Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and whereas these values are universal and common to the Member States;
  - B. whereas the Charter of Fundamental Rights of the European Union is part of EU primary law; whereas freedom of expression and freedom and pluralism of the media are enshrined in Article 11 of the Charter of Fundamental Rights and Article 10 of the ECHR; whereas, in accordance with Article 2, Article 3(1) and Article 7 of the TEU, the Union has the possibility to act in order to protect the common values on which it was founded; whereas the rule of law mechanism should be applied with equal strength to all Member States;
  - C. whereas the EU is a constitutional system that functions on the presumption of mutual trust, namely that Member States will act in conformity with democracy, the rule of law and fundamental rights;
  - D. whereas the independence of the judiciary is enshrined in Article 47 of the Charter of Fundamental Rights and Article 6 of the ECHR, and is an essential requirement of the democratic principle of separation of powers;
  - E. whereas the Maltese anti-corruption investigative journalist and blogger Daphne Caruana Galizia was assassinated in a car bomb attack on 16 October 2017;
  - F. whereas this assassination led to street demonstrations and civil society protests in Malta calling for justice, accountability and respect for the rule of law;
  - G. whereas the Media Pluralism Monitor's 2016 Country Report on Malta identified medium (close to high) levels of risk with regard to market plurality and political independence, and identified risk-increasing factors relating to lack of data on the media market, lack of protection and self-regulation of journalists and editorial autonomy, direct political ownership of media outlets and lack of media literacy policy<sup>2</sup>;
  - H. whereas the 2017 World Press Freedom Index (published by Reporters Without Borders) identifies Malta's defamation laws, which are punishable by fines or imprisonment and

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<sup>1</sup> Texts adopted, P8\_TA(2017)0402.

<sup>2</sup> Nenadic, Iva, 2016. 'Media Pluralism Monitor 2016 – Monitoring Risks for Media Pluralism in the EU and Beyond. Country report: Malta'. Centre for Media Pluralism and Media Freedom. Available to download at <http://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/malta/>

broadly used, especially by politicians, against journalists, as a key factor limiting freedom of expression in Malta<sup>1</sup>;

- I. whereas the Maltese Parliament is currently discussing a bill proposed by the Maltese Government which abolishes criminal libel and introduces an ad hoc prohibition on recourse to any form of precautionary orders or warrants in actions for libel or defamation under any law<sup>2</sup>;
- J. whereas Daphne Caruana Galizia was facing numerous libel charges brought by political representatives from across the political spectrum in Malta;
- K. whereas Ms Caruana Galizia had her bank accounts frozen this year by a court order issuing precautionary warrants relating to a libel case brought by a government minister, before the outcome of the case had been reached;
- L. whereas media outlets in Malta have reported coming under severe pressure from Pilatus Bank, which is at the centre of money-laundering allegations, to retract or remove stories concerning that bank; whereas Pilatus Bank has commenced legal action in the USA against Maltese media for tarnishing its reputation; whereas a leaked Financial Intelligence Analysis Unit (FIAU) compliance report reveals that Pilatus Bank's clients are predominantly Politically Exposed Persons from Azerbaijan, but that the bank did not apply enhanced customer due diligence to these clients as required by the Anti-Money Laundering Directive (AMLD); whereas a government MP has called for an investigation into the FIAU whistle-blower;
- M. whereas prior to the assassination of Daphne Caruana Galizia, a whistle-blower at the centre of corruption and money-laundering allegations involving Politically Exposed Persons in Malta fled the country;
- N. whereas the Maltese Government has implemented the Protection of the Whistleblower Act, 2013<sup>3</sup>, and is one of a minority of EU Member States which have enshrined dedicated whistle-blower protection measures in law;
- O. whereas under the Constitution and laws of Malta, the Police Commissioner is appointed by the Prime Minister, the Attorney-General is appointed by the President on the advice of the Prime Minister, and members of the judiciary are, as from 2017, appointed after a committee has scrutinised judicial nominees prior to their appointment<sup>4</sup>; whereas the independence of law enforcement and the judiciary in Malta may be compromised by the fact that the government is empowered to appoint the Police Commissioner, the head of the FIAU and the Attorney-General;

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<sup>1</sup> See <https://rsf.org/en/malta>.

<sup>2</sup> Government of Malta, 'A Bill entitled "AN ACT to provide for the updating of the regulation of media and defamation matters and for matters consequential or ancillary thereto"', Article 26(6). See:

<sup>3</sup> See: <http://justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=28292&l=1>

<sup>4</sup> See:

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

Act No XLIV of 2016, Article 5 (96A):

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=27835&l=1>

- P. whereas various media reports note that a large number of jobs in Maltese public companies were created a few weeks before the June 2017 elections, raising concerns as to whether this was done for electoral motives;
- Q. whereas Malta refused to join the European Public Prosecutor's Office (EPPO), the independent Union body with the authority to investigate and prosecute EU fraud and other crimes affecting the Union's financial interests;
- R. whereas the Panama Papers revelations from April 2016 showed that a total of 714 companies linked to Malta are listed in the Panama Papers database of the International Consortium of Investigative Journalists; whereas these documents included revelations regarding a current minister and a former minister from the previous administration, and high-ranking officials;
- S. whereas the European Parliament organised a delegation visit to Malta in February 2017 in the framework of its inquiry into the Panama Papers; whereas this delegation concluded in its mission report that there are reasons to believe that the Maltese police force is not well equipped to fulfil its task optimally, possibly suggesting a case of maladministration; whereas this delegation noted that the number of convictions and confiscations related to money laundering in Malta seems extremely low in relation to the on-average number of reports sent to the police by the FIAU; whereas a government official and a former minister refused the PANA Committee's request to meet during this mission;
- T. whereas two confidential reports from the FIAU in Malta, dated 2016, were published in May 2017 and concluded that there was reasonable suspicion of money laundering related to a government official; whereas a third report, published at the same time, detailed the on-site inspection carried out by the FIAU at Pilatus Bank and allegedly found the bank in violation of Malta's anti-money laundering legislation; whereas Pilatus Bank's licensing process has been expeditious compared with the average time required to ensure compliance with standards laid down in the Capital Requirements Directive;
- U. whereas the head of the FIAU and the Police Commissioner, which are both positions directly filled by the Government, resigned shortly after the completion of these reports; whereas no police investigation was launched into these serious allegations of money laundering by Politically Exposed Persons, including a member of the Government; whereas magistrates were appointed on the above-mentioned cases; whereas two FIAU staff were laid off after the leak of the FIAU reports in the press;
- V. whereas the European Commission was informed of these allegations in June 2017 at least, with a request to hold a further inquiry into Malta and its respect for, and adequate implementation of, the third AMLD and the Capital Requirements Directive;
- W. whereas EU citizenship is one of the EU's major achievements and whereas, according to the Treaties, matters of residency and citizenship fall within the exclusive competences of the Member States; whereas the EU has the power to monitor anti-corruption practices by Member States;
- X. whereas it is confirmed in settled case law of the Court of Justice of the European Union that it is for each Member State, having due regard to Union law, to lay down the conditions for acquisition and loss of nationality; whereas since the entry into force of the Treaty of Maastricht, granting Member State nationality also means granting EU

citizenship and hence strong additional rights, meaning that naturalisation decisions by a Member State are not neutral with regard to other Member States and the EU;

- Y. whereas the Maltese Government created an Individual Investor Programme in 2014 which sells Maltese and EU citizenship to third-country nationals at a price of EUR 650 000; whereas the list of recipients of this citizenship remains unclear as they are not identified in the published list of naturalised citizens; whereas a leaked FIAU report from 2016 raised concerns about possible corruption in the administration of this programme;
- Z. whereas management of this Individual Investor Programme was awarded by the government to Nexia BT, an intermediary named in the Panama Papers as the initiator of trusts and offshore companies for Maltese Politically Exposed Persons, including a member of the Government; whereas the Panama Papers suggest that Nexia BT has acted with a lack of due diligence in providing all the information necessary to identify beneficial ownership;
- AA. whereas the report by Europol's Financial Intelligence Group, entitled 'From suspicion to action – converting financial intelligence into greater operational impact', highlights that certain parties, including criminal organisations, have abused aspects of Malta's internet-based industries to launder the proceeds of crime; whereas this should not be interpreted as being reflective of the industry as a whole;
1. Strongly condemns the assassination of Daphne Caruana Galizia and calls on the Maltese Government to deploy all necessary resources to bring her murderers to justice;
  2. Calls for an independent international investigation into the murder of Daphne Caruana Galizia; acknowledges the Maltese authorities' moves to invite the participation of international law enforcement bodies, including the US Federal Bureau of Investigation, and Dutch forensic specialists in this regard; calls for the full involvement of Europol in the investigation for its duration;
  3. Notes that the protection of investigative journalists and whistle-blowers is in the vital interests of society; calls on the Maltese authorities, and all EU Member States, to ensure the protection of journalists' and whistle-blowers' personal safety and livelihoods;
  4. Calls on the Conference of Presidents to create a 'European Daphne Caruana Galizia prize for investigative journalism', to be awarded annually for outstanding investigative journalism in Europe;
  5. Regrets that developments in Malta in recent years have led to serious concerns about the rule of law, democracy and fundamental rights, including freedom of the media and the independence of the police and the judiciary;
  6. Calls on the Commission to establish a dialogue with the Maltese Government regarding the functioning of the rule of law in Malta and to ensure respect for European values; calls on the Commission to keep Parliament fully informed of its assessment; reiterates the need for a regular process of monitoring and dialogue involving all Member States in order to safeguard the EU's fundamental values of democracy, fundamental rights and the rule of law, involving the Council, the Commission and Parliament, as put forward in its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights (the DRF Pact);

7. Regrets that several serious allegations of corruption and breach of anti-money laundering and banking supervision obligations have not been investigated by the police in Malta, which represents a threat to the rule of law in this Member State; acknowledges that there are several magisterial inquiries under way regarding some of these allegations; specifically regrets the fact that there has been no police investigation to date in Malta into the revelations regarding the Panama Papers and Politically Exposed Persons in the leaked FIAU reports, and notes that some of those named in the FIAU reports remain part of the government; calls on the Maltese Police Commissioner to open such an investigation;
8. Notes the comments made by Malta's Chief Justice in regard to the rule of law and supports his assertion that without proper law enforcement the rule of law in Malta cannot be safeguarded<sup>1</sup>;
9. Expresses concern at the report drawn up by the PANA Committee following its visit to Malta, stating that the public institutions in charge of compliance, fraud and financial crime are highly politicised;
10. Calls on the Commission to verify whether Malta is in compliance with the third AMLD and the Capital Requirements Directive; notes that Malta is one of several Member States against which the Commission took initial infringement action for failing to transpose the fourth AMLD by the deadline of 26 June 2017; acknowledges that this transposition is under way;
11. Calls on the Maltese authorities to join the EPPO in order to work together with other participating Member States against EU fraud and other crimes affecting the Union's financial interests;
12. Calls on the Maltese supervisory and judiciary authorities to investigate the licensing process of Pilatus Bank, in particular regarding fulfilment of the fit and proper requirements for the management body of financial institutions, as mentioned in the Capital Requirements Directive, and to investigate the compliance of Nexia BT with the AMLD;
13. Reiterates the frequently expressed concern by members of this House about Citizenship by Investment Schemes in general, including in Malta and other EU Member States; calls on Malta to make it clear who has purchased a Maltese passport and all the rights that come with it, and what safeguards are in place to ensure that all these new citizens have actually spent a year in Malta prior to the purchase; calls on the Commission to monitor such citizenship programmes in Member States, as the latter must have due regard for EU law when exercising their competence in the area of nationality;
14. Calls on Malta and all the other Member States to ensure that the fight against tax evasion is given priority and that all necessary resources are dedicated to this cause;
15. Regrets the decision by the Commission not to publish the EU anti-corruption report in 2017;

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<sup>1</sup> <http://www.independent.com.mt/articles/2017-10-02/local-news/Chief-Justice-boldly-speaks-out-about-rule-of-law-need-for-proper-law-enforcement-6736179695>

16. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States, the Council of Europe and the President of the Republic of Malta.