OECD Public Governance Reviews

Public Integrity in Malta

IMPROVING THE INTEGRITY AND TRANSPARENCY FRAMEWORK FOR ELECTED AND APPOINTED OFFICIALS

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Foreword

Public integrity is an inherent value of representative democracy: it ensures the leaders – both elected and appointed – govern in the interests of the people. Public integrity is about everybody having a voice, from elections to the policy making process, and preventing undue influence of government policies.

Political leaders are essential to integrity: by setting the "tone at the top", they demonstrate to society that integrity is a governance issue the government takes seriously. Moreover, how political leaders themselves behave directly impacts the quality of policymaking: when political leaders guide their decisions based on the public interest, society benefits.

At a minimum, ensuring that integrity is at the centre of policymaking requires codifying standards in legislative and regulatory frameworks. More importantly, it requires establishing oversight and accountability measures that can ensure political leaders are accountable for these standards, and consequences for when the lines are crossed.

In recent years, Malta has implemented reforms to strengthen public integrity, transparency and the rule of law. These reforms adopting the Standards in Public Life Act in 2017 and establishing the Commissioner for Standards in Public Life in 2018. Together, the Act and the Commissioner provide a framework for recommending, monitoring and enforcing integrity standards for elected and appointed officials – Members of Parliament, Ministers, Parliamentary Secretaries and so-called "persons of trust".

These efforts have helped implement a public integrity framework for elected and appointed public officials in Malta, placing integrity, accountability and transparency at the forefront. However, remaining gaps in the legislative and institutional framework hinder ethical awareness and capacity amongst officials, and strengthened procedures for monitoring, investigating and sanctioning wrongdoing are essential.

This report – part of an EU-funded project under the Structural Reform Support Programme – provides concrete recommendations for strengthening the legislative and institutional framework for elected and appointed officials in Malta. It reviews the institutional and procedural set-up of the Commissioner for Standards in Public Life and analyses the omissions, inconsistencies and overlaps in the Standards in Public Life Act. It also provides recommendations to the Government of Malta on developing the most feasible lobbying regulation, and identifies concrete measures to strengthen the existing codes of ethics for elected and appointed officials, as well as the system of asset and interest declarations.

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Executive summary

Public integrity is a cornerstone of democracy. The steadfast commitment of elected representatives and appointed officials to a culture of integrity is key to bolster trust in institutions and secure their legitimacy. Malta has introduced several reforms to strengthen integrity for elected and appointed officials. The 2017 Standards in Public Life Act marked a significant milestone, with the law setting standards of conduct for elected and appointed officials, and establishing a Commissioner for Standards in Public Life as the authority responsible for reviewing the conduct of these officials in terms of their statutory and ethical duties as persons in public life.

These efforts have helped implement an integrity framework for elected and appointed public officials in Malta, placing integrity, accountability and transparency at the forefront. However, challenges remain in terms of raising ethical awareness amongst officials, and effectively enforcing these new integrity standards through consistent procedures for monitoring, investigating and sanctioning wrongdoing.

This report reviews Malta's efforts to strengthen the integrity frameworks for elected and appointed officials, analysing the Standards in Public Life Act and the Commissioner for Standards in Public Life. It also provides recommendations to design the most feasible transparency and integrity in lobbying regulation in accordance with the *OECD Recommendation on Principles for Transparency and Integrity in Lobbying*. Finally, this report reviews the codes of ethics for elected and appointed officials, and provides recommendations for improving asset and interest declarations.

Strengthening the institutional and procedural set-up of the office of the Commissioner for Standards in Public Life

The Commissioner has been proactive in using the findings of investigations to issue guidance on emerging risks. To strengthen integrity awareness and capacity integrity, the Commissioner could develop workshops and training for officials covered under the Standards Act. The Commissioner could also enable anonymous complaints and ensure that cases are handled in a timely manner.

To provide credible integrity leadership, the Commissioner and its office should operate in a way that is above reproach. To that end, the Commissioner could strengthen merit-based recruitment processes for the office's staff and establish an internal Code of Ethics as well as guidance on managing and preventing conflicts of interest.

Strengthening the legislative and institutional framework for public integrity

While the scope of the Standards in Public Life Act is broad – covering Members of the House of Representatives, ministers, parliamentary secretaries and assistants, and persons of trust – it could be expanded to cover local authorities, members of the boards of Directors of public organisations and enterprises. In addition, the legal framework could also address the incompatibilities of secondary employment for elected officials. To ease implementation, Malta could also clarify definitions in the Act,

including “persons of trust” and “misconduct”, and add new definitions on “abuse of power and privileges”, “conflict of interest”, and “gifts” to create a common understanding of expected conduct and behaviour.

Some weaknesses remain concerning the independence of the Commissioner and necessary scope of responsibility to carry out his functions. The process of appointment, role and functions of the Commissioner could be included in the Constitution of Malta to ensure the stability of the public integrity system.

To strengthen the independence of the Committee for Standards in Public Life, Malta could consider including lay members into the Committee, outlining the basic requirements for members of the Committee, and setting clear, transparent appointment procedures to ensure the right people are selected.

Strengthening the Codes of Ethics for Ministers, Parliamentary Secretaries and Members of the House of Representatives

The current Codes of Ethics, which were introduced in the early 1990s, regulate the behaviour of Members of the House of Representatives, as well as Ministers and Parliamentary Secretaries. Three decades after adoption, the Codes present several shortcomings, including the lack of standards to address some of the key risk areas for corruption and misconduct. The Codes could be strengthened to include all relevant terms and definitions, and feature a limited number of values developed with key stakeholders to make them more memorable, create ownership and ensure a common understanding.

The Codes could also include clear provisions on the proper use of information; on how to engage with lobbyists and third parties, manage and prevent conflicts of interest, receive and give gifts and other benefits; and on post-public employment restrictions.

Improving the system of asset and interest declarations

To strengthen the collection and verification of asset and interest declarations, the categories of persons whose data is to be disclosed could be expanded to include persons of trust. Moreover, the scope of information reported could include intangible assets (patents, brands, trademarks, or copyrights) and outside sources and amounts of income. Declarations of assets and interests could be separated into two distinct forms to help elected officials better understand the purpose of each.

To streamline the submission of declarations, the government of Malta could amend the Standards Act to allow declarations to be submitted directly to the Commissioner and provide the Commissioner with the necessary tools to access and verify relevant information. The Commissioner could also establish a system of electronic submission and develop a risk-based methodology for the review of declarations.

Improving transparency and integrity in lobbying

Malta currently lacks the necessary guardrails to ensure that lobbying practices are transparent and conducted with integrity. To advance on this front, the Commissioner has prepared a Consultation Paper with proposals to regulate lobbying, including through two complementary registers: an online open “Register for Lobbyists” and a “Transparency Register” with disclosure obligations for public officials – both managed by the Commissioner.

These proposals are in line with international best practices. Adopting a dedicated law regulating lobby could be central to help stakeholders fully understand the scope and depth of these activities. Malta could also adopt cooling-off periods for elected officials and appointed officials in at-risk positions, as well as a Code of Conduct for Lobbyists.

1 Enhancing the effectiveness of the office of the Commissioner for Standards in Public Life of Malta

This chapter analyses the institutional and procedural set-up of the office of the Commissioner for Standards in Public Life, the human and financial resources of the office, and the organisational culture. This chapter examines the Commissioner's core functions, including on investigations as well as in strengthening capacity and raising awareness on integrity amongst officials covered by the Standards in Public Life. This chapter also provides recommendations on strengthening integrity measures in the office of the Commissioner.

1.1. Introduction

Worldwide, no two parliaments are the same. They differ in form, role and functioning, as they are shaped by each country's own history and culture. Yet parliaments have a set of common functions that aim at giving citizens a voice in the management of public affairs. In this sense, as the highest legislative authority of any government, parliaments carry out four major functions:

- To legislate – that is, to examine, debate, and approve new or amended laws.
- To set the budget – that is, to approve the collection of taxes and other revenue, and to authorise government spending.
- To represent citizens.
- To scrutinise the work of the government (Commonwealth Parliamentary Association, 2016[1]).

The four functions of the legislative body can only be effective insofar as the actors who make up and serve the legislative branch, including both elected and appointed officials, are committed to and held responsible for protecting and upholding the public interest. In particular, this requires establishing effective values and standards to guide behaviour, as well as oversight mechanisms that ensure accountability for the actions taken by such officials.

Accountability can be realised by ensuring answerability, that is, the obligation for elected and appointed officials to provide clarification, explanation or justification for their actions when concerns are raised about breaches of the standards; and enforcement, that is, the ability to take formal action against illegal, incorrect or unethical conduct. Yet overseeing and enforcing standards of conduct of members of parliament presents several unique challenges. First, what standards of conduct should be expected of elected and appointed officials? Second, when these standards are breached, what institutional mechanisms and attributes are needed to effectively oversee these officials?

These challenges emerge in part because of the accountability role that these actors have over government, and in part because of parliamentary privilege; that is, the notion that members of the legislative branch are free to regulate their own conduct in their respective assemblies, without interference from outside bodies (particularly the Executive and the courts). This privilege is meant to ensure that members of the legislative branch can speak freely while carrying out their role, e.g. when they are voting or promoting legislative initiatives. Such privilege is fundamental to the legislative branch's autonomy and independence, and to its ability to carry out its roles of representing constituents and scrutinising executive power (OSCE, 2012[2]).

Yet, "when trust, respect and confidence in elected representatives is damaged, it is incumbent on the democratic legislature […] to steel its nerve and provide leadership around standards of conduct which the public expect" (House of Commons Committee on Standards, 2022[3]). This organisational review is concerned with how that leadership should play out in practice: what institutional mechanisms and attributes should the legislature set out to oversee officials, how should the institutions be established and organised, and what should the core responsibilities be? In particular, this review looks at the legislative, institutional and organisational set-up of the Commissioner for Standards in Public Life (herein "the Commissioner") and his office.[1] The role of the Commissioner was created in 2017 by the Standards in Public Life Act (Chapter 570 of the laws of Malta), and the current incumbent was appointed in October 2018. The role of the Commissioner was created with the aim of enforcing the integrity standards amongst Members of Parliament (MPs), Ministers, Parliamentary Secretaries, Parliamentary Assistants and persons of trust. Amongst its responsibilities, the Commissioner is in charge of examining the declarations of income, assets, interests and benefits, investigating breaches of any statutory or any ethical duty, and making recommendations on ethical matters including on lobbying, acceptance of gifts, the misuse of public resources and confidential information.

This chapter analyses the institutional and procedural set-up of the Commissioner for Standards in Public Life and his office, the human and financial resources the Commissioner relies on to fulfil his functions, and the organisational culture of his office. Through this assessment, this chapter identifies the strengths, weaknesses, opportunities and threats to the Commissioner's mandate, and provides recommendations to improve the effectiveness and impact of the office.

1.2. The legislative and institutional framework establishing the Commissioner for Standards in Public Life

Oversight mechanisms that provide accountability for elected and appointed officials can take several different configurations. They can be set-up as standing committees within parliament, or be instituted within the functions of the Prime Minister or Speaker. A growing trend however is towards establishing oversight bodies that are independent of the executive, and accountable to parliament. These bodies may report directly to the Prime Minister or Speaker (as is the case in Canada, the Netherlands and New South Wales, Australia) or may report to a parliamentary standards committee (as is the case in the United Kingdom (UK), the United States (US), Scotland and Malta).

To ensure independence, good practice suggests designing the oversight mechanisms within the following parameters:

- establishing the function of the oversight mechanism in the constitution or legislation
- appointing the head of the office by the legislative body for a fixed term with limited opportunities for renewal
- ensuring that the appointment procedure facilitates multi-party support and that the head of the office is politically neutral and commands respect from all parties
- protecting the head of the office from removal except for proven misbehaviour or other reasonable grounds in legislation (Committee on Standards in Public Life, 2021[4]).

The legal and institutional set-up of the Commissioner and his office fits well within these parameters. The Act on Standards in Public Life creates the Commissioner, and grants him full autonomy and independence from the Executive, with accountability only to Parliament. The Commissioner does not report through a Minister, but rather directly to Parliament. This independence is further achieved through the appointment procedure for the Commissioner, in which the role is filled via appointment by the President of Malta acting in accordance with a resolution of the House of Representatives (decided by the votes of not less than two-thirds of all the members of the House).

The Commissioner is also protected in law from unfair removal. Article 7 outlines the provisions for the Commissioner's removal from office, noting that "a Commissioner may at any time be removed or suspended from his office… on the grounds of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour". The process for removal requires the House of Representatives to agree via a two-thirds majority vote.

Moreover, the Commissioner has complete independence in terms of staffing. This independence is guaranteed in the Standards in Public Life Act (Article 11(1)), whereby the Commissioner can recruit officers and employees as necessary for carrying out the functions, powers and duties under the Act. This power includes the ability to define the number of persons that may be appointed, their salaries and conditions of appointment. Additionally, it empowers the Commissioner to engage an external consultant with relevant expertise to support an investigation (Article 11(2)).

However, several factors in the legislative framework may impact the Commissioner's independence. First, while the Commissioner can only be dismissed due to certain conditions and following a two-thirds majority vote, the Act on Standards in Public Life is enacted by a simple majority vote. As such, particularly in light of the majoritarian parliamentary system, the Act can be repealed or amended by the government at any time, leaving the Commissioner's position vulnerable to being dismantled. To close this loophole, the functions and role of the Commissioner for Standards could be enshrined in the Constitution of Malta. This would follow the same precedent as the Parliamentary Ombudsman and the Auditor General.[2]

Second, the Standards Act fails to grant legal personality to the office of the Commissioner. This further threatens the independence of the Commissioner, as without its own legal personality, the office of the Commissioner is technically part of government, thus arguably it is subject to article 110(1) of the Constitution of Malta on the appointment, removal and disciplinary control over public officers. To that end, the Ministry for Justice could consider assigning a legal personality to the office of the Commissioner in the Standards Act.[3]

Third, the term limits of the Commissioner are currently set for a five year, non-renewable term. This limited period raises challenges concerning the Commissioner's ability to fully advance the mandate, as well as ensure an appropriate replacement in a timely manner. The current model in Malta is based on the UK system, where the Parliamentary Standards Commissioner is appointed for a non-renewable, five-year term. Other jurisdictions however enjoy a longer period of time (six or seven years), with the possibility of a one-time term renewal (e.g. Canada, France,[4] the Netherlands, etc.). Within Malta, there is also precedent for allowing a one-time term renewal: both the Auditor General and the Ombudsmen are eligible for reappointment for one additional consecutive term of five years. To allow a Commissioner to fully realise their mandate and to bring the terms of appointment in line with other parliamentary oversight bodies in Malta, the Ministry for Justice could amend the Standards Act to allow for a five-year term with the possibility of reappointment for one consecutive term of five years. Reappointment should only be approved by the votes of not less than two-thirds of the House of Representatives.[5]

Fourth, unlike similar models elsewhere, there are limited specifications regarding the preferred background of a Commissioner. While Articles 5(1) and 5(2) of the Standards Act specify the disqualifications and incompatibilities to be appointed Commissioner, the Act does not contain further measures detailing the qualifications or background of the Commissioner. Additionally, although the current incumbent is a well-respected lawyer with decades of public service to Malta who has retained the respect of both political parties, he has been subject to criticism for his own political past. In this sense, the lack of specifications on the qualifications or background of the incumbent may become a challenge to ensure that future Commissioners will have the level of experience, expertise and/or strength needed to maintain the independence and high quality of the Office. In light of these challenges, the Ministry for Justice could consider defining in the Standards Act clearer parameters on qualifications and background to guide the appointment of future Commissioners.[6]

Finally, a fourth challenge emerging from the legislative framework concerning the independence of the Commissioner relates to the appointment of a temporary Commissioner. This is dealt with extensively in Chapter 2.

1.3. The key functions of the Commissioner for Standards in Public Life

In addition to having independence clarified in the appropriate legislative framework, parliamentary oversight bodies need clear roles and responsibilities assigned to them. Although parliamentary oversight bodies may have a wide range of responsibilities, the common function across all these bodies is the ability to receive and/or investigate complaints of misconduct or breaches of ethics. Depending on the set-up, the oversight body may have additional roles and responsibilities, such as:

- Providing confidential advice and guidance to elected and appointed officials on ethical dilemmas and on upholding integrity standards (as is the case in Canada, France and the United Kingdom).
- Overseeing register(s) of interests, including asset and interest declarations (as is the case in Canada, France and the United Kingdom), or lobbying disclosures (as is the case in Ireland).
- Providing advice to the executive on what additional integrity standards or measures may be necessary to address gaps in the integrity system for elected officials and those appointed to support them.

In Malta, Article 13 details the functions of the Commissioner for Standards in Public Life as follows:

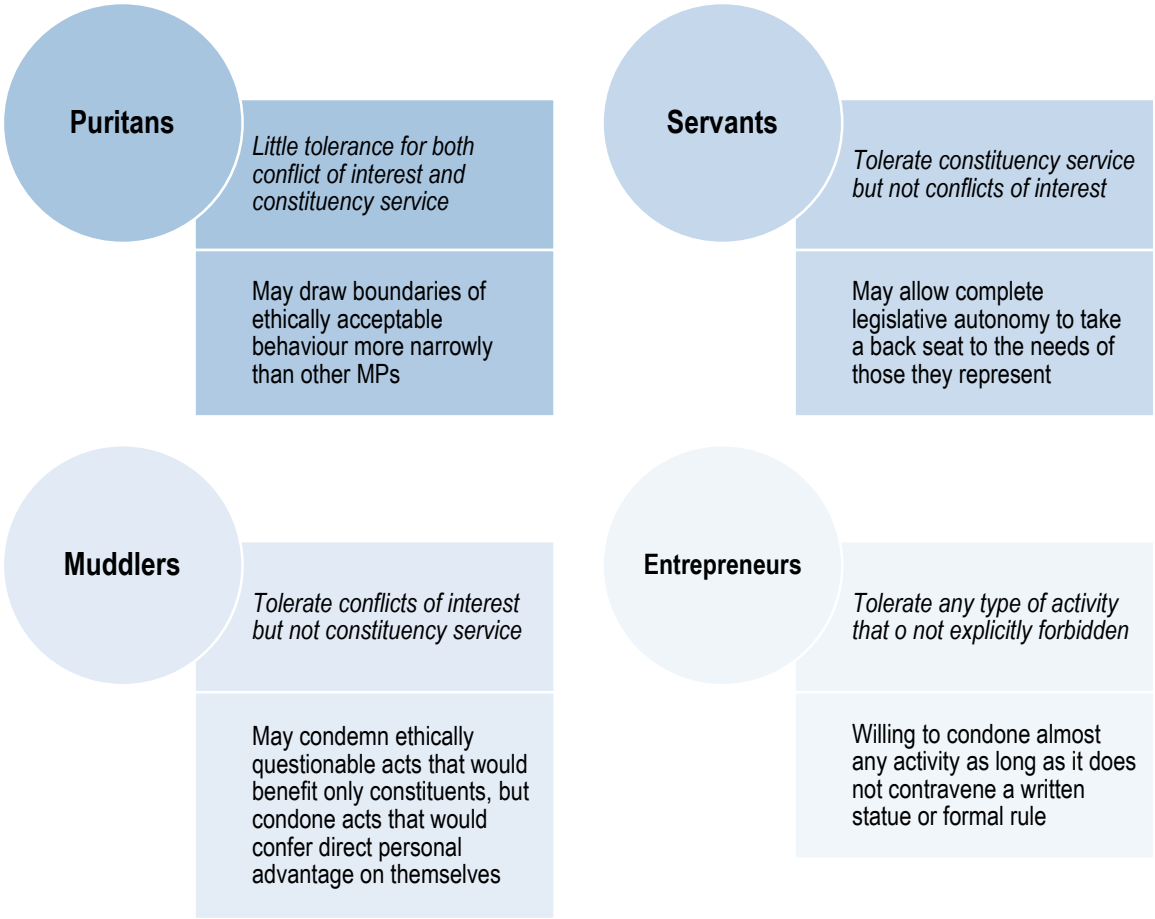
- To give recommendations to persons seeking advice/clearance on whether an action or conduct intended by him would be prohibited by the Code of Ethics or by any other particular statutory duty (e.g. “negative clearance”).
- To investigate the conduct of persons subject to the Act (e.g. Members of the House of Representatives, including Ministers, Parliamentary Secretaries and Parliamentary Assistants, as well as persons of trust and any other officials as determined by the Ministry of Justice by a special decision).
- To monitor parliamentary absenteeism and to make sure that members of Parliament pay the administrative penalties to which they become liable if they miss parliamentary sittings without authorisation from the Speaker.
- To examine the declarations of assets and financial interests filed by persons who are subject to the Act.
- To monitor the evolution of lobbying activities and to issue guidelines for the management of risks connected to such activities.
- To make recommendations concerning the improvement of the Code of Ethics of Members of the House of Representatives and of the Code of Ethics for Ministers and Parliamentary Secretaries, on the acceptance of gifts, the misuse of public resources, the misuse of confidential information, and on post-public employment (e.g. the revolving door) (Office of the Commissioner for Standards in Public Life Valletta, Malta, 2020[5]; Government of Malta, 2018[6]).

The following section reviews the first three functions (negative clearance, complaints handling, and monitoring parliamentary absenteeism), and the measures established to carry out these functions. Where gaps are identified, recommendations are made to strengthen the Commissioner’s capacities to handle these functions. The functions related to asset and interest declarations, lobbying and Codes of Ethics are mentioned, however detailed analysis and recommendations related to strengthening the Commissioner’s role in these areas are included in the respective chapters that review each of these functions in detail.

1.3.1. Negative clearance

Integrity and ethics, particularly political integrity, is not always a clear-cut question of common sense. Often politicians face competing values, with different views on what these values look like in practice, leading to a lack of consensus on what constitutes political integrity. For example, in a study that looked at the political culture in the UK in the 1990s, Mancuso (1993[7]) noted four distinct ethical types: puritans, servants, muddlers and entrepreneurs (see Figure 1.1).

Figure 1.1. Ethical types in political service



Source: (Mancuso, 1993[7]).

While these are not necessarily exhaustive types, they point to the fact that there is not always homogenous consensus on values, or how they should be applied, across political actors. To that end, having mechanisms in place that can provide integrity advice and guidance are essential for helping to raise knowledge about integrity standards and build capacity and skills for implementing the standards. Such guidance and advice can be considered in two different forms: (1) through awareness raising, trainings and workshops on the integrity standards; and (2) through written or verbal confidential advice.

> *The Commissioner could strengthen his role on providing general recommendations and proactive integrity guidance by developing and implementing workshops and training for officials covered under the Standards Act*

Discussions with key stakeholders from parliament, government, business and civil society all underscored a lack of consensus on the core integrity values and standards in Malta. While stakeholders agreed the Commissioner's efforts were instrumental in setting higher standards, they signalled that significant efforts were still required to build consensus around the core values for the political class. Particular challenge areas raised included the line between conflict of interest and constituency service, as well as a values-based and rules-based approach. These discussions highlighted the need to continue raising integrity awareness among persons covered by the Standards Act and further strengthen the advisory function within the integrity system.

Under the current framework, the Commissioner is responsible for addressing negative clearance requests for people covered by the Standards Act. In other words, if a person subject to the Act requests it, the Commissioner is empowered to give recommendations on whether an action or conduct intended by the requester would be prohibited by the applicable Code of Ethics or by any other statutory or ethical duty. This function of "negative clearance" is working well.

Regarding the Commissioner's role to provide proactive general recommendations and integrity guidance, although this is not a new function, it could be further developed to achieve a greater impact. Raising awareness about integrity standards and building knowledge and skills to manage integrity issues appropriately are essential public integrity elements (OECD, 2020[8]). Raising awareness helps public officials recognise integrity issues when they arise, and well-designed training and guidance help equip public officials with the appropriate knowledge and skills to apply integrity standards. Additionally, integrity awareness raising and training can help trigger a change of behaviour by reminding people of the values and standards that should guide them when carrying out their duties.

The Commissioner has been proactive in using the findings of investigations to issue guidance on key risks that emerged. For example, the Commissioner issued recommendations to address potential conflicts of interest resulting from dual employment of Members of Parliament taking up positions in the public sector. He has also issued guidance related to the use of social media. However, to date, aside from awareness raising about the existence of the office of the Commissioner, there have been no trainings or workshops held by the Commissioner for those who are covered under the Standards Act. This, taken together with the lack of consensus around the core values for the political class, suggest that more proactive efforts could be undertaken to provide guidance and support to those covered by the Standards Act.

Aside from awareness raising and capacity building on integrity more generally, providing principles, rules, standards and procedures that give public officials clear directions on how they are expected to behave when engaging with third parties can help foster a culture of integrity (OECD, 2021[9]). In Malta, this remains an area that could be further strengthened, as discussed in Chapter 5.

To that end, the Commissioner could develop and implement a series of workshops for officials covered under the Standards Act, which focus on the core values and standards of conduct outlined in the respective Codes of Ethics and the new proposed regulation on Lobbying. In particular, considering the recent election, the Commissioner could prepare a workshop for the new parliamentary session. Informed by lessons learned in other jurisdictions, this workshop could take place a month or two after MPs take up their roles, allowing these MPs to settle and process information (McCaffrey, 2020[10]). These workshops could include 'ethical dilemma' training, whereby participants are presented with an ethical dilemma, and discuss in small groups what actions they would take to resolve those dilemmas. This practice borrows from the lessons learned in the civil service, where other jurisdictions have used dilemma training to support delivery of integrity training to public officials (see Box 1.1).

Box 1.1. Training to guide public officials in facing ethical dilemma

Dilemma training in the Flemish Government, Belgium

The Agency for Government Employees in the Flemish Government offers dilemma training to public officials. During the training, participants are given practical situations in which they face an ethical dilemma with no clear path to resolving the situation with integrity. The facilitator encourages discussion between the participants about how to resolve the situation and helps them explore the different choices. The focus of the training is the debate rather than possible solutions, as the objective is to help participants identify how different values might act in opposition to one other.

One example of a dilemma situation is:

Frans F. is a supplier with whom you have been working for a long time. Negotiations are currently underway to continue the cooperation with this supplier. You meet Frans F. during a study day and he proposes to have lunch together at noon. He takes you to a fancy restaurant and says "Don't worry, the bill is mine". What do you do?

1. *We have known each other for a long time. I will enjoy the lunch.*
2. *I insist on paying my own bill.*
3. *I make him pay, but make it clear that this makes me uncomfortable, and that it will not be repeated.*
4. *I order the cheapest dish on the menu and report the situation.*

Dilemma situations could cover themes such as conflicts of interest, ethics, loyalty, leadership and so on. The training sessions and situations used can be targeted to specific groups or entities.

Source: (OECD, 2018[11]) and https://overheid.vlaanderen.be/personeel/integriteit/omgaan-met-integriteitsdilemmas (unofficial English translation, original in Dutch).

1.3.2. Complaints handling

When ethical standards are alleged to have been breached, parliamentary oversight bodies play an essential, investigative role to determine whether misconduct took place. Under the Act on Standards in Public Life, the Commissioner is responsible for handling complaints and allegations of breaches of any statutory or any other ethical duty of any person to whom the Act applies. The Commissioner can also launch an own-initiative investigation to investigate possible breaches even if no official complaint has been made. Handling complaints and carrying out investigations is an essential part of the Commissioner's remit.

Determining the effectiveness of the complaint and investigatory process requires looking at it from two different perspectives: (1) the perspective of the complainant; and (2) the perspective of the person the complaint was submitted against. The following deals with these two perspectives, and how they are realised in practice by the procedures in place by the Commissioner.[7]

With regards to the perspective of the complainant, the complaints function should be visible, accessible, timely and effective. "Visible" requires complainants knowing that a mechanism exists for them to raise their concerns with. In practice this means that the parliamentary oversight body should raise awareness about who can submit a complaint and on what issues, and what they can expected from the process. To be "accessible", complainants should not face significant obstacles when trying to submit their complaint. In practice, this means that the parliamentary oversight body should have clear procedures for submitting complaints, whether by post, telephone, email or online; guidance in plain language should be provided;

and complainants should feel safe accessing the mechanism. "Timely" means that the parliamentary oversight body should react quickly to confirm receipt of the complaint, and process the complaint in a timely manner. Finally, "effective" means that once an investigation is complete, the parliamentary oversight body's findings should be received by a competent body that has the ability to take a clear course of action on the findings.

To strengthen accessibility for complainants, the Commissioner could enhance guidance on how to submit a complaint, enable anonymous complaints, and have the power to grant whistle-bower status

With regards to visibility, the Commissioner for Standards in Public Life has a clear website that is easy to access.[8] The Commissioner has also participated in a number of public events to raise awareness about the existence of his office and the complaints mechanism. For example, the Commissioner has carried out presentations to students at the University of Malta on issues related to standards in public life and lobbying, conducted several interviews with the media on his functions and the Standards Act, appearing on One, Net, TVM, Malta Today, 103 – Malta's Heart, and Lovin Malta.

With regards to accessibility, there are clear procedures in place for submitting complaints, including by post, email and through the Commissioner's website. Complaints can also be received orally and put in writing no later than ten days (although this procedure has yet to be used). A dedicated webpage about "complaints" details how to make a complaint, and covers information about who complaints can concern, what actions can be complained about, the timeframe, and what happens if other proceedings are ongoing. The website also clarifies the reasons why the Commissioner may reject the complaint.

The Commissioner also provides support to complainants, including following up with them once a complaint is received to ensure sufficient information has been provided. Previous complainants noted that the process to submit a complaint to the Commissioner is straightforward, and several appreciated the support of the Commissioner and his office in helping to guide complainants through the process. Others however noted that more could be done to clarify the complaints procedure. To that end, the Commissioner could consider including on his website a section that details what the Commissioner cannot investigate, and who the appropriate authority for undertaking that investigation may be. In other jurisdictions, detailed information on the complaints process, including what can and cannot be investigated, is included on their website (see Box 1.2). Moreover, it is worth noting that the website does not clarify *who* can submit a complaint, and for those who may not be well versed on the Commissioner's role or the Standards Act, it may not be immediately clear. To that end, the Commissioner could consider clarifying on the website that the complaints mechanism is open for everyone.

Box 1.2. Websites with guiding information on the process to submit a complaint

Canada

The webpage of the Office of the Conflict of Interest and Ethics Commissioner of Canada contains a section on investigations, with two separate subsections that clearly differentiate what the Commissioner can and cannot investigate. Additionally, it contains a subsection on what to expect during an investigation, which aims to provide participants in an investigation with a clear idea of what happens in the course of an investigation carried out by the Commissioner, and the main differences between investigations under the Conflict of Interests Act and those under the Conflict of Interests Code.

The Netherlands

The webpage of the Integrity Investigation Board of the Netherlands contains a section with information on how to submit a complaint, including information regarding what the Integrity Investigation Board

cannot investigate and a simple form that complainants can fill in order to make an online complaint. The form contains a link to further information on the use of personal data by the Integrity Investigation Board and why personal information is required to process any compliant.

United Kingdom

The webpage of the Parliamentary Commissioner for Standards of the United Kingdom contains clear information on what the Commissioner can and cannot investigate. Additionally, a section with frequently asked questions may also help to guide complainants through the process to submit a complaint, including the answers to the following questions:

- What information do I need to provide when making an allegation?
- Can I make a complaint about the Commissioner's decision not to investigate a matter?
- Can I make an anonymous complaint?
- How can I complain about the standard of service an MP has or has not provided?
- Can I complain about something an MP has posted on a social media platform?
- How do I complain about something an MP has said in the House of Commons Chamber?
- How do I complain about something an MP has done in their Ministerial role?

Sources: Official websites of the Office of the Conflict of Interest and Ethics Commissioner of Canada, https://ciec-ccie.parl.gc.ca/en/investigations-enquetes/Pages/default.aspx; the Integrity Investigation Board of the Netherlands, https://www.tweedekamer.nl/klacht-indienen-bij-het-college-van-onderzoek-integriteit and the Parliamentary Commissioner for Standards of the United Kingdom, https://www.parliament.uk/mps-lords-and-offices/standards-and-financial-interests/parliamentary-commissioner-for-standards/parliamentary-commissioner-for-standards/.

Beyond clear procedures for submitting complaints, a second attribute of accessibility relates to how safe potential complainants feel accessing the mechanism. Currently the Act on Standards in Public Life does not allow for anonymous complaints. Five anonymous complaints have been received thus far, but the Commissioner was unable to receive them. To facilitate access for those who wish to keep their identity confidential, the Commissioner allows for complainants to indicate in their submission that they wish for their identity to be kept confidential. It is not clear the extent to which the Commissioner can protect the identity of these individuals, which may impede those with a legitimate complaint from coming forward. To that end, enabling individuals to submit a complaint anonymously can help encourage reporting on wrongdoing and strengthen trust in the reporting system. As discussed in Chapter 2, the Standards in Public Life Act could be amended to allow for anonymous complaints. To facilitate anonymous reporting, the Commissioner could set up a portal allowing anonymous complainants to submit their information using a pseudonym and employ encryption technology for follow-up to ensure that the complainant remains anonymous. The example of the corruption hotline using double-encryption technology in Austria may serve as an example (see Box 1.3).

Box 1.3. Using encryption technology to facilitate anonymous reporting

In 2013, the Federal Ministry of Justice in Austria launched a portal to enable individuals to report wrongdoing. The portal can also be accessed via a link on the Federal Ministry of Justice homepage, where individuals can find and download further information on the portal. The portal is operated by the Central Public Prosecutor's Office for Combating Economic Crimes and Corruption (CPPOCECC).

The whistleblowing system is an online anonymous reporting system, which is especially suited for investigations in the area of economic crimes and corruption. The whistle-blower (or "discloser") may report anonymously any suspicion that a crime in the general remit of the CPPOCECC pursuant to section 20a of the Code for Criminal Procedure (CCP) was committed; the investigation authority in turn may make inquiries with the whistle-blower, while maintaining his or her anonymity in order to verify the value of the information. Any reports within the focus set forth by section 20a CCP, but outside the CPPOCECC remit, are forwarded to the competent authority (mostly financial authorities).

To ensure that anonymity is guaranteed, when setting up a secured mailbox, the whistle-blower is required to choose a pseudonym/user name and password. The anonymity of the information disclosed is maintained using encryption and other security procedures. Furthermore, whistle-blowers are asked not to enter any data that gives any clues as to their identity and to refrain from submitting a report through the use of a device that was provided by their employer. Following submission, the CPPOCECC provides the whistle-blower with feedback and the status of the disclosure through a secure mailbox. If there are issues that need to be clarified regarding the case, the questions are directed to the whistle-blower through an anonymous dialogue. Such verified reports can lead to the opening of investigations or raise concrete suspicions requiring the initiation of preliminary investigations.

As of 31 May 2017, the introductory page of the electronic whistleblowing system was accessed 343 0296 times. A total of 5 612 (possible) criminal offences were reported, less than 6% of which were found to be completely without justification. A total of 3 895 of the reports included the installation of a secured mailbox. About 32% of the reports fell into the scope of other (especially financial) authorities and were forwarded accordingly.

Sources: Austrian Federal Ministry of Justice, www.bkmssystem.net/wksta; and https://www.bkms-system.net/bkwebanon/report/clientInfo?cin=1at21&c=-1&language=eng.

Allowing anonymity however may not be sufficient in all cases. Public employees in particular who raise a complaint against their colleagues or superiors may need additional assurance that there will not be reprisals and work-related sanctions for reporting wronging and misconduct of superior officers or fellow colleagues covered by the Standards Act. Indeed, providing for and clearly communicating about the protections afforded to whistle-blowers supports an open organisational culture and encourages the disclosure of wrongdoing, as public employees are aware of how to report misconduct and have confidence in reporting due to the clear protection mechanisms and procedures in place (OECD, 2016[12]). To that end, as recommended in Chapter 2, the Commissioner could be enabled to grant whistle-blower status to public employees.

If granted this authority, the Commissioner could ensure that public employees are aware of the possibility to be granted whistle-blower status, and what whistle-blower status is (and is not). To that end, the Commissioner could consider carrying out communication campaigns on the new mechanisms in place and raising awareness amongst public employees about reporting channels, protection mechanisms and procedures to facilitate the submission of complaints, through newsletters and/or information sessions. Examples from other jurisdictions can be used to design communication and awareness raising campaigns on whistle-blowing protection in Malta. For instance, the Slovak Republic integrated whistle-blower

protection into their ethics training, forging a strong link between protecting the public interest and integrity, and the United States requires that agencies provide annual notices and biannual training to federal employees regarding their rights under employment discrimination and whistle-blower laws (OECD, 2016[12]).

The Commissioner could ensure that cases are handled in a timely manner

Complaint mechanisms need to deal with complaints in a timely, efficient manner and good practice suggests clarifying in law or related guidance expected service standards for dealing with a complaint.

Once the Commissioner has received a complaint, his office conducts a preliminary review to determine whether the complaint is eligible for investigation in terms of the Standards Act. If the complaint is not eligible, the Commissioner informs the complainant and the case is closed. Complainants noted that while they appreciate the length of time it takes to investigate a complaint, the Commissioner can take a long time in the 'initial assessment' phase, i.e. determining whether to accept the complaint or not. To strengthen timeliness in this regard, the Commissioner could set a service standard of a specific time period within which to determine whether the complaint will be accepted or not. The Commissioner could also ensure sufficient human resources are available to meet this service standard (see Section 1.4).

If a complaint is found eligible, the Commissioner opens an investigation. This includes collecting, filing and recording evidence, summoning witnesses, preparing and revising the draft reports. Interviews with the Commissioner and his office found that the process to investigate complaints has improved with practice, although carrying out an investigation can be incredibly lengthy and time consuming, given the complexity of the cases received. For example, the office staff transcribes the verbal evidence, which has become one of the main challenges in terms of workload. Although there is a possibility to outsource the transcription of evidence, the Commissioner has been reluctant to do so because of the sensitivity of the information collected in the course of an investigation. Additionally, the Commissioner and his office have noted that witnesses have been co-operating so far, although there have been some delays in certain cases where people were summoned but could not attend because of COVID-19.

Concerted efforts are ongoing to make the process more efficient by formalising procedures, based on lessons learned from previous cases -e.g. summarising witnesses' interviews rather than transcribing them. Yet given the lack of resources, when the Commissioner receives a complex case, the rest of the work is put on the backburner. As will be further explored in Section 1.4, the Commissioner could consider bringing in more dedicated resources to manage the various elements of complaints handling.

To ensure effectiveness of the Commissioner's findings, the Committee for Standards in Public Life could be restructured

Implementing clear investigative procedures and timely responses to reports of misconduct strengthen the credibility of the integrity system. Timely investigations can act as a deterrent for those covered by the Standards Act to comply with their ethical duties and to not engage in misconduct because of the risk for detection, sanctioning and shaming. The Commissioner's response and investigation of complaints are a first step towards enhancing the integrity of elected and appointed public officials, but ensuring his reports are discussed and wrongdoings, when ascertained, are sanctioned, are essential for reinforcing integrity standards in the long term. Indeed, making sure that findings do not just sit on the shelf but instead trigger sanctions can help strengthen the credibility of the system and signal to the public the government's real commitment to political integrity.

In Malta, following the course of his investigation, the Commission can issue a report containing his conclusions and recommendations to the Committee for Standards in Public Life (herein the "Committee for Standards"). The Committee for Standards must decide whether to adopt the conclusions and

recommendations contained in the report, and take an action by application of Articles 27 and 28 of the Standards Act, including the imposition of an appropriate sanction if it finds that there has been misconduct.

To date, the Commissioner has submitted six cases to the Committee for Standards. Although the Committee for Standards has not rejected a case report submitted by the Commissioner, as a whole, it has failed to implement sanctions effectively, mainly because of its current composition and lack of incentives for its members to work above political party lines.[9] Indeed, discussions with key stakeholders, including members of the Committee for Standards, the office of the Ombudsman, academics and representatives from civil society underscored the weaknesses of the composition of the Committee for Standards and highlighted that such Committee is currently the weakest element of the integrity framework for elected and appointed officials in Malta. Additionally, members of the Committee for Standards have been criticised for acting in a politicised way, including the Speaker of the House who has issued rulings that have prevented the Committee for Standards from imposing sanctions where there was evidence of misconduct by government MPs.

While Chapter 2 deals with this issue in more detail, it is important to note here that the Committee's difficulties in reaching consensus on proportionate sanctions in cases of proven misconduct damages the integrity system as a whole. To that end, as noted in Chapter 2, the Ministry for Justice could consider changing the structure of the Committee for Standards to enhance its independence and functioning. Reforms could include the following specific actions:

- Including lay members on the Committee for Standards to bring an independent and external perspective to the deliberations of the Committee, and elaborating clear guidelines for their appointment.
- Appointing as the chairperson of the Committee for Standards a former judge selected by all political parties and known for his/her integrity and independence, to raise the nature of the discussions beyond specific individuals or political parties and ensure a timely response to reports of misconduct.
- Elaborating clear guidelines for the appointment process of MPs as members of the Committee for Standards, including ensuring that MPs appointed as members of the Committee are not sitting members of the Cabinet.
- Developing guidelines for members of the Committee for Standards on their role and responsibilities, values and expected standards of behaviour, along with other integrity measures.

To ensure transparency, the mechanisms detailed in the Standards Act on fair process could be further elaborated on in the form of rules of procedure.

Beyond ensuring that the complaints function is visible and accessible, complaints are handled in a timely manner, and results are effective, parliamentary oversight bodies also need to ensure they handle complaints in line with the principles of fair process. These principles include:

- dealing with complaints on their merits;
- acting independently and having an open mind;
- taking measures to address any actual or perceived conflict of interest;
- considering all information and evidence carefully;
- keeping the complaint confidential as far as possible, with information only disclosed if necessary to properly review the matter;
- acting without delay;
- upholding the right of the individual to be advised of a complaint lodged against them and to present their position, as well as comment on any adverse findings before a final decision is made (Office of the Ombudsman, 2012[13]).

In Malta, there are clear mechanisms in place for protecting the principles of fair process. These mechanisms are outlined in the Standards Act: Article 18(3) states that before the Commissioner makes any finding or recommendations about a person investigated, such person should have access to all evidence and should have the right to be heard in accordance with the principles of fair trial. Moreover, Article 21(1) of the Standards Act mandates the secrecy of the information obtained by the Commissioner in the course of an investigation under the Act, except for the purposes of the investigation and for the publication of the case reports.

The legal basis concerning transparency and accountability in the process could be strengthened, and is further explored in Chapter 2. In addition to the legal basis, the Commissioner and the Committee for Standards have agreed on a series of internal procedures aimed at guaranteeing the principles of fair process in order to safeguard the right to privacy of the individual under investigation.

Going forward, the Commissioner could detail rules of procedure for his office on case handling, from receipt to issuing of the final report to the Committee. These rules of procedure should build on Articles 18(3) and Article 21(1), as well as the internal procedures agreed between the Commissioner and the Committee for Standards. In line with proposed good practice elsewhere, the Commissioner could consider allowing the House of Representatives to review and approve the rules of procedure, in order to obtain their buy-in and support.[10] The Commissioner could also consider sharing these rules with those subject to an investigation.

1.3.3. Monitor parliamentary absenteeism and oversee payment of fines

In addition to the function of receiving and investigating complaints of misconduct or breaches of ethics, parliamentary oversight bodies may have other roles and responsibilities. In Malta, Article 13(1d&e) of the Standards Act requires the Commissioner to scrutinise the register with all the details of absentee Members of Parliament and to ensure that those who have been absent without permission pay the monthly administrative fine.

However, the Commissioner has noted that this function could be carried out by the Clerk of the House of Representatives, as such role takes up an important amount of time which could be devoted elsewhere to achieve a greater impact in raising integrity standards amongst people in public life. In this sense, in line with international good practices, the Ministry of Justice could consider removing this function from the Standards Act and entrusting it to the Clerk of the House and the political parties (see also Chapter 2 for more details on this recommendation).

1.3.4. Asset and interest declarations

Under the Standards Act, the Commissioner is responsible for examining and verifying the declarations of assets and financial interests filed by persons subject to the Act. Early in his term, the Commissioner developed a methodology for the review and verification of these declarations (see Box 1.4).

Box 1.4. Procedure for the review of assets declarations made by MPs

The Commissioner for Standards in Public Life has defined an internal procedure for carrying out the review of the annual declarations made by MPs. Such procedure relies on the submission of the following information per MP:

- The annual declaration, which is submitted by each MP to the Speaker of the House by 30 April of the following year.
- Ministers/parliamentary secretaries returns to the Speaker of the House, which are to be submitted by 31 March of the following year.
- Extracts of the income tax return completed by each MP drawn up by the Commission for Revenue and passed on to the Speaker of the House.

The process consists of the following six steps:

1. The office of the Commissioner maintains an excel sheet for each MP, where data is inputted from each of the aforementioned sources (source of information is clearly indicated). To assess the information available on each MP, data for each year is inputted in different columns allowing to compare how the amounts and assets would have changed from one year to another.
2. A senior official within the office of the Commissioner reviews the information populated and lists any queries or clarifications that are necessary.
3. In cases where an MP has carried out a property transaction during the year, a copy of the public deed is requested. This, in order to understand the financing of property acquisitions as well as the possible movements in bank balances/investments and the possible sources of financing of future property acquisitions. In cases where the movement of assets and/or liabilities do not make sense with i) the income illustrated on the return completed by ministers/parliamentary secretaries; ii) with the extracts of income derived from the Commission for Revenue in the case of MPs; and/or iii) with other facts known by the office of the Commissioner, specific clarifications are requested. The respective MP is given 14 days to reply. All communication is done in writing and a separate file is opened to maintain all correspondence.
4. A senior official within the office of the Commissioner reviews the documentation received. If deemed necessary, further information or clarification is requested.
5. Depending on the outcome of the analysis, the MP may need to re-submit the annual declaration. Depending on the error or omission, further action may be taken or the file could be concluded satisfactory.
6. In all cases, a concluding memo is included in the respective file.

Source: Questionnaire on the office of the Commissioner for Standards in Public Life, 2021.

There are a number of challenges related to this role, most notably due to gaps in the Standards Act and the Income Tax Management Act. These issues are addressed in detail in Chapter 4, it is however worth noting here that any increased responsibility for the Commissioner to handle interest and asset declarations will require considerations related to human resources.

1.3.5. Monitor the evolution of lobbying activities and issue guidelines to manage lobbying-related risks

The Commissioner is also responsible for identifying the activities in Malta that should be considered as "lobbying", issuing guidelines for those activities, and making recommendations to regulate such activities (Article 13(1f) of the Standards Act).

To date, the Commissioner has prepared a Consultation Paper that sets out the proposals to regulate lobbying, including defining who is a lobbyist, what constitutes lobbying, and how such lobbying activities should be regulated. A full analysis of these proposals is dealt with in Chapter 5, but it is worth noting here that the proposals by the Commissioner include assigning his office the responsibility for managing a Register of Lobbyists and a Transparency Register. This will require significant financial and human resources in order to implement the function.

1.3.6. Issue recommendations to improve the Code of Ethics and raise integrity standards

The final function allocated to the Commissioner is laid out in Article 13(g) of the Standards Act, and includes issuing recommendations for improving the Code of Ethics for those covered by the Act, as well as recommendations regarding the acceptance of gifts, misuse of public resources, misuse of confidential information, and post-public employment measures.

In July 2020, the Commissioner issued a document proposing the adoption of revised codes of ethics for MPs, Ministers and Parliamentary Secretaries and additional guidelines. The content of these revised codes and additional guidelines is assessed in Chapter 3, but it is worth noting that the revised codes and additional guidelines recommend several registries that will be managed by the office of the Commissioner, including:

- A Register for Gifts, Benefits and Hospitality
- A Register of Interests (for assets and interests, as noted above)
- A Transparency Register (for lobbying, as noted above)

The proposals also foresee a three-year "cooling-off period" for Ministers and Parliamentary Secretaries, and a one-year "cooling-off period" for MPs.

As noted previously, the proposed additional registries will need to be effectively managed in order to achieve their intended aim. It is paramount that the Commissioner has the appropriate staffing and financial resources in place to carry out these functions.

1.4. Human and financial resources assigned to the office of the Commissioner

For parliamentary oversight bodies, a critical factor for ensuring independence rests in the ability to raise the human and financial resources necessary to carry out duties. This includes hiring independently of the broader public service recruitment system and having stability in the assigned financial resources.

In addition, given the role of raising integrity standards in Malta, it is imperative that the Commissioner and his office operate in a way that is above reproach. This involves strengthening existing integrity measures, as well as implementing new ones, to guide ethical behaviour.

1.4.1. Ensuring the office of the Commissioner has sufficient financial and human resources

Independence in human and financial resources ensures that the staff working within the parliamentary oversight body are not dependent upon the executive for employment. Similarly, the stable financial resources protect oversight bodies from political pressure, thereby strengthening independence. Indeed, the resources allocated to an oversight body must be commensurate with their mandate in order for them to fulfil it in a credible manner, and should be published and stable across years, while allowing some flexibility in periods where there is a higher demand for the oversight body's services –e.g. when an unusually high number of investigations are required. To ensure the Commissioner and his office are fit-for-the-future, the following sets out recommendations to improve the financial and human resource capacity of the office.

> *Malta should ensure that the Commissioner has the appropriate financial resources to implement the strengthened roles and responsibilities regarding lobbying and asset and interest declarations*

In Malta, the Commissioner has a certain degree of independence in terms of his office's budget. Article 11(5) of the Standards Act states that the Commissioner should present to the House of Representatives, by 15 September of each year, a financial plan indicating the ensuing year's activities of his office. There are no specific guidelines to follow and the Commissioner has complete discretion to draw up the budget estimates for the running of his office. As any other entity, the allocated budget of the Commissioner depends on an approval by the House of Representatives (specifically by the House Business Committee), who considers the estimates of the office's financial plan. So far, the House of Representatives has always approved the annual estimates presented by the Commissioner and has always guaranteed the Commissioner the budget requested in the financial plan.

Such practice is in line with good practices adopted in other jurisdictions. For instance, in Canada, before each fiscal year, the Office of the Conflict of Interest and Ethics Commissioner prepares an estimate of its budgetary requirements for the coming fiscal year. The estimate is considered by the Speaker of the House of Commons and then transmitted to the President of the Treasury Board, who lays it before the House with the estimates of the Government of Canada for the fiscal year (Government of Canada, 1985[14]).

With the new mandates and functions on lobbying, assets and interests declarations and handling of additional registers, it is paramount that the Commissioner has the appropriate financial resources to carry out his new functions effectively. To that end, the Commissioner could consider carrying out a socialisation process with the House Business Committee of the House of Representatives in order to explain the need to increase the budget size of his office permanently to consistently deliver on the new functions. The budget size should increase accordingly.

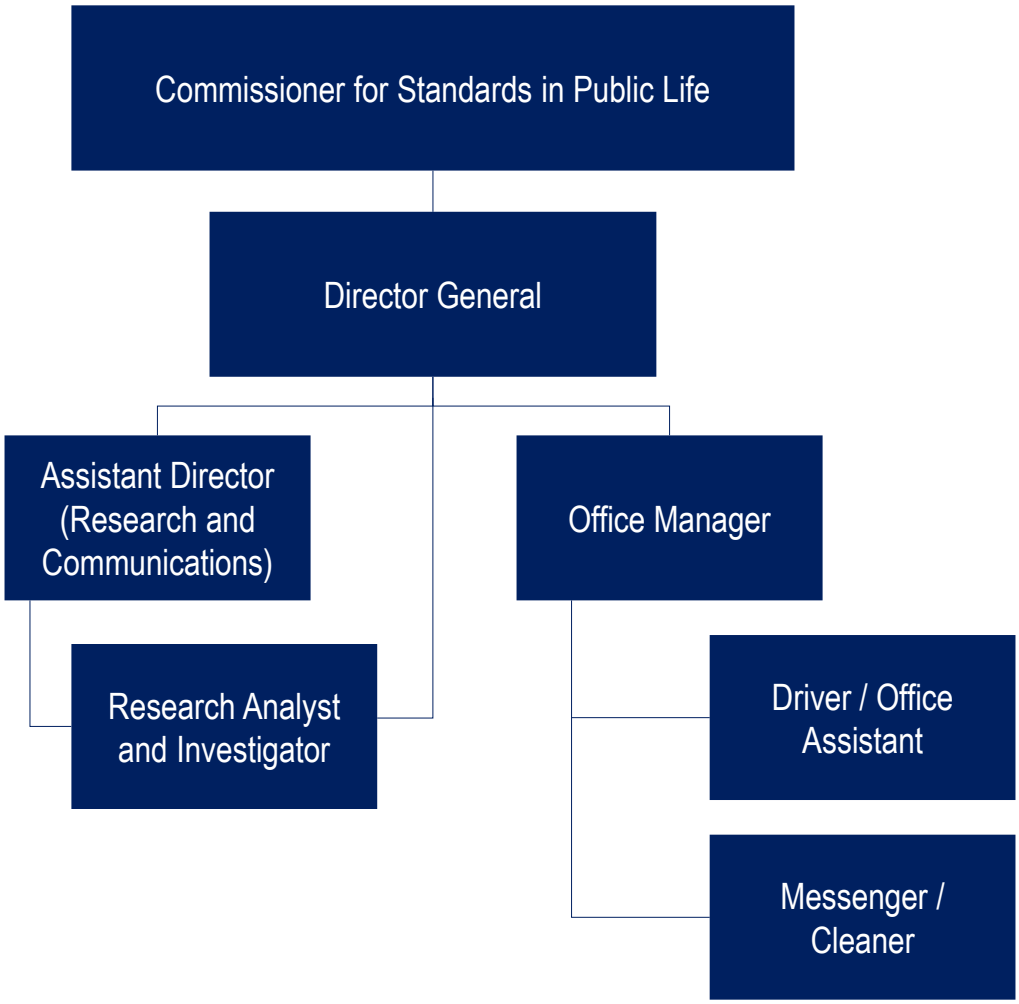
> *The Commissioner could undertake a workforce planning exercise to identify the skills and competencies needed within his office to carry out its functions*

In Malta, the Commissioner has complete independence in terms of staffing. This independence is guaranteed in Article 11(1) of the Standards in Public Life Act, whereby the Commissioner can recruit officers and employees as necessary for carrying out the functions, powers and duties under the Act. This independence includes defining the number of persons that may be appointed, their salaries and conditions of appointment. Additionally, the Act empowers the Commissioner to engage in the conduct of an investigation, in a consultative capacity, any person whose particular expertise is essential to the effectiveness of the investigation (Article 11(2) of the Standards Act).

Currently, the office of the Commissioner consists of seven staff members including the Commissioner for Standards in Public Life, a Director General, an Assistant Director, a Research Analyst and Investigator,

an Office Manager/Personal Assistant, a driver and a messenger/cleaner (see Figure 1.2). The employees who joined the office immediately after the appointment of the Commissioner (this is, the Office Manager/Personal Assistant, the driver and the messenger/cleaner) joined the office without public calls. The Director General and the Assistant Director were detailed from the public service following the approval of the Principal Permanent Secretary and the Prime Minister. The most recent recruit – the Research Analyst and Investigator – was employed through a public call.

Figure 1.2. Organigram of the office of the Commissioner for Standards in Public Life



Source: (Office of the Commissioner for Standards in Public Life, 2021[15]).

In addition to the six officers and employees, the Commissioner has retained three people on a contract-for-service basis. These consultants include i) a legal advisor to give advice on legal issues arising primarily from investigations; ii) an auditor to assist in the examination/verification of the declarations of assets and interests; and iii) a media consultant to provide support and advice regarding communications with the media and the use of online platforms by the office of the Commissioner.

As previously mentioned, the office of the Commissioner is small in number. Although having a small office may be a strength in terms of management, engagement and co-ordination of the staff, it can be a challenge in terms of ensuring that functions are fulfilled in a timely and efficient manner, as has been detailed above. Moreover, as there is the potential for new functions to be added to the Commissioner's remit, for example on lobbying, asset and conflict-of-interest declarations, and registries under the revised Codes of Ethics, the workload of the office is expected to increase substantially.

With a view to analysing the current workforce and increasing the human resources of the office to handle additional functions, the Commissioner could undertake a workforce planning exercise to identify what additional positions are required, the roles and work to be performed in each position, and the qualification and performance criteria that should guide objective selection processes. Key elements of workforce planning are outlined in Box 1.5.

Box 1.5. Key elements of workforce planning

Tracking staff numbers in itself does not constitute workforce planning, rather it is only one facet of workforce planning. Workforce planning requires an accurate understanding of the composition of the public administration's workforce, including skills, competences and staffing numbers in the immediate, medium and longer term and how to cost-effectively utilise staff to achieve government objectives.

Generally, workforce planning models are comprised of similar elements, including:

- defining the organisation's strategic direction
- scanning the internal and external environments
- understanding the current workforce
- assessing future workforce needs
- identifying gaps in the required numbers and capability
- developing and implementing strategies to close the gaps
- monitoring the effectiveness of strategies and revising them as required.

Source: (OECD, 2015[16]).

As part of this workforce planning exercise and with the aim of developing strategies to close the gaps between the current workforce and the future workforce needed, the Commissioner could develop a medium term plan for filling the gaps in the competencies of the workforce through new recruitment and training. In such plan, the Commissioner could determine the strategies to close the gaps by developing scenarios of the size, structure and competences of the workforce needed to deliver its current and new functions, as well as conducting analysis of the cost implications of the different options. Practices from other jurisdictions can be used by the Commissioner to conduct this exercise (Box 1.6).

Box 1.6. Strategic workforce planning in Korea

In the Korean government, a workforce plan is established by each central ministry and agency every five years. The process begins by organisations analysing the current workforce: its size, disposition, structure and composition, as well as recent changes, personnel management practices, and current competency level. The second step is to project what will be necessary for the next five years: workforce size, composition and competencies required to achieve mid- to long-term vision and strategies. The third step is to estimate the gap between the current level and future demand. If a significant gap is identified, likely problems are analysed and possible alternatives for closing the gap are reviewed. The final step is to develop strategies for reducing the gap so that, by the end of the five-year period, the objectives of the workforce plan – workforce size and competency levels – will have been achieved. A workforce plan includes recruitment (selection, promotion and transfer), development (education, outside training and mentoring) and disposition (career development and job posting).

Source: (OECD, 2015[16]).

1.4.2. Strengthening integrity measures

In addition to ensuring the office has the appropriate human and financial resources to prepare for the future, the Commissioner could also strengthen his office by implementing several public integrity measures. These include strengthening merit-based recruitment, adopting a Code of Ethics, and providing further guidance on managing and preventing conflicts of interest.

The Commissioner could strengthen merit-based recruitment processes for his own staff

While the Commissioner's independence precludes him from following public recruitment procedures and public procurement rules, the Commissioner has strived to ensure that the right processes are applied to bring in the right people, in a fair and transparent way. Three years after establishment, the Commissioner could consider formalising these processes to ensure that merit-based recruitment remains the norm. A clear, merit-based process for recruitment and appointment will further strengthen the office's reputation as a key integrity actor in Malta, which not only upholds integrity standards, but also applies integrity standards internally. Core principles of merit-based recruitment, and how they can be exercised in practice, are outlined in Table 1.1.

Table 1.1. Core components of merit-based recruitment

Principles to ensure merit	Explanation
An organisational structure is in place, with clear and justifiable criteria for each position	A principle requirement for a merit-based system is a transparent and logical organisational structure, that clearly identifies the positions needed and the roles and work to be performed in each position
Predetermined appropriate qualification and performance criteria are in place for all positions	Qualification and performance criteria help to guide objective selection processes. Criteria can include the specific abilities, skills, competencies, knowledge, expertise, experience and education necessary to fulfil the tasks required of each position.
Objective and transparent personnel management processes are in place, against which all candidates are assessed	**Transparent processes:** HR decisions are made openly to limit preferential treatment. Decisions are documented so that key stakeholders, including other candidates, can follow and understand the objective logic behind the decisions **Objective decisions:** decisions are made against predetermined criteria and measured using appropriate tools, such as for example standardised or anonymous curricula vitae, standardised testing, assessment centres, panel interviews, competency tests, personality tests, situational judgement tests, and other methods intended to inform the process. **Consensus:** to improve objectivity and limit risks of favouritism, decisions are based on the input of several people.
Open application processes are established and ensure opportunity for assessment to all potentially qualified candidates	Job openings and relevant information are advertised and communicated and reasonable efforts are made to facilitate groups that who may be disadvantaged, such as persons with disabilities.
Oversight and recourse mechanisms are established and ensure fair and consistent application of the system	To protect against potential abuses or irregular application of the merit system, in is essential to develop the following three interrelated mechanisms: • An **independent body** with investigative powers and authority to intervene in HR processes when breaches are deemed to have happened or to be imminent. • **Recourse mechanisms** available to candidates who feel they have been treated unfairly. • **Mandatory and regular training**, advisory services and information provision to ensure that all managers have a clear and consistent understanding of the system and their discretion within it.

Source: Adapted from (OECD, 2020[8]).

Building on these principles, the Commissioner could establish an organisational structure that details the existing positions, with clear and justifiable criteria for each position. This is the first step to develop a merit-based system. Additionally, the Commissioner could ensure that all future employment calls are done publicly. Pre-determined criteria for each position could be included in the advertisement, with measures in place to ensure objectivity in decision making (e.g. requiring a standardised curriculum vitae, carrying out standardised tests, conducting a panel interview, and using various tests depending on the position).

The Commissioner could ensure that the job advertisement is published together with detailed information on the selection criteria and the selection process, providing transparency and objectivity to the recruitment procedure. The recruitment process of the staff of the Parliamentary Commissioner for Standards in the United Kingdom may serve as an example for the Commissioner (see Box 1.7).

Box 1.7. Recruitment process of the staff of the Parliamentary Commissioner for Standards in the United Kingdom

In the United Kingdom, the Parliamentary Commissioner for Standards recruits new members of her team through public employment calls. The Parliamentary Commissioner for Standards sets pre-determined criteria for each position, which are included in the job description together with the key responsibilities and values that the jobholder should carry out and comply with once in his/her role. The job description is published on the House of Commons careers website.

The selection process is based on the analysis of the criteria set out in the skills and experience section of the job description. Candidates that are interested in the position should send an application form, which is used to select those candidates that could move on to the next round of the selection process. Successful candidates are invited to undertake a series of written tests, including psychometric tests and case studies tests, and to attend a competency-based interview.

Source: (House of Commons, n.d.[17]); Interview with the Parliamentary Commissioner for Standards of the UK Kathryn Stone on the 28 October 2021; and UK House of Commons, Careers at the House of Commons, https://housesofparliament.tal.net/vx/lang-en-GB/mobile-0/appcentre-HouseOfCommons/candidate.

Additionally, considering that the office of the Commissioner is not included in the exclusions of the Ombudsman Act (First and Second Schedule of the Ombudsman Act), nothing stops a candidate who applied to work in the office of the Commissioner of referring grievances about the selection process to the Ombudsman. In this sense, there is an independent body with investigative powers and authority to intervene in HR processes of the office of the Commissioner when breaches are deemed to have happened. However, to further clarify this procedure and ensure that candidates are aware of their rights, the Commissioner could include information on this procedure in the job advertisement of the corresponding procedure.

The Commissioner could establish an internal Code of Ethics in consultation with their staff and other key stakeholders, and publish it on the website to raise awareness about values and integrity standards applied in the office

Setting high standards of conduct that must be implemented by any public official –whether elected, appointed or recruited on merit– and that prioritise the public interest reflects the commitment to serving the general interest and building a public-service oriented culture (OECD, 2020[8]). Standards of conduct express public sector values, and these values are key for guiding the behaviour of public officials. In particular, values set out the basic principles and expectations that society deems to be of importance for public officials, and provide clarity for organisations and public officials at all levels regarding expected behaviours.

The office of the Commissioner is well-versed on the role high integrity standards play in guiding the conduct of those covered by the Standards Act. However, given the independence granted to the Commissioner and his office, employees within the office of the Commissioner fall into a 'grey zone'. Some employees, who were detailed from the civil service, are obligated to follow the Code of Ethics for Public Employees and Board Members of the Public Administration Act. Other employees, based on the recruitment levers used, do not fall under this broader Code of Ethics.

It is worth noting that beyond broader integrity standards detailed in a Code of Ethics, some common measures do apply to employees of the office of the Commissioner. For example, under Articles 10(1) and 11(6) of the Standards Act, both the Commissioner and his staff are expected to take an oath that they will faithfully and impartially perform their duties, and that they will not divulge any information acquired by them under the Act. Moreover, the Commissioner has implemented some additional measures, including a contractual obligation for officers to obtain permission from the Commissioner before accepting other paid work either through other employment or through self-employment. Additionally, although there is no legal requirement for doing so, the Commissioner conducted self-due diligence before accepting the appointment with the intention to avoid any possibility of a potential conflict of interest.

Although these measures are a first step towards setting integrity standards for the office of the Commissioner, developing a Code of Ethics that provides internal and external clarity on the integrity measures the office is committed to upholding could further strengthen its integrity. Moreover clear standards of conduct could also strengthen public perceptions regarding the independence of the Commissioner and his office. This is particularly needed in light of public commentaries accusing the office of the Commissioner of political bias and lack of standards, which have affected public perception of its independence and capacity.

To that end, the Commissioner could consider establishing a Code of Ethics that details the core values for his office. In line with good international practice, the Commissioner could avoid overloading the Code with too many values, as this can make it difficult for staff to remember them. Indeed, as the number of items humans can store in their working memory is limited, a memorable set of values or key principals ideally has no more than seven elements (plus or minus two) (Miller, 1955[18]; OECD, 2018[11]). To that end, the Code of Ethics could be limited to no more than seven elements to support understanding and implementation. Box 1.8 highlights examples from Australia and Colombia.

Box 1.8. Setting meaningful and memorable standards for integrity

The REFLECT model of the Australian Government

The Australian Government developed and implemented different strategies to enhance ethics and accountability in the Australian Public Service, including the Lobbyists Code of Conduct, the Australian Public Service Values, the Ministerial Advisers' Code and the Code of Conduct. To help public servants address ethical dilemmas during the decision-making process, the Australian Public Service Commission also developed a decision-making model. The model follows the acronym REFLECT:

1. **RE**cognise a potential issue or problem.
2. **F**ind relevant information
3. **L**inger at the "fork in the road"
4. **E**valuate the options
5. **C**ome to a decision
6. **T**ake time to reflect

The Colombian General Integrity Code

In 2016, the Colombian Ministry of Public Administration initiated a process to define a General Integrity Code. Through a participatory exercise involving more than 25 000 public servants through different mechanisms, five core values were selected:

- Honesty
- Respect

- Commitment
- Diligence
- Justice

In addition, each public entity has the possibility of integrating up to two additional values or principles to respond to organisational, sectoral and/or regional specificities

Source: Australian Public Service Commission, Australia, "APS Values", www.apsc.gov.au/aps-values-1; Departamento Administrativo de la Función Pública, Colombia, www.funcionpublica.gov.co/web/eva/codigo-integridad.

The Code could be developed in consultation with the office's staff and published on the Commissioner's website to raise awareness about integrity standards applied in his office. Developing the Code of Ethics with the support of the office's staff can help the staff in understanding and applying the integrity standards in their daily activities, while allowing the participation of other key stakeholders can help raising awareness about what the public can and cannot expect from the office of the Commissioner. Other jurisdictions, such as Canada, have defined values and standards of integrity for their oversight bodies, in consultation with their employees (see Box 1.9).

Box 1.9. Code of Values and Standards of Conduct of the Office of the Conflict of Interest and Ethics Commissioner of Canada

The Code of Values and the Standards of Conduct for employees of the Conflict of Interest and Ethics Commissioner of Canada were adopted by consultation with employees in October 2019. These documents set out the expectations for behaviour governing all activities that the employees of the Conflict of Interest and Ethics Commissioner perform to fulfil the Office's mandate.

All employees, no matter what their level, are expected to adhere to the values—respect for people, professionalism, impartiality and integrity—set out in the Office's Code of Values. Employees who do not comply with the Code of Values and who knew or reasonably should have known that they were not in compliance may be subject to appropriate disciplinary measures that include reprimand, suspension, dismissal, or legal or other proceedings.

Additionally, the Standards of Conduct support the Code of Values and are intended to offer guidance on its application in different issues including engaging in outside activities, handling conflict of interests, and using social media.

Source: (Office of the Conflict of Interest and Ethics Commissioner, 2019[19]; Office of the Conflict of Interest and Ethics Commissioner, 2019[20]).

The Commissioner could establish guidance on managing and preventing conflict of interest for their employees

Managing conflicts of interest in the public sector, including in oversight bodies, is crucial. If conflicts of interest are not detected and managed, they can undermine the integrity of decisions or institutions, and lead to private interests capturing the policy process. "Conflict of interest" can be understood to mean "a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests, which could improperly influence the performance of their official duties and responsibilities" (OECD, 2004[21]).

Currently, the office of the Commissioner does not have specific guidance in place to support staff in identifying and managing their potential or actual conflicts of interest. As such, in addition to developing a Code of Ethics, the Commissioner could also elaborate guidance for staff on managing and preventing conflicts of interest. This is particularly important given the Commissioner's investigatory role. Indeed, given the nature of the complaints process and the size of Malta, there could be situations in which a member of the office of the Commissioner has private interests that could intersect with their public duty. While these situations may not lead to an actual conflict of interest, they could be perceived as potentially influencing the official's impartiality and therefore need to be managed.

To that end, the Commissioner could develop guidance that clarifies what conflict of interest is (as applicable to the office's staff), how to identify conflict of interest and to whom, and how to manage and prevent conflict of interest. In terms of clarifying what conflict of interest is, there are two types of approaches: a descriptive approach (defining a conflict of interest in general terms) or a prescriptive one (defining a range of situations considered as being in conflict with public duties) (OECD, 2020[8]). In line with a prescriptive approach, OECD countries have considered the following types of external activities and positions as those which could lead to a potential conflict of interest:

- Voluntary organisations
- Positions in NGOs
- In elected public entities
- In trade unions
- In a political party
- In secondary employment in the public sector
- In an entity with relationships with the government
- In positions in the private sector
- In secondary employment in the private sector (OECD, 2003[22]).

Regarding when conflicts of interest could be identified, the policy could cover several opportune moments. First, upon taking up their duties in the office of the Commissioner, all new staff could be required to submit a conflict-of-interest declaration to the Commissioner. Second, staff could be required to disclose a conflict of interest when a new conflict arises – for example, a staff member's partner takes on a new job that leads to a real or potential conflict with the activities carried out by the staff within the office of the Commissioner. Finally, staff members who are specifically involved in investigations could be required to disclose any real or potential conflicts of interest when a new case is received. This will ensure that any conflicts are dealt with prior to undertaking an investigation, to protect the integrity of the process. With regards to who should receive the declarations, given the size of the office, it is reasonable that the Commissioner could receive the conflict-of-interest declarations.

Regarding what measures could be taken to manage or resolve a conflict of interest, good practice suggests applying measures that are proportionate to the functions occupied and the potential conflict-of-interest situation. To that end, measures could include one or more of the following:

- Recusal of the public official from involvement in an affected decision-making process.
- Restriction of access by the affected public official to particular information.
- Transfer of the public official to duty in a non-conflicting function.
- Re-arrangement of the public official's duties and responsibilities.
- Assignment of the conflicting interest in a genuinely 'blind trust' arrangement (OECD, 2004[21]).

1.5. Summary of recommendations

The following provides a detailed summary of the recommendations for enhancing the effectiveness of the office of the Commissioner for Standards in Public Life. The recommendations contained herein mirror those contained in the analysis above.

Section	Recommendation	Entity responsible	Execution term
The legislative and institutional framework establishing the Commissioner for Standards in Public Life	Enshrine the functions and role of the Commissioner for Standards in Public Life in the Constitution of Malta	Ministry for Justice	Short term
	Assign a legal personality to the office of the Commissioner in the Standards Act	Ministry for Justice	Short term
	Amend the Standards Act to allow for the appointment of the Commissioner for Standards in Public Life for a five-year term with the possibility of reappointment for one consecutive term of five years	Ministry for Justice	Short term
	Define clearer parameters on qualifications and background to guide the appointment of future Commissioners for Standards in Public Life	Ministry for Justice	Short term
The key functions of the Commissioner for Standards in Public Life	Develop and implement a series of workshops for officials covered under the Standards Act, which focus on the core values and standards of conduct outlined in the respective Codes of Ethics and new Lobbying regulation, including ethical dilemma training	Commissioner for Standards in Public Life	Short and medium term
	Prepare a workshop for the new parliamentary session, which could take place a month or two after MPs take up their roles	Commissioner for Standards in Public Life	Short term
	Enhance guidance on the Commissioner's website on how to submit a complaint, what the Commissioner cannot investigate, and who the appropriate authority for undertaking that investigation may be	Commissioner for Standards in Public Life	Short term
	Set up a portal allowing anonymous complainants to submit their information using a pseudonym and employ encryption technology for follow-up to ensure that the complainant remains anonymous	Commissioner for Standards in Public Life	Medium term
	If adopted, carry out communication campaigns on the new whistler-blower protection mechanisms in place and raise awareness amongst public employees about reporting channels, protection mechanisms and procedures to facilitate the submission of complaints, through newsletters and/or information sessions	Commissioner for Standards in Public Life	Short and medium term
	Set a service standard of a specific time period within which the Commissioner should determine whether a complaint received will be accepted or not for investigation	Commissioner for Standards in Public Life	Short term
	Restructure the Committee for Standards in Public Life by including lay members and appointing as the chairperson of the Committee a former judge selected by all political parties and known for his/her integrity and independence	Ministry for Justice	Short term
	To ensure there is no doubt in the investigation process, the mechanisms detailed in the Standards Act on fair process could be further elaborated on in the form of rules of procedure	Commissioner for Standards in Public Life	Short term
	Abolish the role of monitoring administrative penalties for non-attendance in Parliament of the Commissioner and entrust the Clerk of the House of Representatives with this responsibility	Ministry for Justice	Short term
	Analyse if there are appropriate staffing and financial resources to manage new potential functions such as handling interest and asset declarations, managing the Register of Lobbyists and other registers created under the new codes of ethics for MPs and ministers	Commissioner for Standards in Public Life	Short term
Human and financial resources assigned to the office of the Commissioner	Formalise the recruitment procedures of the staff of the office of the Commissioner to ensure that merit-based, open, transparent ethical recruitment remains the norm	Commissioner for Standards in Public Life	Short term
	Establish an organisational structure that details the existing positions within the office of the Commissioner, with clear and justifiable criteria for each of them	Commissioner for Standards in Public Life	Short term
	Identify within the organisation structure of the office of the Commissioner, the additional positions, roles and work to be performed, together with the qualification and performance criteria for each position, required to handle the new functions	Commissioner for Standards in Public Life	Short and medium term
	Ensure that future employment calls by the Commissioner are done in a public manner, where pre-determined criteria for each position are included in the advertisement and there are measures in place to ensure objectivity in	Commissioner for Standards in Public Life	Short and medium term

	decision making (e.g. requiring standardised curricula vitae, standardised tests, conducting a panel interview, and using various tests depending on the position)		
	Ensure that information on recourse mechanisms in HR processes by the office of the Commissioner is included in each job advertisement	Commissioner for Standards in Public Life	Short and medium term
	Establish a Code of Ethics in consultation with the office's staff and other key stakeholders, and publish it on the Commissioner's website to raise awareness about integrity standards applied in the office of the Commissioner	Commissioner for Standards in Public Life	Short term
	Establish guidance on managing and preventing conflict of interest for office of the Commissioner's employees	Commissioner for Standards in Public Life	Short term
	Carry out a socialisation process with the House Business Committee of the House of Representatives in order to explain the need to increase the budget size of the office of the Commissioner permanently to consistently deliver on its new functions	Commissioner for Standards in Public Life	Short term and medium term

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Notes

[1] The Standards in Public Life Act (2017) creates the Commissioner for Standards in Public Life, but it does not grant legal personality to an "Office of the Commissioner". However, the Standards in Public Life Act (Articles 11(1) and 11(3)) empowers the Commissioner to appoint the officers and employers and approve the level of capital, equipment, furnishings, materials, and administrative activities needed to fulfil his/her functions, powers and duties. In this sense, whenever this document refers to the 'office of the Commissioner', it refers to the staff appointed, resources allocated and institutional arrangements created by the Commissioner to support him in the fulfilment of his functions, powers and duties.

[2] See also chapter 2 on Strengthening the Standards in Public Life Act of Malta.

[3] See also chapter 2 on Strengthening the Standards in Public Life Act of Malta.

[4] Article 7 of LAW No. 2017-55 of 20 January 2017 on the general status of independent administrative authorities and independent public authorities (1) - www.legifrance.gouv.fr/loda/id/JORFTEXT000033897475/.

[5] See also chapter 2 on Strengthening the Standards in Public Life Act of Malta.

[6] See also chapter 2 on Strengthening the Standards in Public Life Act of Malta.

[7] There are several challenges with the complaint handling process that have emerged due to limitations in the Act on Standards in Public Life. These challenges are addressed chapter 2 on Strengthening the Standards in Public Act of Malta.

[8] Website of the Commissioner for Standards in Public Life: https://standardscommissioner.com.

[9] Note, only in one case the Committee for Standards applied a sanction that consisted of the House Clerk sending a letter to the subject, informing them of the Committee's decision.

[10] See for example House of Commons Committee on Standards, *Review of fairness and natural justice in the House's standards system – sixth report of session 2021-2022,* Review of fairness and natural justice in the House's standards system, https://publications.parliament.uk/pa/cm5802/cmselect/cmstandards/1183/report.html.

2 Strengthening the Standards in Public Life Act of Malta

This chapter examines Malta's existing legislative and institutional framework for public integrity of elected and appointed officials. In particular, this chapter identifies key areas to strengthen the Standards in Public Life Act to ensure coverage of at-risk elected and appointed positions, address incompatibilities, and create a common understanding of expected conduct and behavior. Additionally, this chapter provides recommendations to protect the independence and strengthen the functions of the Commissioner for Standards in Public Life, as well as improve the functions of the Committee for Standards in Public Life.

2.1. Introduction

Public integrity is an inherent value of democracy; it ensures the government responds to the interests of the people. Integrity is about everybody having a voice in the policy-making process and preventing undue influence of government policies. Political leaders – both elected and appointed – are essential to public integrity: by setting the "tone at the top", they demonstrate to society that integrity is a governance issue the government takes seriously. Sustaining this commitment however requires that integrity expectations for political leaders are codified into the legislative and institutional frameworks, that political leaders adhere to the highest standards of conduct in their behaviour, and that they are held accountable when there are breaches.

Over the past several years, Malta has implemented a number of reforms to strengthen public integrity, particularly for elected and appointed officials. These reforms have included the 2017 Standards in Public Life Act[1] (herein "Standards Act") as well as the appointment of Malta's first Commissioner for Standards in Public Life (herein "the Commissioner") in 2018. The Standards Act – which applies to Members of Parliament, Ministers, Parliamentary Secretaries and persons of trust – empowers the Commissioner to support elected and appointed officials in carrying out their public duties in the public interest. In particular, the Standards Act enables the Commissioner to review the conduct of these officials in terms of their statutory and ethical duties as persons in public life. The Standards Act sets out codes of ethics for elected and appointed officials, and also establishes the Commissioner as the responsible entity for reviewing interest declarations submitted by MPs, ministers and parliamentary secretaries, which until 2018 were only scrutinised by the press. Moreover, the Standards Act grants the Commissioner power to introduce legislation on key integrity issues, including lobbying.

These reforms do not exist in a vacuum: the assassination of the investigative journalist Daphne Caruana Galizia triggered an outcry about the state of the rule of law and media freedom in Malta, giving rise to a strong public demand for anticorruption and rule of law reforms, and a more active and organised civil society. The years following have found Malta confronted with an unprecedented wave of controversies concerning the integrity of senior government officials up to the highest level (GRECO, 2019[1]), leading to an overall high level of perception of corruption.

These reforms also respond to recommendations by the international community: for instance, in its Fifth Evaluation Report, the Council of Europe's Group of States Against Corruption (GRECO) recommended to improve awareness raising actions amongst public officials, tighten compliance measures with the integrity standards in place, fill gaps in respect of certain groups of public officials who currently are not covered by any integrity standards, and supplement the integrity system for managing conflicts of interest with clear guidance (GRECO, 2019[1]).

In face of these challenges, both the Standards Act and the Commissioner have proven instrumental in advancing the implementation of an integrity framework for those in public life in Malta (European Commission, 2020[2]). Together, the legislative and institutional framework have put the issues of integrity, accountability and transparency at the forefront of the public debate. However, challenges remain in terms of raising ethical awareness amongst elected and appointed officials and in the wider society, and effectively enforcing integrity standards through consistent procedures for monitoring, investigating and sanctioning wrongdoing.

This chapter analyses the omissions, inconsistencies and overlaps in the Standards Act. It provides recommendations to the Government of Malta through the Commissioner for Standards in Public Life regarding potential amendments to the Standards in Public Life Act to address the existing challenges.

2.2. A clear and comprehensive legislative framework for public integrity

A key starting point in any integrity system is a legislative framework that provides clear and common definitions, sets high integrity standards for public officials, and clarifies the institutional responsibilities for developing, implementing, enforcing and monitoring the different elements of the system (OECD, 2017[3]). Setting high standards of conduct ensures clarity regarding acceptable behaviour and provides a common framework to ensure accountability (OECD, 2020[4]). Elected and appointed officials face specific challenges and clear ethical standards is critical for strengthening good governance, public integrity and the rule of law. For example, a member of parliament may find themselves in conflict amongst their different responsibilities: serving constituents, advancing legislation that benefits the wider population or responding to the priorities of the political. Having robust, clear and consistently enforced standards can help guide them navigate these challenges, while also preventing abuse of office and other forms of corruption. For others, like appointed officials, clear integrity standards are a guidepost in carrying out their public duties. Additionally, having clear ethical standards can be a unifying factor, allowing elected officials to overcome obvious political differences and build a sense of collegiality (OSCE, 2012[5]). Other high-risk positions, including elected officials at the local level, also benefit from clear standards because of their high proximity to citizens and firms, which creates more opportunities for corruption and misconduct (OECD, 2017[6]).

However, reaching consensus on integrity standards for elected and appointed officials as well as neutrally enforcing these standards can prove challenging, especially in environments of increasing partisanship and polarisation. Indeed, it is one thing to recognise a distinctive set of ethical principles for political office, yet another to achieve widespread consensus on exactly what those principles demand in any given situation (Committee on Standards in Public Life, 2014[7]). The competitive dimension of the political process also adds a layer of complexity: elected officials are accountable in terms of whether they have fulfilled the formal responsibilities of their office, and in terms of whether their constituents approve the policies they have enacted or supported. Political systems that blur the distinction between formal accountability (did they act 'properly'?) and political accountability (do we approve what they did?) can "risk subordinating ethical considerations to expediency, or eliminating the distinct political dimensions of judgment" (Committee on Standards in Public Life, 2014[7]).

2.2.1. Closing the loopholes in the Standards in Public Life Act

With the aim of setting and safeguarding high standards of conduct for elected and appointed officials, the Standards Act is a critical tool for guiding behaviour. To provide a fit-for-purpose framework, the following recommendations identify key areas where the Standards Act could be strengthened.

The Ministry for Justice could widen the scope of the Standards Act to cover at-risk elected and appointed positions

Currently, the Standards Act's scope covers Members of the House of Representatives, ministers, parliamentary secretaries and parliamentary assistants, and persons of trust defined by Article 2 of the Act. While this scope is broad, there are several key positions that remain outside the integrity framework, including elected and appointed officials at local level. Indeed, given that Malta is a small country where citizens know each other well, there is a higher need for clarity for public officials across all levels of government to guide behaviour. Moreover, the close interactions between the political and business communities emphasise the need for having clear standards of conduct in place to ensure that public decision making is not unduly influenced by the select few.

Article 3(2) of the Standards Act accommodates for enlarging the scope, noting that the Act shall also apply to any other person or category of persons as the Minister for Justice may prescribe by regulations supported by an affirmative resolution of the House of Representatives. To close existing gaps in coverage,

the Ministry for Justice could consider widening the Standards Act scope. As a starting point, the scope could be expanded to include the following:

- Local authorities (including mayors and local councillors) have direct, day-to-day interactions with citizens. Evidence has found that those at the local level can be prone to higher risks of corruption and misconduct because of their high proximity to public and users of government services. Indeed, sub-national governments are responsible for services in which there is a more frequent and direct interaction between government authorities and citizens and firms (e.g. education, health, waste management, granting licences and permits), creating more opportunities to test public officials' integrity (OECD, 2017[6]). Additionally, a significant share of public funds is spent on subnational levels –in 2017, government investment at subnational local level represented 29% of total government investment in OECD countries–, which means that ensuring integrity and anti-corruption at subnational levels is critical to achieve the best use of public funds (OECD, 2021[8]).
- Members of government boards including the boards of Directors of public organisations and companies. Members of these boards are covered under the Public Administration Act's Code of Ethics, but there is currently no entity responsible for ensuring their adherence to upholding the provisions under the Code. The integrity framework for elected and appointed officials in France serves as a good practice, considering the broad range of coverage (see Box 2.1).

Box 2.1. A broad range of integrity coverage over elected and appointed officials in France

Since 1988, members of the French government, French MEPs, elected officials (including presidents of regional or departmental councils), and the heads of local government have been required to declare their assets before entering their position. In 2013, two laws on transparency of public life (Laws No. 2013-906 and No. 2013- 907) widened this obligation. These laws expanded the obligation of disclosing their assets and interests within two months of taking office to 15 000 public officials including close advisers to the president, ministers and leaders of the two Legislative Assemblies, high-ranking civil servants, members of independent administrative authorities and military officials. Additionally, the 2013 laws provided for the publication of the interest declarations by members of government, parliamentarians, MEPs, local elected officials, and of the asset declarations by members of government.

The 2013 law also established the High Authority for the Transparency of Public Life, an independent administrative authority responsible for collecting and verifying the interests and assets declarations made by those covered by the 2013 laws on transparency of public life.

Source: (High Authority for Transparency in Public Life, n.d.[9]; Government of France, 2013[10]).

The Ministry for Justice could consider, as part of a bill to amend the Standards Act, a provision to amend the Constitution so as to prohibit elected officials from holding secondary positions in all public functions

The Standards Act – and associated Codes of Ethics in Schedules I and II – is currently silent regarding the issue of incompatibilities of secondary employment for elected officials. This is particularly problematic, given the practice in Malta to appoint backbencher MPs to positions in government departments, boards and commissions. Elected officials – whether within a parliamentary or presidential system – play a critical accountability role over the actions of the executive. It is their duty to hold the executive accountable for how public monies are spent and public policies determined. The practice of placing elected officials in the executive therefore fundamentally undermines the accountability role of parliament. Indeed, as noted in a report by the Inter-parliamentary Union, "it follows that the purpose of most incompatibilities is to prevent parliament from being composed of persons who are subject to government control because of their professional connections or economic dependence."

The Ministry for Justice could therefore consider amendments to the Constitution so as to prohibit elected officials from obtaining secondary employment in all public functions. Such an amendment could be included as part of a bill intended primarily to amend the Standards Act, since the constitutional amendment would reinforce the amendments that are being proposed to strengthen the Act itself.

The Ministry for Justice could consider clarifying the definition of 'persons of trust' in the Standards Act to ensure that all those who presently act as a person of trust are covered under the Commissioner's remit

The appointment of persons of trust responds to the idea that ministers need to have staff in their secretariats in whom they can repose their full personal confidence and who can assist them by giving political advice and support that would be inappropriate for the civil service to provide (Institute for Government, 2021[11]). Indeed, there is a legitimate need for ministers, who have a political mandate, to benefit from the assistance of persons of trust who assist them in implementing their political programme. However, serious integrity risks arise when the number of such persons of trust is excessive and when this procedure is widely used to substitute appointments on merits, thereby threatening the quality of the civil service (Venice Commission, 2018[12]).

In Malta, Article 110 of the Constitution sets out the general principle that employees in public administration should be recruited based on merit. However, as an exception to this article, the government can appoint political appointees on the basis of trust ("persons of trust"). This process bypasses the Public Service Commission and merit-based appointments. In recent years, appointments on trust have led to controversy for its extensive use across government, reaching 700 persons of trust in 2018 (Venice Commission, 2018[12]). These appointments extend beyond the traditional usage of political appointees, and include appointments that make part of the permanent machinery of the public administration (e.g. security guards, gardeners, drivers and maintenance officers). As a result, there have been attempts to narrow the use of this type of appointments, but these efforts have led to more loopholes and problems. For instance, by Act XVI of 2021 the definition of "person of trust" included in Article 2 of the Standards Act was substituted with the purpose of establishing a legal basis for the appointment of persons of trust.[2] Although the new definition is somewhat clearer than the previous one, new issues arise.

First, the new definition does not cover persons who were already serving public employees when they were engaged as secretariat staff on the basis of trust, as the new definition only considers as a person of trust those consultants and other staff who have been engaged directly from outside the public service and the public sector. As such, these persons are no longer subject to investigation by the Commissioner. The 2022 Manual on Resourcing Policies and Procedures makes a distinction between persons of trust and people occupying a position of trust, in other words, public officers/employees engaged on a trust basis. Despite this differentiation, people occupying a position of trust are also central in the public decision-making process and should fall under the remit of the Commissioner.

Second, the new definition does not specify whether the Standards Act covers persons of trust appointed in other designated offices and in the Strategic and Priorities Unit in each ministry. According to the 2022 Manual on Resourcing Policies and Procedures, ministries may engage persons of trust to serve in the private secretariat of ministries, parliamentary secretaries and other designated offices or to form part of the Strategic and Priorities Unit within the respective ministry (Government of Malta, 2022[13]). However, the new definition of persons of trust only mentions those serving in private secretariats of a minister or parliamentary secretary, leaving outside the Standards Act's remit persons of trust appointed in other areas of a ministry. This is relevant considering that although in Malta the majority of persons of trust hold positions in the private secretariats of ministers and parliamentary secretaries, ministers also make appointments on trust to units that are closely associated with their secretariats but have separate complement limits (Office of the Commissioner for Standards in Public Life, 2021[14]).

Considering these remaining challenges, the Ministry for Justice could consider clarifying the definition of 'persons of trust' in the Standards Act to ensure that all those who presently act as a person of trust are covered under the Commissioner's remit. For instance, a new definition of the term "person of trust" could include any person performing duties in a ministry, government departments or agency by virtue of an appointment that has not been made in terms of Article 110 of the Constitution of Malta. If needed, the definition could exclude specific categories of people who should not fall under the Standards Act, but by default, it would cover all persons appointed in a ministry, government departments or agency on the basis of trust. This aims to avoid loopholes by guaranteeing all persons of trust are covered by the Standards Act –unless explicitly mentioned– and facilitate the submission of complaints by simplifying the definition of persons of trust.

While clarifying the definition to ensure all who currently or in the future act as a person of trust will enable the Commissioner to assume an accountability role over these positions, the government should more broadly consider limiting the use of such appointments. This recommendation has been supported at the international level, including most recently in the compliance report by the Group of States against Corruption (GRECO). Indeed, despite recognising efforts by the Maltese government to solve the legal situation of persons of trust, GRECO considers that the recent amendments to the Standards Act and the Public Administration Act – made by Act XVI of 2021 – do not appear to fully address the recommendation to limit its number to an absolute minimum (GRECO, 2022[15]).

There are a number of reasons for limiting the use of appointments based on trust, including that merit-based systems create an *esprit de corps* that rewards hard work and skills, while appointment-based systems can increase risks of patronage and nepotism. When people are appointed for non-merit based reasons, they may see their position as an opportunity for self-enrichment. Moreover, non-merit based appointments are often short term, which can increase "short-term opportunism", with individuals using their position to maximise personal gain during the short time they have. Finally, separating the careers between bureaucrats and politicians has also shown to provide incentives for each group to monitor the other and expose each other's conflicts of interest and corruption risks. Conversely, when the bureaucracy is mostly made up of political appointments, loyalty to the ruling party may provide disincentives for the bureaucracy to blow the whistle on political corruption (and elected officials may also be more willing to engage in corrupt acts within the bureaucracy) (OECD, 2020[4]). To that end, the Office of the Prime Minister could revisit the policy on engaging persons of trust to restrict usage beyond appointing political advisors for Ministers and close loopholes that enable exploitation. Moreover, to encourage transparency, the Office of the Prime Minister could annually publish and submit a report to the House of Representatives setting out the numbers, names and pay bands of current persons of trust. These recommendations are aligned with good practices from other jurisdictions (Box 2.2).

Box 2.2. Managing political appointees in the United Kingdom

In the United Kingdom, special advisers are political appointees hired to support ministers on political matters. Ministers personally select special advisers for the appointment, but the Prime Minister approves all appointments.

There is no statutory limit on the number of special advisers. However, successive editions of the Ministerial Code have restricted the number of special advisers that most ministers can appoint. The most recent version of the Ministerial Code states: "with the exception of the Prime Minister, Cabinet Ministers may each appoint up to two special advisers. The Prime Minister may also authorise the appointment of special advisers for Ministers who regularly attend Cabinet" (UK Cabinet Office, 2019[16]). Additionally, the 2019 Ministerial Code indicates "all special advisers will be appointed under

terms and conditions set out in the Model Contract for Special Advisers and the Code of Conduct for special Advisers" (UK Cabinet Office, 2019[16]).

For the sake of transparency, the Government annually publishes a statement to Parliament setting out the numbers, names and pay bands of special advisers, the appointing Minister and the overall playbill.

Note: The 2021 Annual Report on Special Advisers can be found here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1002880/Annual_Report_on_Special_Advisers_2021_-_Online_Publication.pdf.
Source: (UK Cabinet Office, 2019[16]).

The Ministry for Justice could consider including a clear definition of 'misconduct' in the Standards Act and ensure former Members of Parliament can be investigated and sanctioned for misconduct during their term in office

As noted above, an effective integrity system requires clear and common definitions that inform all actors which circumstances can result in breaches of their expected behaviour and conduct (OECD, 2020[4]). Indeed, effectively implementing integrity standards requires public officials who know when and how to identify potential or real circumstances that could lead to misconduct or corrupt behaviour.

Article 13(b) of the Standards Act empowers the Commissioner to investigate any matter alleged to be in breach of any statutory or any ethical duty of any person to whom the Act applies. However, what constitutes 'misconduct' differs per category, leading to a lack of clarity for those concerned. For example, in the case of persons of trust, misconduct is defined by Article 3(1) (b) to mean breaches of the provisions of the Code of Ethics included in the First Schedule to the Public Administration Act. In the case of Members of the House of Representatives (including ministers, parliamentary secretaries and parliamentary assistants), there is no clear and unique definition of misconduct, rather definitions referring to various types of misconduct are scattered throughout the Act:

- Article 13(b) empowers the Commissioner to investigate allegations regarding the "breach of any statutory or any ethical duty" of any person to whom the Standards Act applies.
- Article 18(4) states that the Commissioner should refer the matter to the appropriate authority during or after an investigation if there is substantial evidence of any significant "breach of duty or misconduct on the part of any person to whom the Act applies".
- Article 28 empowers the Committee for Standards in Public Life to decide on the sanctions to be applied when there has been a "breach of the Code of Ethics or of any statutory or ethical duty".

An additional confusion arises from Article 22 on the procedures after investigation, which makes a distinction between particular types of misconduct. Article 22(1) refers in general to breaches of "any statutory or any ethical duty as provided under this or any other law" whereas Article 22(2) specifically refers to abuses of discretionary powers in a manner that constitutes abuse of power. This distinction means that if the Commissioner finds a MP guilty of having abused his/her discretionary powers under Article 22(2), the Committee would face limitations with regards to the sanctions it can impose under Article 28, as only Article 22 makes a distinction of this particular type of misconduct. In the same way, if after an investigation the Commissioner is of the opinion that a MP is guilty of having abused his/her discretionary powers under Article 22(2), the Commissioner would face difficulties in determining whether to refer the matter to another appropriate authority.

Given the complications arising from the various definitions and the lack of clarity that ensues, the Ministry of Justice could consider amending the Standards Act to include a single definition of misconduct of Members of the House of Representatives (including ministers, parliamentary secretaries and

parliamentary assistants) to which Articles 13, 18, 22 and 28 would then refer. The definition should not include an exhaustive list of expected conducts and behaviours, but could be broad and further developed in the corresponding codes of ethics of those covered by the Standards Act. For instance, misconduct could be defined as "breaches of any statutory or any ethical duty including the provisions of the corresponding Code of Ethics to which Members of the House of Representatives, Ministers and Parliamentary Secretaries by virtue of the Standards Act are subject".

Moreover, the definition of misconduct could be expanded to enable the Commissioner to investigate cases of misconduct by former MPs in the course of their official functions and the Committee for Standards to impose corresponding sanctions, when such conduct involved, for example, a breach of public trust or the misuse of information or public resources. Being able to investigate and sanction former MPs for misconduct during their time in office could strengthen public trust in the Maltese parliamentary system as well as discourage public officials from misbehaving, as leaving office will not protect public officials from being investigated and sanctioned. The Independent Commission against Corruption Act 1988 from New South Wales, Australia, could be used as an example to draw up the definition of misconduct in Malta covering former MPs (see Box 2.3). However, considering that for legal certainty purposes, these violations require a statute of limitations, the Ministry of Justice could consider revising the timeframes for submitting complaints (see also Section 2.4.1).

Box 2.3. Definition of corrupt conduct in the Independent Commission Against Corruption Act of New South Wales, Australia

The Independent Commission Against Corruption Act 1988 promotes integrity and accountability of public administration in New South Wales, Australia. In particular, Article 8 of the Independent Commission Against Corruption Act 1988 defines "corrupt conduct" as:

> (a) any conduct of any person (whether or not a public official) that adversely affects, or that could adversely affect, either directly or indirectly, the honest or impartial exercise of official functions by any public official, any group or body of public officials or any public authority, or
>
> (b) any conduct of a public official that constitutes or involves the dishonest or partial exercise of any of his or her official functions, or
>
> (c) any conduct of a public official or former public official that constitutes or involves a breach of public trust, or
>
> (d) any conduct of a public official or former public official that involves the misuse of information or material that he or she has acquired in the course of his or her official functions, whether or not for his or her benefit or for the benefit of any other person.

In this sense, by Articles 8(c) and 8(d) the Independent Commission Against Corruption is entitled to investigate the conduct of former public officials, including former New South Wales Members of Parliament and local government authorities, when it involves a breach of public trust or the misuse of information.

Source: (New South Wales Government, 1988[17]).

The Ministry of Justice could include definitions on 'abuse of power and privileges', 'conflict of interest', and 'gifts' to create a common understanding of expected conduct and behaviour.

As previously mentioned, clear and common definitions that inform actors what behaviour and conduct is expected from them are critical for ensuring an effective integrity system. Currently, the Standards Act includes a limited list of definitions consisting of the terms "Commissioner", "Committee", "corrupt practice", "Minister", "person of trust" and "statutory body". Additionally, neither the Code of Ethics of Members of the House of Representatives nor the Code of Ethics for Ministers and Parliamentary Secretaries include relevant definitions of expected integrity conduct nor behaviour, leaving the door open to interpretation that could affect both the implementation and enforcement of integrity standards. Although the revised versions of the Codes of Ethics proposed by the Commissioner provide more details on the expected conduct and behaviour of MPs, Ministers and Parliamentary Secretaries, key definitions are still missing.

To that end, the Ministry of Justice could consider including additional key definitions in the Standards Act, with the purpose of creating a common understanding of expected behaviours and an enabling framework to strengthen integrity in Malta. Such definitions should include key concepts and be aligned with the revised Code of Ethics for MPs and the revised Code of Ethics for Ministers and Parliamentary Secretaries. Key concepts could include:

- **abuse of power and privileges**: Article 22(2) of the Standards Act states that if the Commissioner is of the opinion that in the conduct subject-matter of the allegation, "a discretionary power has been exercised in a manner that constitutes abuse of power", he should send a report to the Committee for Standards and follow the procedure after investigation. Additionally, the revised Codes of Ethics for MPs and for Ministers and Parliamentary Secretaries include as an expected behaviour of MPs and Ministers not to abuse the powers and privileges enjoyed by them. However, there is no further guidance on what is understood as abuse of power and privileges.
- **conflict of interest**: This is one of the key risk areas of the current integrity framework. Although the Codes of Ethics for MPs and for Ministers and Parliamentary Secretaries include obligations regarding avoiding entering into a conflict of interest, there is no further guidance on what constitutes a conflict of interest. This is particularly important in a context such as Malta –a small country where citizens know each other well– and where the line between the public and private interest may be more difficult to draw.
- **gifts**: the Codes of Ethics for MPs and for Ministers and Parliamentary Secretaries include as an expected behaviour of MPs and Ministers and Parliamentary Secretaries not to accept any gift, benefit or service that may reasonably create an impression that they are compromising their judgement or place them under an inappropriate obligation. This obligation leaves room for interpretation, as proven by previous cases investigated by the Commissioner.

Being the first Act to provide an integrity framework in Malta, the Standards for Public Life Act may be used to support the creation of a shared understanding of expected behaviours from MPs and persons of trust, and to communicate values and standards that politicians should observe while carrying out their daily duties. This is the case of other countries where key definitions are included in the corresponding integrity frameworks (see Box 2.4).

Box 2.4. Key definitions developed in countries' integrity frameworks

In **Canada**, the Conflict of Interest Act S.C. 2006, enacted by section 2 of chapter 9 of the Statutes of Canada, establishes clear conflict of interest and post-employment rules for public office holders. Article 2 of the Conflict of Interest Act includes a series of definitions that apply in the Act, providing a common understanding of key concepts such as "gift or other advantage", "private interest", "reporting public office holder" and "spouse", and a shared framework for the implementation and monitoring of ethical and conduct standards in Canada.

In **Ireland**, the Ethics in Public Office Act 1995 established obligations on the disclosure of interests of holders of certain public offices –including MPs, and created the Public Office Commission –which was later replaced by the Standards in Public Office Commission. Article 2 of the Ethics in Public Office Act includes a series of definitions that apply in the Act, providing a common understanding of key concepts such as "benefit", "gift", "office holder", "registration date" and "spouse", and creating a shared framework for the implementation and enforcing of integrity standards in Ireland.

Source: (Government of Canada, 2006[18]; Government of Ireland, 1995[19]).

2.3. A clear and comprehensive institutional framework for public integrity

A critical component to oversight for elected and appointed officials are effective institutional arrangements that can provide the appropriate scrutiny, while also respecting separation of powers between the executive, judiciary and legislative branches. Clarifying the institutional arrangements requires answering a critical question: should parliaments be trusted to regulate themselves or should regulation be entrusted to an external body (OSCE, 2012[5])? Although self-regulation traditionally was preferred, mainly because of the need to protect the legislative's oversight role of the executive branch, cases of wronging led to a loss of confidence in parliaments' ability to regulate themselves. Recent years have seen a shift towards having establishing parliamentary oversight bodies that are independent of the executive and play a critical accountability role (OSCE, 2012[5]).

Indeed, the independence of parliamentary oversight bodies is critical for an effective standards regulation. The regulation of integrity standards is often a contentious matter that requires fair and impartial investigations. In this sense, those responsible for investigating misconduct must be free from institutional and political pressure to produce outcomes favourable to those they scrutinise and from any personal interest in a particular outcome (Committee on Standards in Public Life, 2021[20]). Otherwise, public trust in parliament could be compromised.

Several core elements can ensure the independence of parliamentary oversight bodies. These elements include having a statutory basis for the oversight body that prevents it from being easily removed by those it aims to regulate. Although the abolition of an ethics body would be a controversial decision for any administration, the very possibility of this happening may prevent it from fulfilling its role and speaking out. Additionally, considering that integrity systems are not entirely rules-based but also rely on values and standards, oversight bodies with a firmer basis in statute will be more empowered to speak out against the undermining of norms and conventions that break the spirit of the system, and not only the formal rules (Committee on Standards in Public Life, 2021[20]). Other core elements include ensuring that the head of the office is appointed following an independent process, establishing a clear term in office with limited opportunities for renewal, and having sufficient resources that allow the body to effectively fulfil their responsibilities (Committee on Standards in Public Life, 2021[20]).

2.3.1. Protecting the independence of the Commissioner for Standards in Public Life

Although the current legal set-up of the Commissioner fits well within these features, some weaknesses remain concerning the independence of the Commissioner and necessary breadth to carry out his functions. The following recommendations identify key areas where the Standards Act could be strengthened to address these challenges.

The Ministry for Justice could propose legislation to include the role and functions of the Commissioner for Standards in Public Life in the Constitution of Malta

In 2017, the House of Representatives unanimously approved the Standards Act, establishing for the first time an institution empowered to oversee the ethical conduct of MPs, Ministers and persons of trust. However, the current set-up does not effectively guarantee the independence of the Commissioner, considering that the House of Representatives could repeal or amend the Standards Act by simple majority at any time, including abolishing the Commissioner by a simple vote.

Therefore the process of appointment, role and functions of the Commissioner could be included in the Constitution of Malta. This is already the case of the other parliamentary oversight bodies established in Malta, specifically the National Audit Office and the Office of the Ombudsmen. For example, the Office of the Ombudsmen was entrenched in the Constitution of Malta by Act No. XIV of 2007, which amended the Constitution (Article 64A) in order to include information on the Ombudsman and the Office, and Act No. XLII of 2020, which complemented Article 64A with additional information on the process of appointing, removal and suspension of the Ombudsman.

The Ministry for Justice could amend the Standards Act to assign legal personality to the office of the Commissioner to avoid conflict with Article 110(1) of the Constitution of Malta

A fundamental element for independence is granting the oversight body the ability to hire the necessary staff independently from the executive. The Standards Act –by Article 11– fulfils this requirement in part by empowering the Commissioner to appoint staff (officers and employees) to his office as may be necessary for carrying out his functions, powers and duties. However, the Standards Act omits assigning legal personality to the office of the Commissioner, threatening the office's independence by creating potential conflicts with Article 110(1) of the Constitution, which sets the conditions for the appointment, removal and disciplinary control over public officers.

Without its own legal personality, the office of the Commissioner is technically part of government and, arguably, subject to Article 110(1) of the Constitution of Malta. This means that without its own legal personality, the Commissioner's staff would be appointed by the Prime Minister on the recommendation of the Public Service Commission, like most government employees, as established in Article 110(1) of the Constitution. However, the aim of Article 11 of the Standards Act is clearly to separate the office of the Commissioner from the government and protect it from any political interference to guarantee its independence and objectivity.

In this sense, the Ministry for Justice could consider amending the Standards Act in order to assign legal personality to the office of the Commissioner, rectifying its full autonomy and independence from the Executive, with accountability only to the House of Representatives of Malta. This would bolster the powers of the Commissioner to appoint his own staff and would prevent any potential conflicts with Article 110(1) of the Constitution to arise.

The Ministry for Justice could align the conditions of appointment and reappointment of the Commissioner with those of the Auditor General and the Ombudsman of Malta

The Standards Act establishes a procedure for the appointment and reappointment of the Commissioner for Standards in Public Life with significant elements to protect his independence. Article 4 of the Standards Act states that the Commissioner is appointed by the President of Malta supported by the votes of not less than two-thirds of the House of Representatives, and Article 6(1) states that the Commissioner is appointed for a five-year term and is not eligible for reappointment. Additionally, the Commissioner does not report to the Executive or through a minister, but directly to the House of Representatives, which grants him full autonomy and independence with accountability only to Parliament.

However, the term length, combined with the impossibility of renewal, inhibits any sitting Commissioner from fully realising the functions assigned by the Standards Act during their mandate. Moreover, current practice in Malta for replacing heads of parliamentary oversight bodies raise additional concerns. While the two-thirds majority requirement in parliament ensures cross-party support for the heads of independent offices, the deeply polarised nature of politics in Malta has historically led to delays when it comes to identifying replacements for independent offices. For example, in early 2021, the incumbent Ombudsman finished his 5-year term. To date, the incumbent remains in office because the Government and the Opposition cannot agree on a replacement. Given the sensitive political mandate of the Commissioner, it is expected that identifying a replacement in a timely manner could prove difficult.

Other jurisdictions show different practices regarding the duration and the possibility of renewal of the appointment of the responsible for leading the institution in charge of standards in public life, which depend on their particular needs and contexts. For instance, the Canadian Conflict of Interest and Ethics Commissioner is appointed for seven years and is eligible for reappointment for one or more terms of up to seven years each. Likewise, the members of the Dutch Integrity Investigation Board are appointed for a period of up to six years and are eligible for reappointment for two terms of up six years each.

Additionally, it is worth looking at other parliamentary oversight bodies established in Malta – the National Audit Office and the Office of Ombudsmen. Article 108 of the Constitution of Malta and Article 5 of the Ombudsman Act of the Constitution of Malta establish, respectively, that the Auditor General and the Ombudsmen shall hold office for a term of five years, and shall be eligible for reappointment for one consecutive term of five years.

Considering the particularities of the Maltese context, the Ministry for Justice could consider amending the Standards Act to allow for a five-year term with the possibility of reappointment for one consecutive term of five years, supported by the votes of not less than two-thirds of the House of Representatives. This would bring the terms of appointment and reappointment in line with the Ombudsman and the National Auditor.

The Ministry for Justice could amend the Standards Act to include a deadlock breaking mechanism in the process for nominating and appointing the Commissioner for Standards in Public Life

As previously mentioned, the Standards Act establishes a procedure for the appointment of the Commissioner for Standards in Public Life. Indeed, Article 4 of the Standards Act states that the Commissioner is appointed by the President of Malta supported by the votes of not less than two-thirds of the House of Representatives, which is the same procedure followed to appoint both the National Auditor and the Ombudsman.

Despite ensuring the independence of the appointment, the current practice for selecting heads of oversight bodies raises concerns related to potential deadlock. For example, despite having finished his 5-year term in early 2021, the incumbent Ombudsman remains in office because the Government and the Opposition cannot agree on a replacement.

To prevent a long-term vacancy, the Ministry for Justice could consider including a deadlock breaking mechanism in the Standards Act. The deadlock breaking mechanism should in particular indicate a time period in which the House of Representatives must complete the selection process (such as within two months of the vacancy of the position). Moreover, the mechanism could specify that in the event that the House of Representatives does not vote on or successfully choose a Commissioner, the Judicial Appointments Committee established by Article 96(a) of the Constitution, could make a binding recommendation to the President of Malta for the appointment of a Commissioner. The Judicial Appointments Committee's recommendation could be either on a temporary or permanent basis.

The Ministry for Justice could amend the Standards Act to include clearer parameters on the Commissioner's background and integrity responsibilities.

As mentioned above, the Standards Act establishes several core elements to ensure the independence of the Commissioner for Standards in Public Life. However, unlike similar models in other jurisdictions, the Standards Act includes limited specifications regarding the preferred qualifications and background of the Commissioner. Article 5(1) of the Standards Act specifies that the Commissioner cannot be an active political, public official or person of trust, and Article 5(2) prohibits the Commissioner from holding an active role in the private sector (e.g. professional, banking, commercial or trade union activity). However, measures further detailing the expected qualifications or background of the Commissioner are not included.

The current incumbent, a well-respected lawyer with decades of public service to Malta, has retained the respect of both political parties thanks to the performance above expectations of his office and for being considered one of the functioning institutions of the integrity system in the country. However, he has been subject to criticism for his own political past, with some calling his judgements into question and suggesting some of his decisions were politically motivated. With no parameters concerning the qualifications or background of the incumbent, there are limited safeguards in place to ensure that his predecessors will have the level of experience, expertise and/or strength needed to maintain the independence and high quality of the office of the Commissioner.

In light of these challenges, the Ministry for Justice could consider amending the Standards Act to include clearer parameters on qualifications and background to guide the appointment of future Commissioners to ensure independence. Such parameters would make it difficult for future governments to appoint a weak Commissioner, and they would also protect incumbent Commissioners from attacks based on their own past. Setting out clear parameters is a good practice adopted in similar models in other jurisdictions (see Box 2.5).

Box 2.5. Clear parameters for the appointment of the heads of oversight bodies

Canada

The Parliament of Canada Act stipulates that the Conflict of Interest and Ethics Commissioner must be:

- a former judge of a superior court in Canada or of a provincial court;
- a former member of a federal or provincial board, commission or tribunal who has demonstrated expertise in at least one of the following areas: conflict of interest, financial arrangements, professional regulation and discipline or ethics; or
- a former Senate Ethics Officer or former Ethics Commissioner.

Ireland

The Standards in Public Office Act stipulates that the Standards in Public Office Commission must consist of six members, including a chairperson who must be:

- a judge of the Supreme Court or the High Court; or
- a former judge of the Supreme Court or the High Court.

Source: (Government of Canada, 1985[21]; Government of Ireland, 2001[22]).

Another key element to protect the integrity of decision making and safeguard the independence of the office of the Commissioner includes establishing mechanisms for detecting and managing conflicts of interest. Conflicts of interest can be understood as "a conflict between the public duty and private interests of a public official, which arises from the public official's private-capacity interests, where those interests have the potential to improperly influence the performance of official duties and responsibilities" (OECD, 2004[23]). This is particularly important when considering the Commissioner's investigatory role where it is essential to guarantee the impartial and disinterested management of the complaints process.

Currently, there is not a formal requirement included in the Standards Act for the Commissioner to identify and disclose potential or actual conflicts of interest. However, in line with good practice, the current incumbent conducted self-due diligence before accepting the appointment with the intention to avoid any possibility of a potential conflict of interest. Going forward, this good practice should be formalised in the Standards Act to protect the independence of the Commissioner and his office.

To that end, the Ministry for Justice could consider amending the Standards Act to formalise the requirement for the Commissioner for Standards in Public Life to identify and disclose conflict of interests upon selection. In practice, this means that the Commissioner would be required to submit a conflict-of-interest declaration to the Speaker of the House of Representatives before taking up his/her duties. Moreover, as detailed in Chapter 1, the Commissioner could consider developing additional guidelines on how to identify, manage and prevent conflicts of interest by the Commissioner and his staff to ensure the coherence and relevance of standards across the office.[3]

The Ministry for Justice could include the appointment of a temporary Commissioner for Standards in Public Life in the list of exceptions of Article 85 of the Constitution of Malta to guarantee their independence.

While the Standards Act grants the Commissioner for Standards in Public Life autonomy and independence to comply with his responsibilities, the available provisions for the temporary appointment of a Commissioner for Standards in Public Life raise two concerns: (i) circumstances under which a temporary Commissioner can be appointed; and (ii) concerns about independence.

According to Article 9(1) of the Standards Act, the President of Malta may temporarily appoint a Commissioner in two cases: a) during the illness or absence of the Commissioner, or b) where the Commissioner considers it necessary not to conduct an investigation himself because of any potential conflict of interests. The Standards Act does not envision a temporary appointment should the incumbent resign or pass away. To that end, Article 9(1) could be updated to include these two scenarios, thereby triggering the process to appoint a temporary Commissioner until the permanent replacement can be confirmed.

The second challenge concerning Article 9 pertains to a lack of safeguards to ensure the independence of the appointment process for the temporary Commissioner. These procedures raise concern when read together with Article 85 of the Constitution of Malta, which states that in the exercise of his functions, the President of Malta should act in accordance with the advice of the Cabinet or a Minister acting under the general authority of the Cabinet. Although Article 85 lists a number of exceptions for such general rule, it does not include the appointment of a temporary Commissioner for Standards in Public Life. As such, under Article 85 of the Constitution, the appointment of a temporary Commissioner should be made in accordance with the advice of the government.

To close this loophole, the Ministry for Justice could consider including the appointment of a temporary Commissioner for Standards in Public Life in the list of exceptions of Article 85 of the Constitution, to guarantee the independence of any temporary Commissioner and shield the office of the Commissioner from any political influence.

The Ministry for Justice could amend the Standards Act to clarify the procedure for enacting further regulations.

Two articles of the Standards Act provide information on the enactment of additional regulation for the guidance of the Commissioner for Standards in Public Life under the Act. First, Article 15 of the Standards Act empowers the House of Representatives to make general rules for the guidance of the Commissioner. More precisely, Article 15(1) states that such rules must be made by resolution, while Article 15(2) establishes that "all rules made under this article shall be made by, and published as, subsidiary legislation made under this Act". Second, Article 29 empowers the Minister for Justice and Governance to make regulations to implement and to give better effect to the provisions of the Standards Act. Such Article provides for the enactment of subsidiary legislation as it refers to legislation to further develop the provisions of the Standards Act without amending it.

Considering this, it is not clear whether the House of Representatives should frame its rules for the Commissioner's guidance by resolution (Article 15(1)) as a request to the Minister for Justice and Governance to enact its proposal through regulations under Article 29, or whether Article 15(2) empowers the House to issue subsidiary legislation in its own right. In this sense, the Ministry for Justice could consider aligning the conditions for enacting rules for guidance with those established on Article 15 of the Ombudsman Act, while also clarifying that the procedure to enact further regulations under the Standards Act should not prejudice the independence of the Commissioner for Standards.

2.4. Strengthening the functions of the Commissioner for Standards in Public Life

In addition to having independence from any political or institutional interference, parliamentary oversight bodies also need clear roles and responsibilities assigned to them. Article 13 of the Standards Act assigns the Commissioner for Standards in Public Life the following functions:

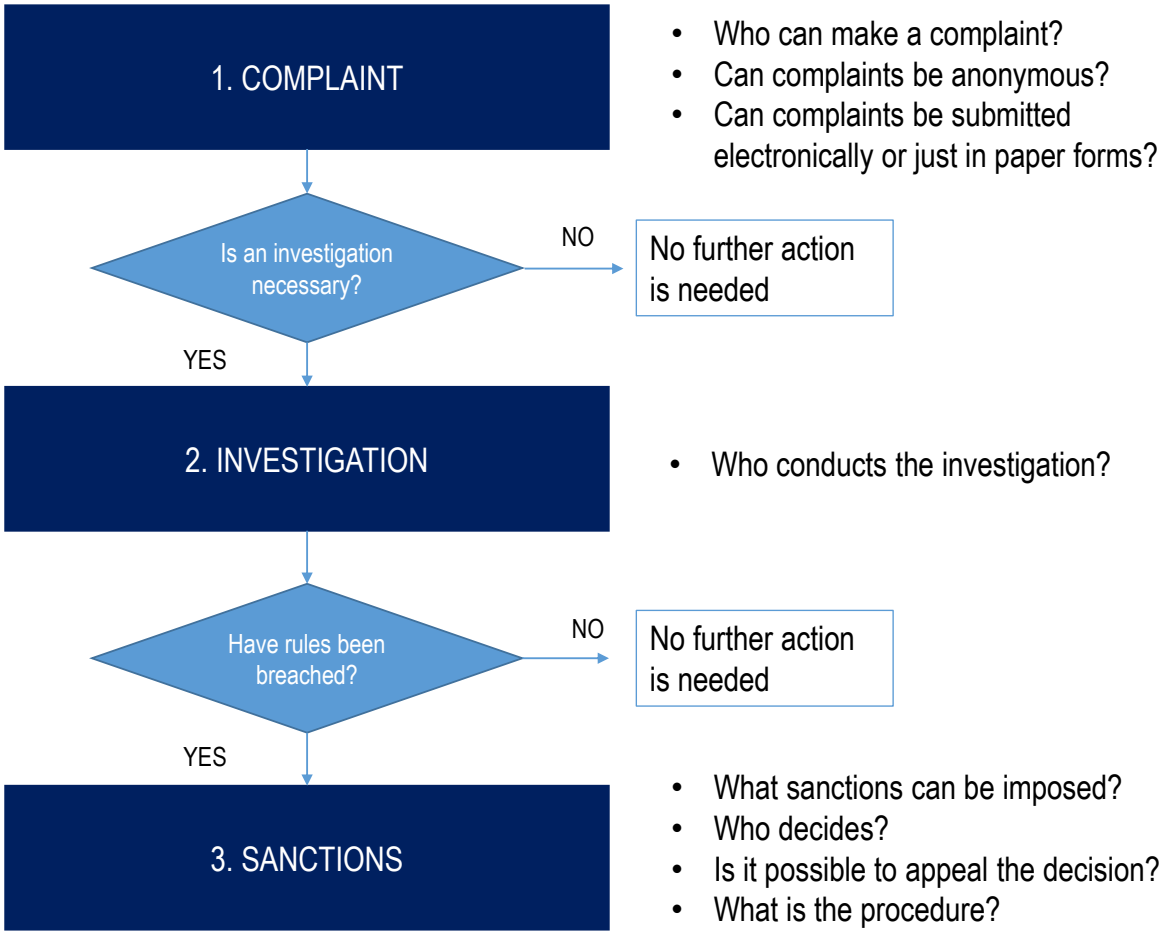
- To examine the declarations relating to income, assets, other interest and/or benefits filed by persons who are subject to the Act;
- To investigate the conduct of persons subject to the Act, on the Commissioner's initiative or based on a written complain;
- To give recommendations to persons seeking advice on whether an action or conduct intended by them falls to be prohibited by the applicable Code of Ethics or by any other particular statutory or ethical duty;
- To monitor parliamentary absenteeism and to ensure that MPs pay the administrative penalties to which they become liable if they have been absent throughout the whole session without permission of absence;
- To identify lobbying activities and to issue guidelines accordingly;
- To make recommendations concerning the improvement of any Code of Ethics applicable to persons who are subject to the Act, on the acceptance of gifts, the misuse of public resources, the misuse of confidential information, and on post-public employment.

This section reviews and analyses the Commissioner's functions as established in the Standards Act, and proposes recommendations to amend the Standards Act in order to address its main weaknesses and loopholes in terms of setting clear roles and responsibilities to the Commissioner.

2.4.1. The Ministry for Justice could amend the Standards Act to strengthen the complaints management process

A core function of parliamentary oversight bodies is to receive and investigate complaints concerning potential breaches of conduct. Three essential procedural elements make up this process: first, the receipt of a formal complaint regarding the conduct of a person covered by the ethics rules, and determination of whether the complaint meets the minimum standards to start an investigation. In this first element, some oversight bodies also have the ability to investigate potential breaches of their own initiative. Second, the investigation to establish the facts and determine whether ethical rules or norms were breached, and third, determining the appropriate and proportionate sanctions to apply to address the breaches (see Figure 2.1).

Figure 2.1. General procedure to monitor and enforce ethical standards



Source: (OSCE, 2012[5]).

In the case of Malta, the Commissioner for Standards in Public Life is responsible for investigating any matter alleged to be in breach of any statutory or any ethical duty of any person to whom the Standards Act applies (Article 13 of the Standards Act). Such investigations can be launched on the Commissioner's own initiative or on a written complaint made by any person to his office. If a complaint is found eligible, the Commissioner opens an investigation and carries out the collection, recording and analysis of evidence that allows him to decide whether statutory or ethical duties were breached or not. Where misconduct is found to have occurred and depending on the severity of the breach, the Commissioner may decide to

grant the person investigated a time limit within which to remedy such breach, or may refer the case to the Committee for Standards in Public Life, which decides on the appropriate sanction to be imposed.

The Ministry for Justice could consider revisiting the timeframes for submitting complaints included in Article 14 of the Standards Act

Regarding the first element to monitor and enforce ethical standards (*1. Complaint*), the main challenge consists in designing a system that promotes accessibility of potential complainants to the complaints system. This entails having clear procedures for submitting complaints and ensuring that complainants do not face significant obstacles when trying to submit their complaints.[4]

In the case of Malta, there are clear procedures for submitting complaints, both in the Standards Act and further developed by the Commissioner, as well as elements to facilitate complainants access to the system. For instance, the Standards Act allows complainants to make their complaints both in writing and orally (although the latter procedure has not been used yet), and when done in writing, they can be sent by post, email and through the Commissioner's website. Additionally, the Commissioner's website has a section about "complaints" with further details on how to make a complaint and other relevant information about this process aiming at further guiding complainants.

However, other provisions of the Standards Act create barriers for complainants and impede the Commissioner from undertaking investigations. The first barrier relates to the limited timeframes for submitting complaints, where Article 14 of the Standards Act states that the Commissioner cannot investigate complaints that have any of the following characteristics:

1. If the fact giving rise to the complaint occurred prior to the date in which the Standards Act came into force, this is, 30 October 2018;
2. If the complaint is made after thirty working days from the day on which the complainant had knowledge of the fact giving rise to the complaint;
3. If the complaint is made after one year from when the fact giving rise to the complaint happened.

Regarding the first case, it is worth considering that the Standards Act is the first legal base of a comprehensive integrity framework for elected and appointed public officials in Malta. This means that prior to 30 October 2018, Malta did not have a clear and formal framework for guiding the conduct, investigating potential offenses and sanctioning breaches of ethical and integrity standards by elected and appointed officials (i.e. MPs, ministers, parliamentary secretaries, parliamentary assistants and persons of trust). In this sense, in the absence of a formal framework, the Commissioner should not be able to investigate violations that took place before the entry into force of the Standards Act. However, the Commissioner has established that in the case of on-going actions, the relevant date for the purposes of determining whether or not the actions are time-barred is the date when the actions cease (see report on case K/002). This is in line with Maltese criminal law. In keeping with this, also considering the particularities of Malta and with the aim of further building trust in the integrity framework for elected and appointed officials, the Ministry of Justice could clarify in the Standards Act that the Commissioner can investigate on-going actions (under the Standards Act and/or any statutory or any ethical duty), even if the actions started before 30 October 2018. In this way, the Act would clarify that the Commissioner could investigate actions that started before the 30 October 2018 but were still ongoing as of that date. This would align with Article 13 (1 a and b), which allows the Commissioner to investigate breaches of other laws on public integrity standards that were enforceable prior to the Standards Act enactment.

Additionally, the remaining timeframes considerably limit the submission of complaints and generate mistrust in the current complaints system. Previous complainants noted that they could not submit serious complaints of public officials' misconduct because of the current limitations of the complaints system. Thus, despite the existence of conclusive evidence, severe cases of misconduct were going unpunished just because the fact giving rise to the complaint had taken place more than a year from the date the compliant

was made or because the complaint was made after thirty working days from the day on which the complainant had knowledge of the situation.

Like any jurisdiction, Malta faces integrity challenges that are unique to its context. To enable the Commissioner adequate time to review a breach of statutory or ethical duties that may have occurred during an elected or appointed officials' term in office, without unduly restricting the process, the Ministry of Justice could lengthen the period of time within which a person can submit a complaint. In this sense, the Ministry for Justice could consider revisiting the "thirty working days" and the "one year" timeframes to submit and investigate a complaint, in order to encourage more complainants to come forward and strengthen citizen's trust in the integrity system. Other jurisdictions have set longer periods of time to enforce their integrity standards, including the Massachusetts Ethics Commission in the United States, which has five years from the date the Commission learned of the alleged violation, but not more than six years from the date of the last conduct relating to the alleged violation, to start public proceedings against an individual (State Ethics Commission, n.d.[24]).

The Ministry for Justice could amend the Standards Act to enable anonymous complaints and empower the Commissioner to grant whistle-blowers status

In addition to restrictive timeframes, the second barrier to accessibility includes the inability for complaints to be submitted anonymously (as laid out in Article 16 of the Standards Act). To date, the Commissioner has received five anonymous complaints, which he has been unable to review given the restrictions set out in the Standards Act. Anonymous complaints are not allowed because (i) it makes it difficult for follow-up; and (ii) anonymity can been seen to increase the risk of superfluous or slanderous complaints. However, encryption technology[5] can be used to address both of these concerns: first, by enabling the Commissioner to follow up with complainants who prefer to remain anonymous; and second, by discouraging those who wish to abuse the system by making it clear that they will still be contacted and asked to provide additional information or substantiate their claims further. The benefits of allowing anonymous complaints outweigh the risks, by improving the accessibility of the system.

Given the sensitivity of the information held, and the often high-profile individuals concerned, there is a risk that the person who submitted the complaint could face retaliation. If this person is a private citizen, they have no recourse to protection in the face of potential threats. While the Commissioner does apply measures to ensure confidentiality, including in the Standards Act a guarantee of anonymity could help those private citizens with genuine concerns regarding potential ethical misconduct by persons covered under the Act to come forward. To that end, the Ministry for Justice could consider amending the Standards Act to enable anonymous complaints.

Finally, the third barrier to accessibility rests in the Commissioner's inability to grant whistle-blower status to public employees who disclose misconduct observed in their workplace. Similar to the rational for allowing anonymous complaints, public employees who witness misconduct by their political superiors or other appointed officials covered under the Standards Act may be hesitant to submit a complaint due to a genuine fear of retaliation. Currently Malta has a whistle-blower protection system in place, laid out in the Protection of the Whistle-blower Act 2013 (see Box 2.6). However, under the current system, complaints made to the Commissioner for Standards in Public Life do not fall under the Protection of the Whistle-blower Act, meaning the Commissioner is not empowered to grant the complainant any whistle-blower status or protection.

To address the weakness in the current system, the Ministry for Justice could consider amending the Standards Act to enable the Commissioner to grant whistle-blower status to public employees who disclose misconduct in good faith and on reasonable grounds in the context of their workplace. Doing so would further enhance accessibility to the complaints system by addressing potential concerns related to fear of reprisals. It is worth noting that in addition to amending the Standards Act, the government would also

need to amend the Protection of the Whistle-blower Act 2013 (Chapter 527 of the laws of Malta), to include the Commissioner within the landscape of institutional actors for applying whistle-blower status.

Box 2.6. Malta's Whistle-blower Protection Framework

In Malta, the whistle-blower protection framework is established in law through the Protection of the Whistle-blower Act 2013. This Act establishes a system of internal and external reporting channels to be used by persons disclosing in good faith corrupt practices and other suspicious behaviour, and allows various forms of protection for the whistle-blower). As part of the measures implemented, the Act requires all ministries to appoint a whistleblowing reporting officer responsible for receiving reports from informers, establishes an external whistle-blowing disclosure unit –the Cabinet Office– to handle external disclosures by public sector employees, and presents a number of authorities to receive external disclosures by the private sector, including the Office of the Ombudsman.

Source: (GRECO, 2019[1]; Government of Malta, 2013[25]).

The Ministry for Justice could amend the Standards Act to enable the Commissioner to request additional information to determine whether an individual or the alleged breach falls under the Standards Act and an investigation is warranted

To ensure independence of parliamentary oversight bodies, it is also necessary to guarantee that the head of the office is empowered to initiate investigations, including launching investigations on their own initiative, and that they have access to all the necessary evidence to determine whether a breach existed or not (Committee on Standards in Public Life, 2021[20]). In Malta, the Standards Act empowers the Commissioner to investigate the conduct of persons subject to the Act – on his initiative or based on written allegations- as well as to gather the evidence needed in the course of an investigation. However, in certain situations, the Commissioner faces limitations to initiate an investigation, which can impede his ability to hold accountable those individuals that fall under the Standards Act.

First, the Commissioner can encounter limitations when seeking to determine whether an allegation can be investigated or not, in particular when trying to determine whether the alleged breach falls outside the timeframes stipulated in the Act. Second, with regards to persons of trust, the current definition included in Act XVI of 2021 creates difficulties for the Commissioner to establish whether he is entitled to carry out an investigation or not in all possible scenarios. For instance, under the current system, if the Commissioner receives a complaint against a person working in a government department, additional information is required to first determine whether the person falls under the Commissioner's remit or not. However, given current limitations in the Standards Act, it is not clear whether the Commissioner can request additional information (such as an employee's contract of employment) to determine whether that person is a permanent public employee (and hence not subject to the Standards Act) or a person recruited on trust serving in the private secretariat of a minister or parliamentary secretary (and hence subject to the Standards Act).

The Ministry for Justice could therefore consider amending the Standards Act to explicitly grant the Commissioner the ability to request the necessary documentation to determine whether an individual or the alleged breach falls under the Standards Act and is subject to investigation. With particular reference to persons of trust, this power should also be granted to the Commissioner even if the definition of "persons of trust" is modified as recommended in the first section of this chapter, unless no exceptions to the term "persons of trust" are included in such definition.

The Ministry for Justice could amend the Standards Act to further detail the proceedings after investigation, including on publishing case reports

Regarding the process for investigations, two key elements are critical: defining who carries out the investigation and setting a clear, transparent and fair procedure to do so. In Malta, the Standards Act empowers the Commissioner to conduct the investigations of potential breaches of ethics and establishes a procedure for this, which includes several elements to guarantee its transparency and fairness. However, challenges remain in terms of ensuring that cases are handled in a timely manner, the procedure is clear and consistent, and that reports are published appropriately. This chapter focuses on the challenges associated with the timely publication of reports, while the Chapter 1 provides recommendations to ensure that cases are handled in a timely manner following a clear procedure.

The investigation process according to the Standards Act is as follows: upon receipt of a complaint, the Commissioner conducts a preliminary review to determine whether it is eligible for investigation in terms of the Standards Act. If a complaint is found eligible, the Commissioner opens an investigation, which is conducted following the proceedings established under the Standards Act (Articles 18 to 21). The Commissioner is expected to conclude his investigation within six months of having received the complaint. However, if this is not the case, the Commissioner should inform the Speaker of the House about the reason for the delay; this should be done every six months until the closure of the investigation.

Although the Standards Act establishes some general guidelines during and after an investigation, the Commissioner considered it necessary to set out more detailed internal procedures to be followed after having considered complaints pursuant to the Standards Act, including on the publication of case reports. To that end, the Committee for Standards and the Commissioner agreed on a series of procedures, and laid them down in a memorandum and letter. The internal procedures specify the following:

- If after an investigation the Commissioner does not find evidence of misconduct, he issues a report which is published on his website (except for exceptional circumstances) and submitted to the person investigated, the complainant and the Committee for Standards, purely for information purposes.
- If after an investigation the Commissioner finds that a *prima facie* breach of ethics or of a statutory duty has occurred, he must elaborate a report and follow one of the subsequent procedures:
  - If the breach was not of a serious nature and the person investigated agrees with the outcome of the investigation, the Commissioner may grant the person a time limit within which to remedy the breach by application of Article 22(5) of the Standards Act. If the remedy is carried out to the Commissioner's satisfaction, he publishes the report on his website and closes the case.
  - If the breach was of a serious nature, the Commissioner must submit the report to the Committee for Standards in Public Life, who then decides whether to adopt the conclusions and any recommendations contained in the report, and takes an action by applying Articles 27 and 28 of the Standards Act. Additionally, the Commissioner informs the individual investigated and the complainant that the report has been concluded and has been submitted to the Committee. In these cases, the Committee for Standards is responsible for deciding when to authorise the publication of the reports on the Commissioner's website (Commissioner for Standards in Public Life, 2021[26]; Commissioner for Standards in Public Life, 2019[27])

The procedure regarding publication of reports on cases of a serious nature has given rise to several challenges for the Commissioner, his office and the Committee for Standards. In particular, reports are often leaked to the media once the Commissioner has submitted his findings to the Committee for Standards, and political considerations, rather than those concerning accountability and transparency, drive decisions to publish the reports. To address these issues, two considerations are key: strengthening transparency and accountability while respecting the principles of fair process, and addressing political

polarisation. The first can be dealt with regarding the process of investigations, whereas the second can be dealt with by reforming the structure of the Committee (as discussed below).

Regarding accountability and transparency, it is necessary to find the right balance between these principles and the principle of fair process and confidentiality. On the one hand, it is necessary to ensure transparency concerning the status of case reports so that the public can hold the Commissioner and the Committee for Standards accountable for processing the complaints. On the other hand, it is paramount that fair process be respected to uphold the integrity of the investigation.

As such, to improve transparency and accountability, the Ministry for Justice could consider including an obligation to the Commissioner in the Standards Act to provide further details on the procedures during and after investigation. To start, the Standards Act could clarify that the Commissioner will publish the status of all cases received on his website (for example, accepted/rejected, under review, submitted to the Committee, concluded). Codifying transparency in this regard will reduce the need for speculation about the status of a case, and will enable the public to hold the various actors responsible for processing the case.

With regards to the publication of case reports, the Standards Act could also be further clarified. First, it could specify that in cases where there is no evidence of misconduct or where the breach was not of a serious nature, the Commissioner's reports will be published on the website upon conclusion of the investigation. Second, in cases concerning breaches of a serious nature, the Standards Act could clarify that upon conclusion of the investigation, the Commissioner will submit the findings report to the Chairperson of the Committee for Standards. Following this, the Chairperson will share the findings report with the Committee for Standards and approve the Commissioner's publication of the report on the Commissioner's website.

To facilitate transparency during the Standards Committees proceedings, the Standards Act could further clarify that the Committee for Standards will keep an up-to-date list on its website of cases currently considered by the Committee, including when the case reports were received and when the Committee will consider the Commissioner's findings and issue their conclusions. Additionally, the Standards Act could clarify that the Committee for Standards will issue a report concerning the reasons for adopting or not the conclusions and recommendations contained in the findings report by the Commissioner – including, when appropriate, the reasons for conducting additional investigations. Such report could be published in the Committee's website and be linked to the corresponding findings report by the Commissioner.

Clearly establishing the procedure for publication in the Standards Act will close existing loopholes and address ongoing public confusion about expectations. Established rules will also place obligations on the Commissioner, his office and the Standards Committee to which they will be accountable. In clarifying these rules, it is essential that the principles of fair process and impartiality remain at the forefront, to avoid further enflaming a naturally tense process.

2.4.2. The Ministry for Justice could amend the Standards Act to include a comprehensive and proportionate system of sanctions

Regarding sanctions, one of the main challenges consists in effectively designing and implementing a wide range of appropriate sanctions to be applied in a timely manner for cases of proven misconduct. Indeed, sanctions are integral to meaningful regulation and to the overall legitimacy of a parliamentary regulation system, but these have to be proportionate to the severity of the offence and the number of infractions (OSCE, 2012[5]). To achieve this, parliamentary regulation systems may include a wide range of sanctions, from relatively weaker penalties that can be seen as "reputational", through fines and temporary suspensions from office. The ultimate political sanction –loss of a parliamentary seat– should be reserved to very serious offences only (OSCE, 2012[5]).

In Malta, Article 28 of the Standards Act states that where the Committee for Standards in Public Life finds that there has been a case of misconduct, it should decide on any one or more of the following sanctions:

- (a) Admonish the person investigated;
- (b) Recommend that the matter be reported to the Commissioner of Police for further investigation;
- (c) In the case of an employee, it may direct Government or any entity or statutory body, to take all necessary measures in accordance with the person's conditions of employment, with a view to remedy the breach;
- (d) In the case of a member of the House of Representatives, it may (i) recommend the House to direct the member to rectify any breach; (ii) demand an apology in writing to be made to the Committee; (iii) demand an apology by way of a personal statement on the floor of the House; (iv) demand the repayment of or payment for resources improperly used; (v) recommend that the House takes any other measure it may deem fit;
- (e) In any case, it may recommend that the House directs the person being investigated to rectify the breach.

Although the Standards Act proposes some sanctions for cases of proven misconduct and allows the Committee for Standards to recommend the House on any other measure it may consider appropriate, the current system is insufficient to guarantee the enforcement and promotion of parliamentary standards in an efficient and consistent way. Indeed, the current system presents two main weaknesses. First, it does not provide an adequate and comprehensive scale of sanctions as it does not seem to consider more severe sanctions than an apology. Second, it does not allow for the consistent imposition of sanctions as it does not provide a transparent procedure for scaling from softer to tougher measures as the severity of the offense increases. Having a consistent approach to imposing sanctions is vital to avoid any suggestion that their application is arbitrary, to promote best practice and to guarantee that individuals covered by the integrity framework understand what is expected of them (House of Commons Committee on Standards, 2020[28]). Additionally, although no two cases of misconduct are identical, individuals have the right to be dealt with no more severely or more leniently than another in a similar set of circumstances (House of Commons Committee on Standards, 2020[28]).

In this sense, the Ministry for Justice could consider establishing a comprehensive and proportionate system of sanctions under the Standards Act with a wide range of possible sanctions or remedies based on the severity of the breach and a clear statement of how and in what circumstances the Committee would expect to impose them. Additionally, considering that cases can only be similar but never entirely the same, and aware of the benefits that imposing sanctions consistently can bring to the credibility of the integrity system, the Commissioner could also consider defining a list of aggravating and mitigating factors that should be considered when revising cases to impose sanctions. Good practice from other jurisdictions can be used as a basis for Malta to define a wide set of proportionate sanctions as well as the aggravating and mitigating factors that could be used to analyse specific cases (see Box 2.7). Sanctions could also be envisaged for late filing, inaccurate filing or non-filing of asset and interest declarations (see Chapter 4).

Box 2.7. System of sanctions for breaches of ethics

Israel

In Israel, the Ethics Committee is responsible for the jurisdiction over Knesset Members (Members of the Israel's unicameral Parliament) who have violated rules of ethics of the Knesset or have been involved in illegal business outside the Knesset. If the Ethics Committee, by a majority vote of all its members, determines that a Knesset Member has violated the Knesset's ethics rules, it may impose sanctions. According to Section 13d of the Law of Immunity of Knesset Members, their Rights and Obligations (1951), these sanctions include:

- a note
- a warning
- a reprimand –including a severe reprimand, revocation of the right to speak in the Plenum or in committees for a period that should not exceed 10 days, and a ban on submitting bills and making motions for the agenda–
- suspension from plenary sessions of the Knesset and its committees for a period not to exceed six months.

The Ethics Committee may also withhold salary or other payments from a Knesset Member due to excessive and unjustified absence from Knesset meetings.

Netherlands

In the Netherlands, the Integrity Investigation Board receives and investigates complaints regarding violations of the Code of Conduct by MPs. If the Board establishes a violation of the Code of Conduct, a recommendation for a sanction can be made in the report that is sent to the Presidium (executive committee of the House of Representatives). Possible sanctions are clearly delineated in the Regulations on Supervision and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General, under Chapter 5: Sanctioning. These include:

- an instruction, a measure that obliges a MP to rectify a violation of the Code of Conduct,
- a reprimand, including a public letter from the Presidium addressed to a MP in which the act that led to a violation is rejected, and
- a suspension, including the exclusion of a MP for a period of up to one month from participation in plenary sittings, committee meetings or other activities held by the House.

Additionally, the explanatory notes of the Regulations provide more details outlining in which circumstances certain sanctions are utilised. For instance, reprimands can be seen as a warning to the MP, while suspension is the most severe form, which is only utilised in the event of a breach of secrecy or confidentiality. The Regulations also stressed that the sanction of suspension is flexibly framed so that the measure can be tailored appropriately and proportionately to the nature and severity of the violation.

United Kingdom

In its report *Sanctions in respect of the conduct of Members* (2020), the Parliamentary Commissioner for Standards of the United Kingdom sets out a table listing sanctions recommended in individual standards cases since 1995, which are considered to be useful and meaningful sanctions for MPs who are found to be in breach of the Code of Conduct for MPs. The sanctions are arranged in, approximately, ascending order of seriousness:

Possible sanction or remedy	Notes	Decision-making body
Words of advice or warnings given by Parliamentary Commissioner for Standards or others	Warnings to remain active for twelve months	Parliamentary Commissioner for Standards
Requirement to attend training Training courses include: • Equality and Diversity • Dignity in the workplace • Good employer • Anger Management Parliamentary Commissioner for Standards to be able to require MP to attend other bespoke training or coaching as decided	Parliamentary Commissioner for Standards to receive report from provider of training on attendance and engagement of MP, and to follow up one year after training completed.	Parliamentary Commissioner for Standards
Letter of apology to complainant (ICGS only) or to Committee	Parliamentary Commissioner for Standards to approve text in ICGS cases	Parliamentary Commissioner for Standards
Apology on point of order or by personal statement (formal apology in the Chamber) which (in ICGS cases) might be in conjunction with letter of apology to complainant	Parliamentary Commissioner for Standards to approve text of letter Committee on Standards to require personal statement apology	Parliamentary Commissioner for Standards
Withdrawal of services / access from MP (not from office or constituents), for example exclusion from catering facilities or library Services. (Could be used in ICGS cases)	In conjunction with security team / catering staff / library staff Parliamentary Commissioner for Standards to decide on length of exclusion	Parliamentary Commissioner for Standards
MP not to be permitted to serve on Select Committee	Committee on Standards to decide on length of exclusion	Committee on Standards
MP not to be permitted to travel abroad on parliamentary business	Committee on Standards to decide on length of exclusion	Committee on Standards
MP to repay part or all of cost of investigation	Parliamentary Commissioner for Standards to decide/advise on the sum to be repaid	Parliamentary Commissioner for Standards / Committee on Standards
MP to be suspended from service of the House, without pay		House of Commons, on recommendation from Committee on Standards
MP to be expelled		House of Commons, on recommendation from Committee on Standards

Additionally, drawing on the Committee's past conclusions in a range of cases, the Parliamentary Commissioner for Standards proposes a list of aggravating and mitigating factors:

Aggravating factors	Mitigating factors
Non-cooperation with the Commissioner or the investigation process; concealing or withholding evidence	Physical or mental ill health, or other personal trauma
Seniority and experience of the Member	Lack of intent to breach the rules (including misunderstanding of the rules if they are unclear)
Racist, sexist or homophobic behaviour	Acting in good faith, having sought advice from relevant authorities
Use of intimidation or abuse of power	Evidence of the Member's intention to uphold the General Principles of Conduct and the Parliamentary Behaviour Code
Deliberate breach or acting against advice given	Acknowledgement of breach, self-knowledge and genuine remorse
Motivation of personal gain	
Failure to seek advice when it would have been reasonable to do so	
A repeat offence, or indication that the offence was part of a pattern of behaviour	
Any breach of the rules, which also demonstrates a disregard of one or more of the General Principles of Conduct or of the Parliamentary Behaviour Code.	

Source: (House of Commons Committee on Standards, 2020[28]; The Knesset, 1951[29]; Tweede Kamer der Staten-Generaal, 2021[30]).

2.4.3. The Ministry for Justice could amend the Standards Act to abolish the role of monitoring administrative penalties for non-attendance in Parliament

Parliamentary oversight may have different roles and responsibilities, including receiving and investigating complaints of breaches of ethics, providing confidential advice and guidance to public officials, and monitoring declarations of interests and assets. In the case of Malta, the Commissioner for Standards in Public Life is also responsible for monitoring parliamentary absenteeism and ensuring that MPs pay the administrative penalties to which they become liable for being absent throughout a whole Parliament session without authorisation from the Speaker (Articles 13(1d&e) of the Standards Act).

However, the Commissioner and his office has noted that this function takes up an important amount of time, which is already tight to properly carry out and deliver on other major responsibilities, including investigating complaints. Additionally, the Commissioner and his office noted that such role on monitoring parliamentary absenteeism does not have a major impact on raising awareness and building a culture of integrity in Parliament, in the sense that it consists only in policing MPs to ensure that administrative penalties for non-attendance are paid.

In line with good practices adopted in other jurisdictions (see Box 2.8), the Ministry for Justice could consider removing the function of monitoring parliamentary absenteeism from the Standards Act and entrusting it to the Clerk of the House of Representatives and the political parties themselves. Indeed, international practices show how in recent years political parties have become responsible for ensuring that there is an adequate representation of MPs in Parliament for debates and votes rather than just relaying on formal mechanisms managed by the specific bodies/people within parliament.

Box 2.8. Monitoring parliamentary absenteeism in other jurisdictions

In other jurisdictions, clerks and political parties are responsible for monitoring parliamentary absenteeism, while standards commissions are focused on conducting investigation of misconduct, monitoring declarations of interests and assets, and providing confidential advice and public guidance.

Canada

In Canada, one of the main duties of MPs is to attend the sittings of the House of Commons when it is in session, unless the MP is occupied with parliamentary activities and functions or on public or official business (Standing Order 15 of the House of Commons). In this sense, the *Parliament of Canada Act* (Article 65(1)) provides for deductions for non-attendance from the MP's sessional allowance. Since there is no regulatory mechanism to monitor MPs' attendance, calculations of MPs' allowances are made on the basis of an statement provided at the end of each month and at the end of each session by each MP to the Clerk of the House, with information on the number of days of attendance during the month or session. Deductions are made only when absences exceed 21 sitting days.

Although the Parliament of Canada Act gives the House of Commons the power to impose more severe regulations regarding MPs' attendance or deductions from sessional allowances, in Canada the presence of MPs in the Chamber is largely a function of politics, not procedure or law. As a result, the Whips of the different parties have become responsible to ensure an adequate representation of MPs in the Chamber for debates and votes.

United Kingdom

In the United Kingdom, neither the House of Lords not the House of Commons enforce the attendance of MPs on ordinary occasions. In the House of Lords, the Clerks take down each day the name of every member present during the sitting of the House and enter them in the Journals. In the House of Commons, ensuring attendance has become a function of the party machinery. The Whips of the

different parties make it their duty to secure adequate representation for all important divisions and keep daily attendance lists for their respective parties. Additionally, the minutes of select committees and the Official Report of general committee meetings include attendance lists. These, together with the publication of records of debate and divisions in the Official Report and on parliamentlive.tv, allow MPs to demonstrate their regular attendance in Parliament.

Source: (Government of Canada, 1985[21]; House of Commons of Canada, 2000[31]; Erskine May, 1844[32]).

2.4.4. The Ministry for Justice could amend the Standards Act to strengthen the provisions on asset declarations and conflict of interest

Under Article 13(1) (a) of the Standards Act, the Commissioner is responsible for examining and verifying the declarations of assets and financial interests filed by persons subject to the Act. The article however leaves a number of grey areas and gaps, both in terms of process and in terms of gaps concerning other legislation, such as the Income Tax Management Act. Following the findings in Chapter 4, the Ministry for Justice could refer to the detailed recommendations on the scope and process to update the Standards Act and other associated legislation.

2.4.5. The Ministry for Justice could update and adopt the new Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries replacing the codes in Schedules I and II of the Standards Act

The first and second schedules of the Standards Act contain the Codes of Ethics for Members of the House of Representatives and the Code of Ethics for Ministers and Parliamentary Secretaries. However, these codes of ethics present several shortcomings including the lack of standards to address some of the key risk areas for corruption and misconduct –e.g. on the use of confidential information, pre- and post-employment restrictions, and engagement with third parties.

The Commissioner has proposed updates to the respective Codes of Ethics, and Chapter 3 details recommendations to the Ministry for Justice to update and adopt a new Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries replacing the codes in Schedules I and II of the Standards Act.

2.5. Strengthening the functions of the Committee for Standards in Public Life

External oversight bodies may be seen as more legitimate and transparent than parliament's self-regulation, but a question still remains as to whom the regulators should be accountable to (OSCE, 2012[5]). If the oversight body reports to the executive branch, this threatens to undermine the separation of powers and the independence of the legislative branch. If the oversight body remains purely external and is granted judicial powers, it could risk interfering with parliamentary sovereignty and can discourage MPs from taking responsibility for their own conduct, as there would be little sense of ownership of their own integrity standards and system (OSCE, 2012[5]).

To achieve a balance between effective oversight and independence of the legislative arm, many countries have opted for a hybrid system. In such a system, an independent body carries out some elements of the process, but remains accountable to either a parliamentary committee, the Speaker or the Prime Minister. Examples of hybrid systems can be found in other jurisdictions, where an independent body reports directly to a parliamentary standards committee or to the Prime Minister/Speaker (see Box 2.9).

Box 2.9. Accountability system of the independent parliamentary oversight bodies

Canada

In Canada, the Commissioner of Conflict of Interest and Ethics investigates possible contraventions of the Conflict of Interest Act and the Conflict of Interest Code for Members of the House of Commons, and elaborates a report with his/her findings of the investigation. The Commissioner of Conflict of Interest and Ethics provides the reports to the Prime Minister or the Speaker of the House of Commons.

- Under the Conflict of Interest Act (2006), the Commissioner should provide the Prime Minister with a report setting out the facts in question and the Commissioner's analysis and conclusions. The Prime Minister is then responsible for deciding on the cases.
- Under the Conflict of Interest Code for Members of the House of Commons (2021), the Commissioner should provide the Speaker of the House with a report. If the Commissioner concludes that a MP did not complied with an obligation under the Code, he/she should include recommended sanctions in the report. The Speakers should present the report to the House of Commons when it next sits.

Netherlands

In the Netherlands, the Integrity Investigation Board is responsible for receiving and investigating complaints regarding violations of the Code of Conduct by MPs. If after an investigation the Board establishes a violation of the Code of Conduct, the corresponding report is sent to the Presidium (executive committee of the House of Representatives) and to the MP under investigation. In these cases, the Board can also made a recommendation for a sanction in the report. The Presidium is obliged to make the report public no later than four weeks after receiving it, so that the complainant can take cognizance of the report at that time. However, the Board can determine that parts of the report remain confidential in connection with serious reasons, and those cannot be published by the Presidium. The Presidium should also send a letter to the House of Representatives, simultaneously with the publication of the report, with a proposal to impose the recommended sanctions.

Ireland

In Ireland, the Standards in Public Office Commission processes complaints and examines possible wrongdoing under the Ethics in Public Office Acts. After an Investigation, the Commission is required to prepare a written report including the findings of the Commission together with its determinations in relation to whether there has been a contravention of the Ethics in Public Office Acts. The Commission's report is furnished to the respondent, the complainant, the Cathaoirleach –Chair of the Seanad Éireann or Irish Senate– and the Chief Executive of a local authority –where a complaint relates to a member and/or employee of the local authority–, and the Minister for Public Expenditure and Reform. When reports are referred to the local authority, the local authority may take action it deems appropriate, including, in the case of a Chief Executive Officer, suspension or removal from the local authority.

Scotland

In Scotland, the Commissioner for Ethical Standards in Public Life is responsible for investigating complaints about the conduct and behaviour of Members of the Scottish Parliament (MSP), amongst others. Based on his/her investigation, the Commissioner prepares a confidential report describing his/her findings and giving his/her opinion on whether the MSP breached the Code of Conduct for MSP. The Commissioner provides the report to the Standards, Procedures and Public Appointments Committee of the Scottish Parliament. Where the Commissioner finds there has been a breach of the

Code, the Committee considers the report in full, decides on whether or not to accept the Commissioner's findings, and recommends a penalty to the Scottish Parliament.

United Kingdom

In the United Kingdom, the Parliamentary Commissioner receives complains on potential breaches of the Code of Conduct for MPs, conducts investigations and reports his/her findings to the House of Commons Committee on Standards. The Committee on Standards is then responsible for deciding on the cases of misconduct referred to it by the Parliamentary Commissioner for Standards and reporting on these cases to the House of Commons, normally including recommendations for sanctions when the process concludes that the Code has been breached.

United States

In the United States, the Office of Congressional Ethics, an independent and non-partisan entity within the House, is responsible for reviewing complaints of wrongdoing against Members, offices and staff of the House of Representatives and when appropriate, referring matters to the Committee on Ethics for further review. The Office of Congressional Ethics is also not authorised to sanction Members, officers, or employees of the House or to recommend any sanctions.

The Committee on Ethics is responsible for recommending administrative actions to establish or enforce standards of official conduct and investigating alleged violations of the Code of Official Conduct or of any applicable rules, laws, or regulations governing the performance of official duties or the discharge of official responsibilities. Additionally, the Committee on Ethics is responsible for providing advisory opinions regarding the propriety of any current or proposed conduct of a Member, officer, or employee, and issue general guidance on such matters as necessary.

Source: (Government of Canada, 2006[18]; House of Commons of Canada, 2021[33]; Evans, 2021[34]; Tweede Kamer der Staten-Generaal, 2021[30]; Standards in Public Office Commission, 2021[35]).

Independently of the approach, it is necessary to guarantee that the bodies responsible for enforcing professional ethical standards in parliament are not used in a partisan way to get rid of political opponents and to promote the interests of a particular party, and instead are regarded as legitimate, independent and transparent. Otherwise, such bodies will ultimately lead to the failure of the integrity framework and will further enable the public to lose confidence in Parliament and its ability to deliver on its function of ensuring accountability.

2.5.1. The Ministry for Justice could consider changing the structure of the Committee for Standards in Public Life in order to strengthen its independence

Part II of the Standards Act creates the Committee for Standards in Public Life, which is responsible for overseeing and scrutinising the work of the Commissioner. The Committee for Standards is also responsible for examining any reports it receives from the Commissioner, resolving whether to adopt the conclusions and recommendations contained in such reports, and deciding on the sanctions to be applied in cases where it finds that there have been breaches of any statutory or ethical duty. The Committee for Standards is not involved with individual investigations carried out by the Commissioner, nor with what the Commissioner includes in his reports. However, it can conduct additional investigations, with the assistance of the Commissioner, in cases where it deems that the allegations need to be investigated further in order to decide on the adoption of a report.

Currently, the Committee for Standards is the only parliamentary committee that does not reproduce the majoritarian composition of the House of Representatives. It consists of the Speaker of the House of Representatives (who acts as the chairperson and has a casting vote), two members nominated by the Prime Minister, and two members nominated by the Leader of the Opposition.

The functions of the Committee for Standards aim to guarantee the previously mentioned required balance between effective oversight and independence of the legislative arm. Indeed, having a parliamentary committee, such as the Committee for Standards, responsible for both scrutinising the work of the Commissioner and deciding on the sanctions to be applied in cases of proven misconduct by elected and appointed officials, ensures the necessary separation of powers. In this sense, the current hybrid set-up of the Maltese integrity system for elected and appointed officials should be maintained and strengthened with an independent Commissioner equipped with the appropriate means and possibilities to conduct inquiries, and a non-partisan Committee for Standards capable of imposing effective and proportionate sanctions in cases of proven misconduct.

However, discussions with key stakeholders, including members of the Committee for Standards, the office of the Ombudsman, academics and representatives from civil society underscored the weaknesses of the composition of the Committee for Standards for effectively and independently enforcing integrity standards and identified such Committee as the weakest element of the integrity framework for elected and appointed officials in Malta.

To date, the Commissioner has submitted six case reports to the Committee for Standards. These case reports correspond to investigations that concluded with a finding of misconduct of a serious nature (0 cases in 2018-2019, 2 cases in 2020, and 4 cases in 2021).[6] In each of these cases, the Committee for Standards was expected to decide whether to adopt the conclusions and recommendations contained in the reports, and in the event of finding breaches of statutory or ethical duties, to decide on the appropriate sanctions. Thus far, the track record of the Committee for Standards has been lacklustre. Although the Committee for Standards has never rejected a case report submitted by the Commissioner, there is a general lack of confidence in its ability to decide on effective sanctions. Table 2.1 details the cases and sanctions applied by the Committee for Standards.

Table 2.1. Cases submitted to the Committee for Standards and resulting sanctions

Case number	Committee for Standards decision
K/019	The Committee endorsed the Commissioner's case report and agreed to treat a letter from the subject of investigation (former Prime Minister Joseph Muscat) as an apology for the purposes of Article 28(d) (ii) of the Standards in Public Life Act.
K/022	The Committee endorsed the Commissioner's case report but the Speaker issued rulings saying that sanctions could not be applied since the subject of the investigation (former Prime Minister Joseph Muscat) was no longer an MP.
K/028	The Committee considered the Commissioner's case report and a vote by members resulted in a tie. The Speaker abstained from voting in Committee (he did not use his casting vote to decide on the case).
K/017	The Committee did not discuss this report. On a request by the Government representatives on the Committee, the Speaker ruled that the report should not have been issued since the investigation concerned a matter that was still *sub judice* and consequently the Commissioner had acted ultra vires by proceeding with the investigation. The Committee did not authorise the publication of the report, but it was leaked.
K/032	The Committee endorsed the Commissioner's case report and decided to admonish the subject of investigation (Labour MP Rosianne Cutajar). However, the sanction was a letter from the House Clerk informing MP Cutajar about the Committee's decision against her.
K/036	The Commissioner submitted the report to the Committee for Standards. However, the Speaker and government MPs members of the Committee agreed that proceedings concerning this case should be suspended in light of the court case the subject of investigation (former minister Justyne Caruana) filed.

Source: (Office of the Commissioner for Standards in Public Life, n.d.[36]; Cordina, 2022[37]).

Moreover, the Committee for Standards has been criticised for acting in a politicised way, with the two members of the Opposition defending the interests of their party and colleagues, and the two members of the Government and the Speaker of the House acting in accordance with the interests of the governing party. Additionally, the current structure of the Committee for Standards has created challenges in terms

of reaching an agreement about the reports issued by the Commissioner, and more importantly, on the effective and proportionate implementation of sanctions.

While the Committee for Standards serves a critical role in protecting Parliament's independence, its current set-up is undermining public trust in the integrity system. The deeply political nature of politics in Malta has so far rendered it almost impossible for members of the Committee for Standards to work above political party lines when it comes to applying appropriate sanctions. This has led to public perception that the Committee is concerned more with protecting its respective party members than with enforcing integrity standards for members of public life. To enhance its independence and improve its functioning, the Ministry for Justice could change the structure of the Committee for Standards in the Standards Act.

First, the Ministry for Justice could consider including lay members on the Committee for Standards. Such changes could be implemented progressively, for instance, starting with the introduction of two lay members (to four MPs) and increasing it to four lay members (to four MPs) in the medium term, as the new structure proves its effectiveness. While the Committee is currently the only parliamentary committee that enjoys equal representation of both parties, this accomplishment should not overshadow the need to further strengthen its composition. As the core challenge with the current Committee is its division along party lines, including lay members on the Committee for Standards, in addition to the existing four Members of Parliament, would strengthen both the independence and functioning of the Committee. Good practice has found that including independent, external actors into an ethics committee strengthens neutrality, thereby enabling the committee as a whole to function more effectively (Commonwealth Parliamentary Association, 2020[38]). Additionally, including lay members brings new considerations and insights into the discussions on enforcing integrity standards. Taken together, this can strengthen transparency, accountability and scrutiny of the system. Examples of lay members in ethics committees can be found in the Netherlands and the United Kingdom (see Box 2.10).

Box 2.10. Lay members in committees responsible for enforcing ethical standards

United Kingdom House of Commons Committee on Standards

The United Kingdom House of Commons Committee on Standards was created in 2012 by the House of Commons standing orders 149 and 149A, following its separation from the former Committee on Standards and Privileges. The House of Commons Committee on Standards is responsible for overseeing the work of the Parliamentary Commissioner for Standards, reviewing the Code of Conduct of MPs and recommending its modification to the House of Commons when needed, and deciding on cases of misconduct referred to it by the Parliamentary Commissioner for Standards.

The House of Commons Committee on Standards consists of seven MPs and seven lay members. Lay members are not MPs but members of the public chosen through and open and fair competition to bring an independent and external perspective to the deliberations of the Committee. Lay members were first added to the Committee in 2013, when there was a balance of three lay members to 11 Members of Parliament. However, in 2016 this was changed to an equal number of seven lay members and seven MPs, following a recommendation by the Committee on Standards in Public Life in its 2009 report on *MP's expenses and allowances*. Additionally, since January 2019, lay members have full voting rights on the House of Commons Committee on Standards. They also have the right to have their opinion added to a report of the Committee.

Integrity Investigation Board of the Netherlands

The regulations on the Monitoring and Enforcement of the Code of Conduct for Members of the House of Representatives, which came into effect on 1 April 2021, established the Integrity Investigation Board, which is responsible for handling complaints related to violations of the Code of Conduct of the House

of Representatives by MPs. The Integrity Investigation Board is independent and it comprises a chair and two members who are appointed by the House of Representatives on the recommendation of the Presidium (executive committee of the House of Representatives) for a period of up to six years.

On 20 April 2021, the House of Representatives decided to appoint an independent Integrity Investigation Board, chaired by a former State Councillor and former Deputy Ombudsman at the National Ombudsman. The other members of the Board are a former Acting Clerk of the House of Representatives, former deputy clerk and head of the support committee for Governance and Education of the House of Representatives, and a former assistant professor with a PhD research on the relationship between politics and civil service in modern, constitutional states.

Source: (Tweede Kamer Der Staten-General, n.d.[39]; Parlement.com, 2021[40]; UK Parliament, 2021[41]).

Second, the Ministry for Justice could consider appointing as the chairperson of the Committee for Standards a former judge known for their integrity and independence. Currently, the Standards Act assigns the role of chairperson to the Speaker of the House of Representatives. In modern Westminster-style democracies, the Speaker of the House is expected to be politically impartial and avoid taking a political stance or favouring particular interests over others (Institute for Government, 2019[42]). Moreover, their role is to allow further discussions before the point of 'closure', when a motion or bill goes to a vote and ensuring the smooth running of parliamentary business. However, while the current Speaker of the House resigned from his political party in 2012, he is still widely perceived as partisan, and his rulings, instead of encouraging the discussions of relevant integrity issues, have led to a premature closure of the debate, which has had a detrimental impact on the functioning of the Committee. Moreover, the law allows for the election of a Speaker that belongs to a specific political party, which could hinder the objective of separating the decisions of the Committee for Standards from any interest of a particular political party and could threaten the Committee for Standards' independence.

Under the new proposed structure of the Committee for Standards, the chairperson could be instead a former judge, elected by the votes of not less than two-thirds of the House of Representatives from a pool of candidates acknowledged for their good character and high integrity, and for being able to put aside political leanings while carrying out their role. Additionally, the chairperson of the Committee for Standards should maintain his/her current powers, this is, and they shall not have an original vote but a casting vote in cases of equality of votes.

To avoid undue delays in selecting a chairperson for the Committee for Standards, a deadlock breaking mechanism could be included in the Standards Act. For instance, should within two months of the vacancy of the position of chairperson of the Committee for Standards, the House of Representatives does not vote on or successfully choose the replacement, the Judicial Appointments Committee could make a binding recommendation to the Speaker of the House for the appointment of the chairperson of the Committee for Standards. The Judicial Appointments Committee's recommendation could be either on a temporary or permanent basis.

Having a former judge as the chairperson of the standards committee is not a new practice. In other jurisdictions, including Ireland, a former judge can be elected as the chair of the corresponding standards committee. This, together with the appointment of lay members into the Committee, may help enrich the discussions of the Committee for Standards by focusing them on sanctioning misconduct rather than in protecting particular political parties' interests, and strengthen the sense of ownership of the integrity system, while protecting and guaranteeing parliament's sovereignty.

2.5.2. The Ministry for Justice could consider amending the Standards Act to include a provision outlining the basic requirements for members of the Committee for Standards, and the House of Representatives and the Commissioner could set clear, transparent nomination procedures and guidelines

To improve the functions of the Committee for Standards, it is also necessary to ensure that people with the right qualifications, qualities, skillset and experience are appointed as members of the Committee for Standards. Currently, the Prime Minister and the Leader of the Opposition each nominate members, and those members are then part of the Committee for Standards. There are no requirements in the Standards Act outlining the expected qualifications of Committee members, nor guidelines to advise the Prime Minister and the Leader of the Opposition on key qualities to consider when nominating their members. Furthermore, once Committee members take up their role, training or further guidance on how to carry out the role are not provided.

It is worth noting that when it comes to appointing members to parliamentary committees' writ large (including committees responsible for ethical conduct), it is not general practice in Malta or other Westminster-style democracies to establish minimum requirements or give training to members of parliamentary committees on the subjects at hand. However, given the highly sensitive nature of the issues discussed in the Committee for Standards, and the need for a high degree of ethical understanding and commitment to integrity standards, it may be worthwhile to set out some essential criteria for Committee members to strengthen the Committee's functions. To that end, the Ministry for Justice could consider amending the Standards Act to include a provision outlining the basic requirements for members of the Committee for Standards, and setting out clear, transparent appointment procedures to ensure the right people are selected.

To support political parties in implementing this provision, the House of Representatives could elaborate general guidelines for political parties on the appointment of members to the Committee for Standards, including minimum professional and integrity considerations for their appointment (e.g. known amongst their peers to be a person of high integrity). Included in the guidelines could be provisions that prevent a sitting member of the Cabinet from joining the Committee. Such guidelines could be developed together with the current members of the Committee for Standards, to make sure that their experience and knowledge on the challenges faced by members of the Committee are considered. The Commissioner and his office could play an advisory role in developing the general guidelines.

In the case of lay members, they should be recruited through an open and fair competition. In this sense, the Commissioner could recommend general guidelines for the recruitment and appointment of lay members of the Committee for Standards, to help guarantee that lay members are independent, come from diverse backgrounds and possess significant professional or academic experience on issues related to integrity and transparency. The Commissioner could ensure that the selection procedure is public, transparent and objective by defining pre-determined qualification and performance criteria for each position as well as establishing a clear application procedure (e.g. standardised or anonymous curricula vitae, standardised testing, panel interviews, and other methods intended to inform the process). To facilitate objectivity in the selection process, the Ministry for Justice could consider inviting the Judicial Appointments Committee to conduct the recruitment process of lay members of the Committee for Standards. Additionally, guidelines for the recruitment and appointment of lay members could include information on exceptions for appointment (e.g. lay members should not be former MPs or lobbyists, nor public officials exercising a public position) and the general composition of the Committee for Standards (e.g. the appointment of lay members should guarantee good gender balance of the Committee for Standards). Examples form other jurisdictions can be used to design the guidelines for the recruitment and appointment of lay members of the Committee for Standards (see Box 2.11)

Box 2.11. Appointment process of lay members in committees responsible for enforcing ethical standards

Netherlands

In the Netherlands, the Integrity Investigation Board is independent and is appointed by the House on the recommendation of the Presidium. According to the explanatory notes of the Regulations on Supervision and Enforcement of the Code of Conduct for Members of the House of Representatives of the States-General, the members of the Integrity Investigation Board should be persons with authority and expertise, while no sitting MPs should participate in the Board.

On 20 April 2021, the House of Representatives appointed the first Integrity Investigation Board consisting of a chairman and two members. The vacancy for chair and members of the Integrity Investigation Board were open from 23 January 2021 to 8 February 2021. More than a hundred responses were received. In March 2021, a selection committee –consisting of the President of the House of Representatives and the two vice-chairmen– held various talks with interested parties and recommended the appointment of the selected candidates to the Presidium of the House of Representatives. In addition to experience, the selection committee also looked at balance and complementarity within the Board to be formed.

United Kingdom

In the United Kingdom, according to the Standing Order No.149A Lay Members should be appointed by a resolution of the House of Commons for a period that should not exceed six years, following a fair an open competition. Additionally, Standing Order No.149A states a series of general conditions for the appointment of Lay Members, including:

- No person who has once been a lay member may be appointed for a further term,
- No person may be appointed as a lay member if that person is or has been a MP,
- Any person so appointed shall cease to be a lay member upon becoming a MP.

In line with the requirement in Standing Order No.149A, the process must be fair and open. To that end, posts are advertised on the Parliamentary website, through the Outreach Service, through social media and through advertisement and search by recruitment consultants. Posts contain information on the responsibilities of the position and expected behaviour. Examples of previous posts include the following requirements (House of Commons Committee on Standards, 2021[43]):

- *Proven ability to consider and review large volumes of information to reach sound, evidence-based judgments which take account of codes of conduct, rules, or organisational context will be vital.*
- *Experience of working strategically with or within complex environments to develop and improve systems and processes is also essential, as are a general understanding of Parliament's role in a representative democracy, and the role of MPs.*
- *Appointments require the highest standards of propriety, involving impartiality, integrity and objectivity, in relation to the stewardship of public funds and the oversight and management of all related activities.*

Applicant are required to provide their CV, a short supporting statement, and two references and to complete a conflicts of interest form, a political activity declaration and a diversity monitoring form. Applicants are reduced through sifts and interviews to a short list of candidates, for a final interview by a Committee Selection Panel. For instance, the Committee Selection Panel of the 2017 selection process comprised the Chair of the Committee on Standards, a lay member of the Committee on

Standards, an external member of the House of Commons Commission, and the Clerk of Committees. The Selection Panel makes a report to the House of Commons Commission, recommending candidates for appointment and the term of such appointments.

Source: (UK House of Commons, 2017[44]; House of Commons Committee on Standards, 2021[43]; Tweede Kamer der Staten-Generaal, 2021[30]; Tweede Kamer Der Staten-Generaal, 2021[45]).

The proposed guidelines on the recruitment and appointment of lay members elaborated by the Commissioner could be presented to current elected MPs prior to the appointment of lay members, in order to receive feedback and socialise the proposal. The purpose of this consultation process would be to provide a better insight into the purpose, expectation and outcomes of having lay members in the Committee for Standards as well as relieve any apprehensions MPs may have regarding the new structure of the Committee for Standards.

2.5.3. The Ministry for Justice could amend the Standards Act to include a provision requiring Committee members to prevent and manage conflict-of-interest situations

Managing conflicts of interest in the public sector is crucial. If conflicts of interest are not detected and managed, they can undermine the integrity of decisions or institutions, and lead to private interests capturing the policy process. “Conflict of interest” can be understood to mean “a conflict between the public duty and private interests of a public official, in which the public officials has private-capacity interests, which could improperly influence the performance of their official duties and responsibilities” (OECD, 2004[23]). In Malta, provisions to prevent and manage conflict of interest could be strengthened for the Commissioner and his office (as discussed above and in Chapter 1), as well as for the Standards Committee.

Discussions with key stakeholders, including members of the Committee for Standards, underscored the lack of guidance to assist Committee members in addressing conflict-of-interest situations that could arise during the course of their functions. Taking into account the particular context of Malta, as well as the unique functions of the Committee, stakeholders expressed a need for clear standards on identifying, managing and preventing conflicts of interest. To that end, the Ministry for Justice could consider amending the Standards Act to include a provision requiring Committee members to identify and disclose conflicts of interest to the Committee Chairperson upon appointment, as well as each time the Committee receives a case report for review.

Detailed guidance could be developed to assist Committee members in implementing this provision.[7] In particular, the guidance could clarify what conflict of interest is and the types of situations that could lead to conflict of interest for Committee members, when to identify private interests that could lead to a conflict now or in the future (e.g. upon appointment and each time a case report is received) and to whom (e.g. the Committee Chairperson).

The guidance could also clarify how to manage and prevent conflicts of interest when they arise. Good practice suggests applying measures that are proportionate to the functions occupied and the potential conflict-of-interest situation. Depending on the situation, measures could include the following:

- Recusal of the Committee member from involvement in an affected case report discussion
- Assignment of the conflicting interest in a genuinely 'blind trust' arrangement (OECD, 2004[23]).

Moreover, the Committee for Standards could also develop specific guidelines on how to properly disclose, register and handle Committee members’ private interests that might influence, or be perceived to influence, their judgement. To develop these guidelines, the Committee could leverage international practices. For instance, the United Kingdom’s Committee on Standards in Public Life created a clear and simple register of where Committee members can disclose their interests as well as guidance on categories of registrable interests. Such guidelines aim to facilitate members’ compliance with the expectation to

declare, register and resolve any actual or potential conflict between other current roles, relationships or interests and their role as committee member.

Finally, the Standards Act could require that the Committee for Standards develop internal integrity guidelines – such as a code of conduct – that details the values and expected behaviours of Committee members when carrying out their duties. Having clarity about what falls within the Committee's responsibility and what is expected from its members helps raise awareness about the key role the Committee plays within the integrity framework and facilitates accountability for its decisions. To develop these guidelines, the Committee could build on existing international practices (see Box 2.12).

Box 2.12. Guidelines for members of the Committee on Standards in Public Life of the United Kingdom

The Committee on Standards in Public Life of the United Kingdom is an independent advisory body responsible for promoting the Seven Principles of Public Life and advising the Prime Minister on ethical standards across the whole of public life. The Committee on Standards in Public Life consists of four independent members –appointed by the Prime Minister after an open competition under the government's Governance Code for Public Appointments–, three political members –nominated by the Conservative, Labour and Liberal Democrat political parties–, and an independent chair.

The Committee on Standards in Public Life has set a number of guidelines for its members to help them understand their role and responsibilities as well as the values and standards of behaviour expected from them, including the following:

- **Code of Practice**: This document sets out the values and standards of behaviour expected of members of the Committee, as well as the responsibilities of Committee members and the chair, separately. The values that members of the Committee are expected to follow include highest standards of impartiality, integrity and objectivity, accountability through the Prime Minister to Parliament and to the public more generally both for the activities of the Committee and for the standard of advice it provides; and openness and transparency. It also includes a specific section on how to handle media relations as well as another section on how to handle conflicts of interest.
- **Expectations of Committee Members and the Secretariat**: This document includes a list of seven expectations of members of the Committee and three expectations of the Secretariat, as well as specific information on expectations regarding the Committee's meetings. Members' expectations include "taking collective responsibility for the operation and decisions of the Committee" and "engaging fully in collective consideration of issues, taking account of the full range of relevant factors".
- **Committee's way of working**: This document states the general principles for the functioning of the Committee, including on the annual and specific reports, relations with other bodies and the media and the Committee's meeting.
- **Public Statements and Speaking to the Media**: This document includes the general guidelines that the Committee should follow when doing public statements and speaking to the media.

Note: For more information on the guidelines, see https://www.gov.uk/government/organisations/the-committee-on-standards-in-public-life/about/our-governance.
Source: (Office of the Commissioner for Standards in Public Life, 2021[14]).

2.6. Summary of recommendations

The following provides a detailed summary of the recommendations for strengthening the Standards in Public Life Act. The recommendations contained herein mirror those contained in the analysis above.

Section	Recommendation	Entity Responsible	Execution term
Closing the loopholes in the Standards in Public Life Act	Widen the scope of the Standards Act to cover at-risk elected and appointed positions	Ministry for Justice	Short term
	Include, as part of a bill to amend the Standards Act, a provision to amend the Constitution so as to prohibit elected officials from obtaining secondary employment in all public functions	Ministry for Justice	Short term
	Include a more clear-cut definition of the term 'persons of trust' in the Standards Act to ensure that all those who presently act as a person of trust are covered under the Commissioner's remit	Ministry for Justice	Short term
	Recommend the government revisit the policy on engaging persons of trust to restrict usage beyond appointing political advisors for Ministers and close loopholes that enable	Commissioner for Standards in Public Life	Short term
	Annually publish and submit a report to the House setting out the numbers, names and pay bands of persons of trust	Office of the Prime Minister	Short and medium term
	Include a clear definition of 'misconduct in the Standards Act and ensure former MPs can be investigated and sanctioned for misconduct that took place during their term in office	Ministry for Justice	Short term
	Include clear definitions on 'abuse of power and privileges', 'conflict of interests', and 'gifts' in the Standards Act	Ministry for Justice	Short term
Protecting the independence of the Commissioner for Standards in Public Life	Propose legislation to include the role and functions of the Commissioner in the Constitution of Malta	Ministry for Justice	Short term
	Amend the Standards Act to assign legal personality to the office of the Commissioner	Ministry for Justice	Short term
	Align the conditions of appointment and reappointment of the Commissioner with those of the Auditor General and the Ombudsman of Malta	Ministry for Justice	Short term
	Include a deadlock breaking mechanism in the Standards Act, in case of a deadlock for the nomination and appointment of a Commissioner	Ministry for Justice	Short term
	Amend the Standards Act to i) include clearer parameters on qualifications and background to guide the appointment of future Commissioners and ii) formalise the requirement for the Commissioner to identify and disclose conflict of interests upon selection	Ministry for Justice	Short term
	Expand the circumstances that would lead to the appointment of a temporary Commissioner and include the appointment of a temporary Commissioner in the list of exceptions of Article 85 of the Constitution of Malta to guarantee his independence	Ministry for Justice	Short term
	Clarify the procedure to enact further regulations under the Standards Act	Ministry for Justice	Short term
Strengthening the functions of the Commissioner for Standards in Public Life	Revisit the timeframes for submitting complaints on potential misconduct of persons under the Standards Act	Ministry for Justice	Short term
	Amend the Standards Act to i) enable the Commissioner to receive and investigate anonymous complaints and ii) empower the Commissioner to grant whistle-blowers status to those public employees who disclose in good faith and on reasonable grounds misconduct in the context of their workplace	Ministry for Justice	Short term
	Amend the Standards Act to enable the Commissioner to request additional information to determine whether an individual or the alleged breach falls under the Standards Act and an investigation is warranted	Ministry for Justice	Short term
	Amend the Standards Act to include further details on the proceedings after investigation, including on the publication of case reports	Ministry for Justice	Short term

	Establish a comprehensive and proportionate system of sanctions under the Standards Act	Ministry for Justice	Short term
	Define a list of aggravating and mitigating factors to be considered when revising cases to impose sanctions	Commissioner for Standards in Public Life	Short term
	Abolish the role of monitoring administrative penalties for non-attendance in Parliament of the Commissioner and entrust the Clerk of the House of Representatives with this responsibility	Ministry for Justice	Short term
	Amend the Standards Act to strengthen the provisions on asset and conflict of interest	Ministry for Justice	Short term
	Update and adopt the new Codes of Ethics for Members of the House of Representatives and the Code of Ethics for Ministers and Parliamentary Secretaries replacing the codes in Schedules I and II of the Standards Act	Ministry for Justice	Short term
Strengthening the functions of the Committee for Standards in Public Life	Change the structure of the Committee for Standards by i) initially including 2 lay members into the Committee and then increase it to 4 and ii) appointing as the chairperson of the Committee for Standards a former judge known for their integrity and independence	Ministry for Justice	Short term and medium term
	Amend the Standards Act to include a provision outlining the basic requirements for members of the Committee for Standards, and setting out clear, transparent appointment procedures to ensure the right people are selected	Ministry for Justice	Short term
	Elaborate general guidelines for the recruitment and appointment of lay members of the Committee for Standards	Commissioner for Standards in Public Life	Short term
	Elaborate general guidelines for political parties on the appointment of members to the Committee for Standards, including minimum professional and integrity considerations for their appointment	House of Representatives	Short term
	Amend the Standards Act to include a provision requiring Committee members to prevent and manage conflict-of-interest situations	Ministry for Justice	Short term
	Develop specific guidelines on how to properly disclose, register and handle Committee members' private interests that might influence, or be perceived to influence, their judgement	Committee for Standards in Public Life	Short term
	Amend the Standards Act to include a provision requiring the Committee for Standards to develop internal integrity guidelines that detail the values and expected behaviours of Committee members when carrying out their duties	Ministry for Justice	Short term

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Notes

[1] Chapter 570 of the Laws of Malta.

[2] By Act XVI of 2021, the new definition of persons of trust include consultants and other staff who serve in the private secretariat of a minister or parliamentary secretary, and who have been engaged directly from outside the public service and the public sector; persons engaged on the basis of trust to fill posts in the public administration that remain vacant following repetitive public calls for engagement; and any other persons engaged according to the procedure established under article 6A of the Public Administration Act.

[3] See the report on the Organisational Review of the office of the Commissioner for Standards in Public Life.

[4] See the report on the Organisational Review of the Office of the Commissioner for Standards in Public Life for further details.

[5] See the report on the Organisational Review of the office of the Commissioner for Standards in Public for more information.

[6] Additionally, the Commissioner has submitted to the Committee for Standards all reports on cases of non-serious nature and where he has not found evidence of misconduct, for information purposes only, as agreed with the Committee.

[7] Note: this section mirrors the guidance provided in the Organisational Review on Conflict of Interest, as the core elements of the policy will be similar.

3 Updating the Codes of Ethics for Ministers, Parliamentary Secretaries and Members of the House of Representatives in Malta

This chapter provides recommendations on strengthening the Codes of Ethics for Ministers, Parliamentary Secretaries and Members of the House of Representatives to provide a comprehensive integrity framework for elected and appointed officials. In particular, this chapter addresses the need for revised Codes which contain clear and common definitions, memorable and meaningful values, and clear provisions on the proper use of information, engagement with lobbyists and third parties, management and prevention of conflicts of interest, receipt of gifts and other benefits, and post-public employment restrictions. This chapter also details guidance on implementing and enforcing the Codes.

3.1. Introduction

Public integrity is "the consistent alignment of, and adherence to, shared ethical values, principles and norms for upholding and prioritising the public interest over private interests in the public sector" (OECD, 2020[1]). In other words, public integrity means doing the right things for the right reasons and in the right way. Understanding what is meant by "right" requires setting standards that clarify which behaviours are expected of public officials. These standards – set out in a country's Constitution, criminal, civil and administrative law, and codes of conduct or ethics – provide a framework to enable ethical behaviour.

As standards for integrity are dispersed throughout different legislative and policy tools, governments use codes of conduct and codes of ethics to collect and clarify in one place the standards that guide their public sector's behaviours and actions (Bacio Terracino, 2019[2]). A distinction between codes of ethics and codes of conduct can be made with regards to their content and enforcement mechanisms. In general, codes of ethics identify the principles and values that guide behaviour and decision making, while codes of conduct provide further guidance and clarify expected standards and prohibited situations (OECD, 2020[1]). However, in practice, many countries have a hybrid type of code that combines public service values with more detailed guidance on how to apply integrity standards (Bacio Terracino, 2019[2]).

Codes can be designed to be regulatory, educational, or inspirational. Regulatory codes include detailed rules and standards of conduct that are usually enforceable through a monitoring system and the imposition of sanctions. Educational codes seek to familiarise public officials with its provisions through extensive commentaries and guidelines for interpretation. Aspirational codes are a declaration of values to which practitioners should adhere to in their daily decisions. In practice, most codes combine elements of these three aspects (OECD, 2018[3]).

Independently of the method used, codes should be clear and simple, logically structured, and linked to all other related documents or legislation that make part of the broader legal and regulatory framework of public integrity. Moreover, considering that in practice it is impossible to cover the full range of conceivable situations a public official may face in his/her daily activities, codes should have an appropriate balance between general core values applicable in complex and dynamic situations, and more specific standards to support day-to-day decision making (OECD, 2018[3]).

In their aim to anticipate and prevent certain types of undesired behaviour (e.g. conflicts of interest, bribery and other inappropriate actions), most codes describe specific actions that are prohibited to public officials (OECD, 2018[3]). Table 3.1 describes the most common duties and prohibitions contained in codes of conduct in different OECD countries.

Table 3.1. Substantive provisions contained in codes of conduct in OECD countries

Due regard of the law
Integrity
Impartiality
Confidentiality
Honesty
Efficiency
Effectiveness
Serving the public interest
Avoidance of conflict of interest
Declaration of assets, financial interests and outside activities
Prohibition of bribery
Acceptance of gifts and favours
Pre- and post-public employment restrictions
Duty to report suspicious activities
Individual and collective accountability
Refraining from seeking personal benefits or abusing powers granted because of the public office
Proper use of public resources

Source: (OECD, 2018[3]).

In Malta, integrity standards for elected and appointed officials are set out in the First and Second Schedules of the Standards in Public Life Act (herein "Standards Act"): the *Code of Ethics for Members of the House of Representatives* and the *Code of Ethics for Ministers and Parliamentary Secretaries*, respectively. In July 2020, under the mandate of the Standards Act, the Commissioner for Standards in Public Life (herein "Commissioner") proposed revisions to both Codes to bring them in line with the modern integrity challenges that elected and appointed officials face in Malta.

This chapter reviews the existing codes of ethics as well as the proposed revisions to the codes of ethics and proposed additional guidelines elaborated by the Commissioner in July 2020, and provides recommendations to improve integrity values and standards for elected and appointed officials. The recommendations are tailored to the specific integrity landscape in Malta and informed by relevant good practices from OECD members and the OECD Recommendations on Public Integrity, on Principles for Transparency and Integrity in Lobbying and on Guidelines for Managing Conflict of Interest in the Public Service.

3.2. Integrity standards for elected and appointed officials in Malta: The current Codes of Ethics

The existing Codes of Ethics have been in place since the early 1990s. The Code of Ethics for Members of the House of Representatives, first adopted in 1995, includes provisions to address some of the most relevant matters for political integrity, including the declaration of assets and interests, acceptance of gifts and honorarium, and registration of sponsored travel. The Code of Ethics for Ministers and Parliamentary Secretaries, which was adopted in 2015 and superseded an earlier code adopted in 1994, sets and defines the values that should guide Ministers and Parliamentary Secretaries' actions and decisions, and lays out expected standards of behaviour concerning conflicts of interest, asset declaration, and duties concerning Parliament, the press, and the general public.

The current Codes of Ethics for Members of the House of Representatives, and for Ministers and Parliamentary Secretaries however present several shortcomings, including the lack of standards to address some of the key risk areas for corruption and misconduct. Additionally, the codes have been in

place for several years and no significant revision has been approved to ensure their cohesion with today's expectations and challenges. Indeed, codes benefit from being reviewed to test the continuous applicability of the set of rules that they contain, to address contemporary integrity risks that were not a previous priority and to align standards of conduct with the increasing expectations of citizens. The following sections review in detail the current gaps in the two Codes.

3.2.1. Gaps in the Code of Ethics for Members of the House of Representatives

The Code of Ethics for Members of the House of Representatives, although one of the first of its kind globally, is now showing signs of wear, with several critical shortcomings undermining the Code's effectiveness:

- **A lack of common values**. The Code does not include a set of common values to guide the behaviour of Members of Parliament (MPs). A "catch-all" provision is included, whereby each MP is required "at all times, both inside and outside the House, [to] conduct himself in a manner, which reflects the status and dignity of the House of Representatives" (Article 1). Similarly, MPs are required to adhere to the spirt and letter of the rules of the House of Representatives, committees, standing orders and other resolutions passed (Article 2). While these provisions set high expectations of conduct, they do not provide clarity to MPs on what values are expected for all members.
- **Limited scope on asset declarations.** The current provisions in the Code of Ethics require all MPs to disclose information on financial and non-financial interests, but these are narrow in scope. Indeed, the asset declarations system focuses more broadly on financial assets than as a tool to identify real, perceived or potential conflict of interests.
- **Limited scope on managing and preventing conflicts of interest.** The current provisions on conflict of interest in Article 5(2) of the Code of Ethics are limited to an obligation to declare conflict of interest when MPs may have a direct interest in legislation before the House. Subsequent requirements are not included for managing these conflicts of interest, leading to a limited understanding of conflict of interest. Moreover, key risk areas related to incompatibilities, secondary employment and post-public employment are not duly covered.
- **Ambiguous provisions on gifts and voluntary payments.** The Code's provisions concerning gifts and voluntary payments by third parties (e.g. payment of honoraria and foreign travel) are ambiguous and narrow in scope. For instance, the Code establishes that MPs shall not accept gifts from persons, groups or companies that had any direct or indirect intent in legislation before the House of Representatives. However, it does not contain a definition of "gift" nor of "direct or indirect influence", creating a lack of consistent and common understanding of what constitutes a gift and how it can influence the decision-making process. Additionally, the Code does not require MPs to report gifts offered by third parties, making it difficult to monitor and enforce the prohibition to receive gifts from third parties that had any direct or indirect intent in legislation. Finally, while it is imperative that gifts given with the intent to influence legislation are prohibited, this narrow scope opens the door for potential undue influence. Gifts may be given before any legislation is developed, with the intent to build favour. Moreover, the narrow focus on legislation omits gifts that are given in relation to a public concession or contract, or other type of public decision.
- **Risk of undue influence emerging from honorarium and foreign travel.** The current provisions in the Code allow those with direct interests in legislation to pay MPs honoraria for a speech, writing or publication, as long as it does not exceed the usual and customary value for such services. Moreover, MPs are entitled to accept foreign travel from those with direct interest in legislation, so long as they declare it in a register. These provisions raise reasonable questions about the extent to which these standards outlined in the Code of Ethics protect MPs – and the decision-making processes as a whole – from undue influence risks.

- **No guidance for engaging with lobbyists and third parties.** The Code does not include standards or guidance for MPs on interacting with lobbyists and third parties attempting to influence them, nor requires MPs to disclose information about contacts with lobbyists and third parties, the subject matters discussed with them and the potential links of those third parties to MPs' decisions and actions.
- **No guidance on proper use of confidential information.** The Code does not include a provision on the correct use of information obtained by MPs in their role. This opens up a potential risk area, as throughout the course of their duties, MPs have access to confidential information that could potentially be used for their personal gain or for the benefit of selected individual(s) or group(s) (OECD, 2021[4]).
- **No guidance on proper use of publicly provided resources**: The Code does not include provisions on the proper use of publicly provided resources. As all public officials are responsible for protecting and conserving publicly provided resources (e.g. public funds, equipment, facilities, etc.), as well as ensuring these resources are used for the public interest, a lack of guidance presents a loophole for misconduct.

In light of these challenges, **the government of Malta could prepare a new Code of Ethics for Members of the House of Representatives to create a comprehensive integrity framework for MPs**. The new Code could build on the Commissioner's proposed revisions, which are analysed in the section below.

3.2.2. Gaps in the Code of Ethics for Ministers and Parliamentary Secretaries

The Code of Ethics for Ministers and Parliamentary Secretaries, while updated more recently in 2015, still contains gaps and potential loopholes that undermine its effectiveness:

- **No guidance for engaging with lobbyists and third parties**: The current Code of Ethics for Ministers and Parliamentary Secretaries does not provide guidance on how Ministers and Parliamentary Secretaries should engage with third parties attempting to influence the policy-making process, nor requires Ministers and Parliamentary Secretaries to disclose information about contacts with lobbyists and third parties and the subject matters discussed with them.
- **No restrictions on post-public employment**: The current Code of Ethics for Ministers and Parliamentary Secretaries does not include restrictions on post-public employment, leaving the door open to undue or unfair advantage. This is particularly important for politically exposed positions such as those filled by Ministers and Parliamentary Secretaries, as they are central in the public decision-making process, set the political agenda and have access to confidential information.
- **Limited provisions on managing and preventing conflicts of interest.** Sections 7 and 8 of the current Code of Ethics cover conflict-of-interest and asset declarations. Section 7 prohibits Ministers and Parliamentary Secretaries from holding a secondary employment, while Section 8 requires Ministers and Parliamentary Secretaries to ensure that "there is no conflict between their public duties and private interests, financial or otherwise" and to inform the Prime Minister of any possibility of conflict of interest. Additionally, the Cabinet Manual provides further guidance on conflict of interest and asset declaration. However, the Code fails to provide further guidelines on what conflict-of-interest situations and private interests are, and offers Ministers and Parliamentary Secretaries limited options for managing their conflicts of interest.
- **Limited scope on asset declarations**. The current provisions on the Code of Ethics require all Ministers and Parliamentary Secretaries to disclose information on financial and non-financial interests, but these are narrow in scope. Although the form used covers relevant assets and interests, the information that Ministers and Parliamentary Secretaries are obliged to provide by law is still limited when it comes to understanding their source of wealth/funds and whether private interests may create potential conflicts of interest. Additionally, although the spouses of Ministers

and Parliamentary Secretaries are expected to provide information, this only applies for a specific matrimonial regime of assets (when property is part of a community of assets).[1]

- **Lack of clarity on enforcement provision.** The current Code of Ethics allows the Prime Minister to refer to or consult with a body established by law any potential breach of the Code, but ultimately it is the Prime Minister who makes a decision on a breach when it comes to Ministers and Parliamentary Secretaries. However, the Standards Act states that the Commissioner is responsible for investigating any matter alleged to be in breach of the Codes of Ethics, and that it is up to the Committee for Standards in Public Life to adopt or not the report by the Commissioner and decide on the sanctions in cases of proven misconduct. In this sense, it is necessary to clarify the enforcement provision in the current Code, which is a carry-over from the period before it was incorporated in the Standards Act (Commissioner for Standards in Public Life, 2020[5]), and ensure that it reflects the current regulatory and enforcement framework for those in public life.

In light of these challenges, **the government of Malta could prepare a new Code of Ethics for Ministers and Parliamentary Secretaries to create a comprehensive integrity framework for high-level elected and appointed officials within the executive branch**. The new Code could build on the Commissioner's proposed revisions, which are analysed in detail below.

3.3. The Commissioner's proposed revisions to the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries

The gaps and loopholes present in the existing Codes of Ethics – both for Members of the House of Representatives and for Ministers and Parliamentary Secretaries – demonstrate a need for a revision. This has been noted both domestically and internationally.

In July 2020, as means of Article 13(g) of the Standards Act,[2] the Commissioner issued a report proposing revisions to the existing codes of ethics for MPs and for Ministers and Parliamentary Secretaries. The Commissioner's proposal to revise the codes were based on the main weaknesses of the existing codes, as well as international good practice from Australia, Canada, New Zealand and the United Kingdom. Additionally, in line with the enabling provisions included in the Commissioner's proposal to revise the codes, which would (if adopted)empower the Commissioner to issue additional guidelines, both codes were accompanied by a set of guidelines elaborating on specific aspects of the code.

In line with article 3(4) of the Standards Act[3], the Commissioner submitted the proposal to revise the codes to the Committee for Standards in Public Life ("the Committee"). However, the Committee concluded its discussion on the Commissioner's proposals with a decision that it would wait for a bill proposing new codes to be presented in the House of Representatives.

The international community has also noted the need to strengthen the codes of ethics for elected and appointed officials. For instance, in its Fourth Evaluation Review, GRECO recommended to conduct a "thorough review of the current provisions of the Code of Ethics for members of parliament and the Standing Orders related to integrity, ethics, financial/activity declarations and conflicts of interest" with the purpose of adopting improvements in terms of coverage, consistency and clarity (GRECO, 2015[6]). Likewise, in its Fifth Evaluation Review, GRECO recommended to strengthen integrity standards for people with top executive functions, including Ministers and Parliamentary Secretaries. In particular, GRECO recommended to provide further guidance on preventing and managing conflict of interest, set rules to govern contacts between persons with top executive functions and lobbyists/third parties that seek to influence the public decision-making process, and further develop the current regime of assets and interests declarations, amongst others (GRECO, 2019[7]). More recently, the European Commission's Rule of Law Report recommended improving ethics rules for high-ranking officials, and noted that "the review of the code of conduct for members of Parliament and Ministers that was recommended by the

Commissioner's office in July 2020, remains unaddressed" (European Commission, 2022[8]). The following analysis reviews the Commissioner's proposal for a revised Code of Ethics for Members of the House of Representatives and additional guidelines, as well as a revised Code of Ethics for Ministers and Parliamentary Secretaries and additional guidelines (see Box 3.1 for an overview of the Commissioner's proposed revisions). It highlights the strengths of the Commissioner's proposed revisions, while also pinpointing areas where further clarification or additional provisions are needed to ensure a robust integrity framework for Ministers, Parliamentary Secretaries and Members of Parliament in Malta.

In line with this analysis, this chapter provides concrete recommendations to the government of Malta on developing a new Code of Ethics for Members of the House of Representatives, as well as a new Code of Ethics for Ministers and Parliamentary Secretaries, in preparation for tabling a single bill proposing changes to the Standards Act and its Schedules.[4] The recommendations are addressed to the government of Malta, following the Committee for Standards in Public Life's conclusion that it will wait for a bill proposing new codes to be presented in the House of Representatives. The chapter also provides recommendations to the Commissioner on preparing complementary guidelines to the codes, although the preparation of these guidelines is dependent on and should be preceded by the introduction of new codes by the government.

Box 3.1. The Commissioner's proposed revisions to the respective Codes of Ethics and additional guidelines

Code of Ethics for Members of the House of Representatives and additional guidelines

The proposed Code of Ethics for Members of the House of Representatives and additional guidelines aim to strengthen the integrity framework for MPs. In particular, these provisions include:

- the adoption of a set of nine values in common with the Code of Ethics for Ministers and Parliamentary Secretaries
- provisions obliging MPs to register certain gifts, benefits and hospitality received and bestowed by them to third parties
- provisions on the interactions and communication between MPs and third parties/lobbyists
- more clear and comprehensive provisions on disclosing and managing conflicts of interest, including a proposal to establish a Register of Interests for the registration of financial and non-financial interests
- provisions on the proper use of information and public resources.

Code of Ethics for Ministers and Parliamentary Secretaries and additional guidelines

The proposed Code of Ethics for Ministers and Parliamentary Secretaries and additional guidelines introduce important changes including:

- provisions on employment restrictions after departure from office
- provisions obliging Ministers to register certain gifts, benefits and hospitality received and bestowed by them to third parties
- more clear and comprehensive provisions on disclosing and managing conflicts of interest, including a proposal to establish a Register of Interests for the registration of financial and non-financial interests
- provisions on engagement with third parties aiming at influencing the decision-making process, including the obligation to record all relevant communications with lobbyists in a Transparency Register
- provisions on the proper use of public resources

- more clear and comprehensive provisions on the proper use of information
- alignment of the enforcement provisions with the Standards in Public Life Act and provides that breaches of the Code shall be investigated by the Commissioner and decided on by the Committee for Standards in Public Life, without prejudice to the powers and prerogatives of the Prime Minister in respect of his Cabinet.

Source: (Commissioner for Standards in Public Life, 2020[5]).

3.3.1. Clarifying definitions

Integrity systems include a number of different definitions, rules and standards set out across legislation and policies. Indeed, a coherent and comprehensive integrity system provides common definitions, rules and standards to help inform the different actors about the behaviours and conduct that are expected from them, which can be set out in the Constitution, criminal, civil and administrative law, amongst others. To facilitate coherent implementation of such a variety of integrity standards across government and help public officials understand the values and uphold them, it is can be helpful to have the key definitions in one place, such as in accompanying guidelines (OECD, 2020[1]).

The government of Malta could include all relevant key terms and definitions in the new Codes of Ethics

In Malta, the integrity framework for elected and appointed officials consists of different mechanisms, including the Standards Act and the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries, the Constitution, relevant Standing Orders, and if approved, the Regulation of Lobbying Act. As a first step to strengthen clarity around these standards, Chapters 2 and 5 recommend to include definitions on ‘abuse of power and privileges’, ‘gift’, ‘benefit’, ‘hospitality’, ‘undue influence’ and ‘misconduct’ in the Standards Act, and ‘lobbying’ and ‘lobbyists’ in the Lobbying Act.

The Commissioner’s proposed revisions to the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries include some additional key integrity definitions. The first Code contains definitions including on the terms ‘family members’, ‘conflict of interest’ and ‘personal interest’. The latter Code contains definitions including on the terms ‘conflict of interest’ and ‘personal interest’.

To further provide clarity and facilitate the application of integrity standards by MPs, Ministers and Parliamentary Secretaries, the **government of Malta could also include the following definitions in the new codes: ‘abuse of power and privileges’, ‘gift’, ‘benefit’, ‘hospitality’, ‘undue influence’ and ‘misconduct’ ‘lobbying’ and ‘lobbyists**. Collecting the key definitions laid out in the different integrity mechanisms in one place may strengthen awareness and understanding of the conduct expected by MPs and Ministers, facilitating their implementation in everyday activities.

3.3.2. Ensuring values are memorable and identified in a consultative way

Standards and guidance for ethical conduct are often derived from a commitment to overarching values (OECD, 2018[9]). Such values aim to guide ethical judgement when serving the public interest, becoming the frame against which public officials’ everyday choices and actions can be evaluated. This is particularly helpful considering that it is impossible to capture and direct in a code all actions and decisions that public officials should make in the face of diverse ethical issues. In addition, values shape citizens’ expectations about the mission, vision and daily activities of government. To effectively support day-to-day decision making, values should be memorable, clear and meaningful (OECD, 2018[9]).

The government of Malta could include key values in the new Code of Ethics for Members of the House of Representatives, by means of a participatory process with key stakeholders

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives include a set of nine values to guide the behaviour, actions and decisions of MPs. These nine values – i.e. sense of service, integrity, diligence, objectivity, accountability, transparency, honesty, justice and respect, and leadership – are accompanied by a short definition aiming at ensuring values are interpreted in the same way by all stakeholders. Including a set of values and providing common definitions, align with good practice that recognise the need for clear values to safeguard integrity in public service. However, the number of values proposed by the Commissioner surpass the average number recommended by cognitive science. Indeed, evidence suggests that the number of items humans can store in their working memory is limited, so a memorable set of values or key principles ideally has no more than seven elements (Miller, 1955[10]). To that end, when developing the new Code of Ethics for Members of the House of Representatives, the **government of Malta could reduce the number of values to make them more memorable and facilitate application in daily situations**. Box 3.2 gives the example of Australia, where the Public Service Values were reduced from fifteen rules to five values to make them more memorable for public officials.

Box 3.2. Revision of the Australian Public Service Values

In the past, the Australian Public Service Commission used a statement of values expressed as a list of 15 rules. For example, they stated that the Australian Public Service (APS):

- is apolitical and performs its functions in an impartial and professional manner
- provides a workplace that is free from discrimination and recognises and utilises the diversity of the Australian community it serves
- is responsive to the government in providing frank, honest, comprehensive, accurate, and timely advice and in implementing the government's policies and programmes
- delivers services fairly, effectively, impartially, and courteously to the Australian public and is sensitive to the diversity of the Australian public.

In 2010, the Advisory Group on Reform of the Australian Government Administration released its report and recommended that the APS values be revised, tightened, and made more memorable for the benefit of all employees and to encourage excellence in public service. It was recommended to revise the APS values to "a smaller set of core values that are meaningful, memorable, and effective in driving change".

The model follows the acronym "I CARE". The revised set of values runs as follows:

- **Impartial**: The APS is apolitical and provides the government with advice that is frank, honest, timely, and based on the best available evidence.
- **Commitment to service**: The APS is professional, objective, innovative and efficient, and works collaboratively to achieve the best results for the Australian community and the government.
- **Accountable**: The APS is open and accountable to the Australian community under the law and within the framework of ministerial responsibility.
- **Respectful**: The APS respects all people, including their rights and heritage.
- **Ethical**: The APS demonstrates leadership, is trustworthy, and acts with integrity, in all that it does.

Sources: Australian Public Service Commission (2011), "Values, performance and conduct", https://resources.apsc.gov.au/2011/SOSr1011.pdf; Australian Public Service Commission, "APS Values", https://www.apsc.gov.au/working-aps/information-aps-employment/aps-values

Additionally, values and standards of conduct should ideally be defined through a participative process to ensure that the result is both meaningful and actionable for those who are expected to follow them (OECD, 2018[9]). Indeed, to achieve a greater impact, the values and the language used in a code of ethics need to be able to activate and remind the user of their own moral reference point, to create a sense of belonging and facilitate their implementation (OECD, 2018[9]). To that end, **the government of Malta could consider involving key stakeholders in the process of identifying and defining the values for the Members of the House of Representatives to create ownership, align expectations and ensure a common understanding of values that will guide MPs conduct**. Similar processes have been carried out in other countries, which could be used as examples for Malta to conduct their own participatory process for the identification of MPs' integrity standards (see Box 3.3).

Box 3.3. Examples of participatory processes for the definition of integrity standards

Examples from the legislative branch

In December 2016, the Parliament of **Sweden** (the Riksdag) adopted the Code of Conduct for Members of Parliament. The Code of Conduct was decided through a participatory process led by the First Deputy Speaker of the Parliament – signaling the importance of this work, together with a working group consisting of one member from all of the eight parties in the Riksdag – showing the need to ensure MPs are voluntarily adopting their own Code of Conduct.

In **Canada**, the Standing Committee on Procedure and House Affairs (PROC) is currently undergoing a review of the Code of Interest for Members of the House of Commons. As part of this process, the PROC has held sessions on the review of the Code, where Members of the House of Commons have participated and submitted their comments regarding different proposals to strengthen the existing Code.

Additionally, national and international experts – including the Integrity Commissioner of Ontario, the Ethics Commissioner of the National Assembly of Quebec, and the UK Parliamentary Commissioner for Standards – have been invited to share their views. External stakeholders from relevant civil society organisations and associations have also participated in the process.

Examples from the executive branch

In 2016, the Ministry of Public Administration in **Colombia** initiated a process to define a General Integrity Code. Through a participatory exercise involving more than 25 000 public servants through different mechanisms, five core values were selected: Honesty, Respect, Commitment, Diligence, and Justice. In addition, each public entity has the possibility to integrate up to two additional values or principles to respond to organisational, regional and/or sectorial specificities.

The Professional Code of Conduct for Public Servants of the Office of the Comptroller General of the Union in **Brazil** was developed with input from public officials from the Office of the Comptroller General of the Union during a consultation period of one calendar month, between 1 and 30 June 2009. Following inclusion of the recommendations, the Office of the Comptroller General of the Union Ethics Committee issued the code.

In developing the code, a number of recurring comments were submitted, including:

- the need to clarify the concepts of moral and ethical values: it was felt that the related concepts were too broad in definition and required greater clarification,
- the need for a sample list of conflict-of-interest situations to support public officials in their work,

- the need to clarify provisions barring officials from administering seminars, courses, and other activities, whether remunerated or not, without the authorisation of the competent official.

Note: For more information on the 2021-2022 review of the Canadian Code of Interest for Members of the House of Commons, access PROC's website https://www.ourcommons.ca/Committees/en/PROC?parl=44&session=1 and the Commissioner's websitehttps://ciec-ccie.parl.gc.ca/en/publications/Pages/PROCsubmissionFeb2022.aspx
Sources: (Martensson, 2014[11]; OECD, 2019[12]; Office of the Conflict of Interest and Ethics Commissioner, 2022[13])

While values should be identified and defined by the group to whom they apply, the government of Malta could consider the following comments on some of the existing definitions of the values included in the revisions proposed by the Commissioner:

- **'Sense of service'** is defined as "Members shall be motivated by a sense of service to the community in general and the common good. Members shall not be motivated by a spirit of gain for themselves, their families, their friends, or persons close to them". However, in the case of MPs, the community in general and the common good may be terms difficult to reconcile with the fact that MPs' sense of service may consist of serving the needs of their constituents. This definition could be strengthened by replacing "the community in general and the common good" by "the public interest".
- **'Diligence'** is defined as "Ministers shall familiarise themselves with the duties, obligations and powers which arise from the position entrusted to them, with the Standing Orders and other rules on the basis of which Parliament functions, with the rules and procedures governing their work, and with the provisions of this Code and any applicable guidelines and recommendations issued by the Commissioner". However, diligence is not only about knowing the rules but also about implementing them on a daily basis while in duties and outside. This definition could strengthen the point and express the importance not only of understanding and knowing the standards but also, and more importantly, of implementing them.
- **'Leadership'** is defined as "Members shall embrace and be inspired by these values in order to lead by example". However, in addition to leading by example, ethical leaders may also be responsive, credible and trustworthy to integrity ideas, questions and concerns brought forward by their employees, thus encouraging an open organisational culture and a sense of voice, community and belonging amongst the Parliament's staff. This definition could strengthen this point and express the necessity not only of leading by example but also of encouraging an open organisation.

Finally, to further support day-to-day decision making, it is also useful to provide concrete guidance on how values can be translated in public officials' daily activities (OECD, 2018[3]). Indeed, including practical examples in the code of ethics or complementary guidelines may help specify the generally formulated values and may serve as a practical tool for reaching ethical and lawful decisions under more specific circumstances. **To help MPs better understand how public values are applied in their daily choices and actions, the Commissioner could complement the values laid out in the Code of Ethics for the Members of the House of Representatives by including examples of more concrete expected behaviours in an accompanying handbook**.[5] Examples from the public sector could serve as inspiration: for example, the Australian Public Service Commissioner's Directions 2022 set out requirements for upholding each value, the Code of Conduct of the Employment and Social Development Department in Canada provides a good example of this approach, by presenting the definition of each value in juxtaposition to expected behaviours, while the Commentary on the Code of Ethics for Civil Servants in the Slovak Republic provides further information on how to read and interpret the rules contained in such Code, by means of examples that illustrate how to deal with situations that civil servants may encounter in practice while carrying out their duties (see Box 3.4).

Box 3.4. Examples of documents detailing expected behaviour from public officials

In **Australia**, the Australian Public Service Commissioner's Directions 2022 set out the scope and application of the five Australian Public Service (APS) Values. These directions set out requirements for individual APS employees in upholding each value, having regard to an individual's duties and responsibilities. For example, directions on the 'Ethical' value, include, among other things:

- acting in a way that models and promotes the highest standard of ethical behaviour
- following through on commitments made
- having the courage to address difficult issues
- acting in a way that is right and proper, as well as technically and legally correct or preferable
- reporting and addressing misconduct and other unacceptable behaviour by public servants in a fair, timely and effective way

In **Canada**, the Code of Conduct of the Employment and Social Development Department includes the set of five public sector values – respect for democracy, respect for people, integrity, stewardship and excellence – that should guide public servants in everything they do. Additionally, the code includes the definition of each public sector value, along with the expected behaviours that support them:

Table 3.2. Definition of the value "Respect" and associated expected behaviours

Value: Respect for People	Expected Behaviours
Treating all people with respect, dignity and fairness is fundamental to our relationship with the Canadian public and contributes to a safe and healthy work environment that promotes engagement, openness and transparency. The diversity of our people and the ideas they generate are the source of our innovation.	Public servants shall respect human dignity and the value of every person by: • treating every person with respect and fairness • valuing diversity and the benefit of combining the unique qualities and strengths inherent in a diverse workforce • helping to create and maintain safe and healthy workplaces that are free from harassment and discrimination • working together in a spirit of openness, honesty and transparency that encourages engagement, collaboration and respectful communication.

Source: (Employment and Social Development Canada, 2016[14]).

These lists of expected behaviours are further elaborated into practical examples and guidance on how the civil servant should act under certain circumstances. In this way, the code not only encompasses the standards of conduct, but also presents a practical tool for reaching ethical and lawful decisions, safeguarding the integrity of the public service and employees alike.

Table 3.3. Practical examples of the value "Respect"

Public servants shall respect human dignity and the value of every person by:
i) Treating every person with respect and fairness. • Everyone deserves to work in an environment where they are respected and treated with dignity and fairness. At work, you are expected to be respectful, transparent, candid, and fair with people, whether they are clients, supervisors, colleagues or employees of other government departments. • Authority must be administered with fairness, dignity and respect.

Source: (Employment and Social Development Canada, 2016[14]).

In the **Slovak Republic**, the Civil Service Council developed guidance on how to interpret the rules contained in the Code of Ethics for Public Servants. The guidance provides details on the various provisions included in the Code, and uses examples to illustrate how to deal with situations that civil servants may encounter while conducting their daily activities. For instance, to illustrate how *civil servants shall act impartially by not allowing his/her opinions and beliefs to influence his/her performance as a civil servant*, the Commentary on the Code of Ethics for Civil Servants includes the following examples:

- **Example 1**: As a civil servant, you are processing the results of a questionnaire relating to environmental protection. Because of your inner conviction that much more vigorous protection of nature is needed, you do not include some of the answers in the evaluation.

  Guidance: Even if the employee has good intentions, as a civil servant he should not transfer his views to the civil service because he would thereby gain some advantage to advance his opinion and interest, and would undermine confidence in an impartial performance of the civil service. In practical life it would probably be very difficult to prove that an employee's conduct violated a specific provision of the law, but it can clearly be concluded that he has violated the ethical principles.

- **Example 2**: The Chief civil servant repeatedly refuses to allow a certain group of employees to participate in the trainings with certain religious beliefs or ethnic backgrounds, even though they are qualified and competent staff. He claims that this group of people is only one big problem.

  Guidance: Such behaviour by the head of a civil servant is unacceptable because it transmits his personal beliefs, or prejudices, into the performance of the civil servant. It also violates the rights of the civil servant to education. It may also violate anti-discrimination law. It is appropriate to ask whether my decision would have been different if it was an applicant or employee whose views were similar to mine, or who belongs to the same ethnic group.

Sources: (Employment and Social Development Canada, 2016[14]; Civil Service Council, 2019[15]; Australian Public Service Commissioner, 2022[16]) (unofficial English translation of the Commentary on the Code of Ethics for Civil Servants, original in Slovak)

The government of Malta could include key values in the new Code of Ethics for Ministers and Parliamentary Secretaries, by means of a participatory process with key stakeholders

The Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries mirror the proposals in the current Code of Ethics for Ministers and Parliamentary Secretaries, with the following values recommended: sense of service, integrity, diligence, objectivity, accountability, transparency, honesty, justice and respect, and leadership. However, the definitions that accompany the set of values have been adjusted to avoid misinterpretation and further detail how these values translate into Ministers' every day activities.

Regarding the number of values, again considering that a set of maximum seven principles is most suitable to achieve remembrance and meaning, **the government of Malta could identify through a participatory process seven or less values for Ministers to make them more memorable and meaningful**. Several OECD countries (including Denmark, New Zealand and the United Kingdom) have defined seven or less values with the aim of ensuring they are more easily applicable by public officials in their day-to-day activities and decision making (see Box 3.5).

Box 3.5. Key values and principles for public officials

In **Denmark**, the Danish Agency for Modernisation under the Ministry of Finance issued the "Kodex VII", a code of conduct for Danish civil servants in central government. The Kodex VII describes seven key duties (syv centrale pligter) for civil servants in central government –with a focus on the duties of civil servants in relation to the advice and assistance they render to the government and ministers–, as well as the relevance and the implications of each duty for the Danish public sector. The seven key duties are:

- 1. Legality, 2. Truthfulness, 3. Professionalism, 4. Development and co-operation, 5. Responsibility and management, 6. Openness about errors, and 7. Party-political neutrality.

In **New Zealand**, the Code of Conduct for the State Services *Standards of Integrity and Conduct* establishes a set of four principles that those working in State Service organisations must comply with:

- 1. Fairness, 2. Impartiality, 3. Responsibility, and 4. Trustworthiness.

In the **United Kingdom**, the Seven Principles of Public Life outline the ethical standards those working in the public sector are expected to adhere to. This includes all those who are elected or appointed to public office, nationally and locally, and all people appointed to work in the Civil Service, local government, the police, courts and probation services, non-departmental public bodies, and in the health, education, social and care services:

- 1. Selflessness, 2. Integrity, 3 Objectivity, 4. Accountability, 5. Openness, 6. Honesty, and 7. Leadership.

Sources: (Danish Ministry of Finance, 2015[17]; Committee on Standards in Public Life, 1995[18]; Public Service Commission of New Zealand, 2007[19])

Additionally, as noted above, the values and standards of conduct should ideally be defined through a participatory process with key stakeholders in order to ensure that they are both meaningful and actionable. To that end, **the government of Malta could involve key stakeholders in the process of reducing the number of values for Ministers.** As part of this process, key stakeholders could also be invited to build a common understanding of the values by working together in a new definition of those selected to remain in the Code of Ethics. Such definitions could be tailored to the specific challenges of Ministers and clarify, in a few words, what each value means for Ministers.

Finally, as in the case of the Code of Ethics for MPs, in order to further support day-to-day decision making, the Commissioner could elaborate concrete examples in the form of a Handbook to help Ministers to better understand how public values translate into their daily choices and actions, and how they are expected to act under more specific circumstances.[6]

3.3.3. Strengthening provisions on the use of information

During the course of their duties, elected and appointed officials are entrusted with information that is not publicly available. This privileged access can however lead to a potential conflict-of-interest situation, in which the official uses that information to further their own interests or the interests of those close to them.

The proposed Code of Ethics for Ministers and Parliamentary Secretaries clarifies and further develops the existing provisions on the proper use of information. The proposed provisions included in Section *7. Other Ministerial Duties* expand on the existing provisions in the current Code, and add further guidance, such as:

- encouraging Ministers to be open and transparent with Parliament and the public
- encouraging Ministers to ensure that key policies, policy decisions and directives affecting the public are recorded in open, easily accessible and official formats
- prohibiting Ministers from abusing or making improper use of information, including information received in confidence, for their personal gain or in order to advantage or disadvantage any person(s)
- prohibiting Ministers from disclosing or using confidential information after their term in office
- asking Ministers to return to the Cabinet Secretary, once their appointment is finished, all the documents, material and resources that were given and entrusted to them in order to perform their duties.

The new set of provisions on the proper use of information included in the revised Code of Ethics for Ministers and Parliamentary Secretaries are clear, comprehensive and in line with international good practices found in OECD countries (see Box 3.6). **The government of Malta could include them as such in the revised Code of Ethics.**

Box 3.6. Examples of provisions on the proper use of information by Ministers

In **Australia**, the Code of Conduct for Ministers states that Ministers must not use any information that they gain in the course of their official duties, including in the course of Cabinet discussions, for personal gain or the benefit of any other person. Ministers are also required to undertake that, on leaving office, they will not take personal advantage of information to which they have had access as a Minister, where that information is not generally available to the public

In **Iceland**, the Ministerial Code of Conduct includes an extended and comprehensive list of provisions regarding the proper use of information:

- Ministers are expected to never use their position, nor information to which their position gives them special access, for their own personal benefit or that of parties close to them.
- Ministers shall inform the public and the media of ministry activities in a regular and organised manner, and any incorrect information or misunderstanding about a minister's activities must be corrected as quickly as possible.
- Ministers shall endeavour to render information accessible insofar as legislation permits and make sure that ministry staff operate with the same purpose.
- Ministers are never to conceal any information concerning the public wellbeing unless required by law or otherwise demanded by the public interest. If giving such information is in the public interest, the minister must take initiative in making it public.

In the **United Kingdom**, the Ministerial Code includes provisions encouraging Ministers to be truthful, open and transparent, in line with the Seven Principles of Public Life:

- It is of paramount importance that Ministers give accurate and truthful information to Parliament, correcting any inadvertent error at the earliest opportunity. Ministers who knowingly mislead Parliament will be expected to offer their resignation to the Prime Minister.
- Ministers should be as open as possible with Parliament and the public, refusing to provide information only when disclosure would not be in the public interest, which should be decided in accordance with the relevant statutes and the Freedom of Information Act 2000.

Sources: (Australian Government, 2022[20]; Government of Iceland, 2011[21]; UK Cabinet Office, 2019[22])

The government of Malta could include clear provisions on the proper use of information in the new Code of Ethics for Members of the House of Representatives

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives introduces a section (*Section 6 on Provision and use of information*) that guides MPs in properly using information they receive in the course of their duties. These suggested provisions clarify that MPs are expected not to knowingly mislead or provide inaccurate information to the House of Representatives, and that information received in confidence in the course of their duties shall be used only in connection with those duties and never for personal gain or for the benefit of an individual, group or community close to them. In preparing the new Code of Ethics, the government of Malta could include a provision based on section 6.1 of the Commissioner's proposals, which states that **"Members shall be truthful and transparent with Parliament and the public, and shall only withhold information when its disclosure would be prejudicial to the national interest. Members should correct immediately any incorrect information given".**

The government of Malta could also include an updated version of the Commissioner's proposal in section 6.2, as currently the concept "for the benefit of an individual, group or community close to them" is ambiguous and leaves room for potential loopholes as what is interpreted as "close to them". **To address this ambiguity, the government of Malta could include a revised provision that states "Information received in confidence in the course of a Members' duties shall be used only in connection with those duties and never for personal gain or to advantage or disadvantage any person or persons"**.

Moreover, the Commissioner's proposed revisions do not include specific provisions on improper use of information after leaving office. Although section 6.2 indicates that MPs shall "never" use confidential information for personal gain or in the benefit of selected individual(s) or group(s), considering current integrity risks and the particularities of the Maltese context, MPs would benefit from a clearer provision on this matter. To that end, **the government of Malta could include an additional provision stating that "Members shall not disclose and make use of confidential information even after leaving office".**

3.3.4. Strengthening provisions on engaging with lobbyists and third parties

Lobbying can have a profound impact on the outcome of public policies and, in turn, on well-being and living standards in societies (OECD, 2021[4]). Indeed, interest groups can provide governments with valuable insights and data that policy makers can use to better understand options and trade-offs, and ultimately, define better public policies. However, the abuse of lobbying practices by special interest groups poses a risk to inclusiveness in decision making, possibly resulting in suboptimal policies and outcomes and undermining citizens' trust in democratic processes.

To address this tension, governments can enhance the transparency of the policy-making process and strengthen the integrity of both public officials and those who try to influence them (OECD, 2010[23]). In particular, to strengthen the integrity of public officials, governments can set clear principles, rules, standards and procedures to guide public officials on their communication and interaction with lobbyists and third parties trying to influence them, in a way that bears the closest public scrutiny. This is particularly necessary in the case of politically exposed positions such as members of parliament, ministers, and political advisors, who have a central role in the public decision-making process, set the political agenda and have access to confidential information (OECD, 2021[4]).

According to international good practices, depending on the type of document in which they are included, standards for public officials on their interaction and communication with lobbyists/third parties may include the following (OECD, 2021[4]):

- the duty to treat lobbyists equally by granting them fair and equitable access
- the obligation to refuse meetings with unregistered lobbyists, or at a minimum to check that the lobbyist is registered or intends to register within the specified deadlines
- the obligation to report violations to competent authorities
- the duty to register their meetings with lobbyists (through a lobbying registry or open agendas)
- the obligation to refuse accepting gifts and benefits (fully or beyond a certain value), and
- the duty to report gifts and benefits received, amongst others.

The government of Malta could include provisions on the interactions between MPs and third parties/lobbyists in the new Code of Ethics for Members of the House of Representatives

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives includes limited provisions on engaging with lobbyists or third parties who are attempting to influence policy making: Currently, section 5.1 includes a provision to protect MPs from improper influence, threats or undue pressure in the course of their duties, section 5.2 prohibits MPs from acting as lobbyists whether paid or otherwise, and section 9 lays out specific provisions on the acceptance, bestowing and registration of gifts, benefits and hospitality – which is further detailed on the additional guidelines.[7] However, other relevant standards are missing to help MPs engage with lobbyists and third parties aiming at influencing them.

To address these gaps, **the government of Malta could add a specific section on engaging with lobbyists and third parties in the new Code.** The provision could set out the following: "Lobbying is a legitimate activity as long as it is carried out with transparency and integrity. Lobbying is a natural and beneficial part of the democratic process, as it allows different interest groups to inform public policy and decision making, but risks emerge when activities take place without due regard for transparency or integrity." As lobbying is currently perceived negatively in Malta, including this explanation could help socialise the concept and encourage registration by both public officials and lobbyists in the corresponding registers.

The government of Malta could also include provisions on how Members are expected to engage with lobbyists/third parties, covering the main risk areas of interaction and communication between public officials and lobbyists/third parties. The provisions could state the following:

- Members shall treat lobbyists and third parties equally by granting them fair and equitable access.
- Members shall check that the lobbyist or third party is registered or intends to register in the Register for Lobbyists within the specified deadlines, and report violations to the Commissioner for Standards in Public Life.
- Members shall record all relevant communications (including meetings) with lobbyists/third parties in the Transparency Register. Providing an adequate degree of transparency on the actors who are influencing government policies or engaging in lobbying is a key element to ensure that public officials, citizens and businesses can obtain sufficient information for the public scrutiny of the public decision-making process.

Box 3.7 highlights good practice from Spain in this regard.

Box 3.7. Code of Conduct for members of the Congress and the Senate of Spain

In October 2020, the Boards of both Houses of the Spanish Parliament adopted a Code of Conduct for members of the Congress and the Senate. The Code requires the publication of the senators' and deputies' agendas, including their meetings with lobbyists:

The members of the Chambers (Congress and the Senate) "must publish their institutional agenda in the corresponding Transparency Portal, including in any case the meetings held with the representatives of any entity that has the status of interest group. (…) each parliamentarian will be responsible for the veracity, accuracy and timeliness of the published information".

Source: (Parliament of Spain, 2020[24]).

Moreover, to support MPs in assessing the reliability of information they receive from lobbyists, **the government of Malta could also include a provision reminding MPs that while lobbying is legitimate, there is a risk that lobbyists and/or third parties may abuse this legitimate process by providing unreliable or inaccurate information**. For example, lobbyists and/or third parties may highlight selective findings of scientific studies, dismissing any doubts or criticisms in these studies. Likewise, they may support and promote studies that challenge scientific arguments unfavourable to their interests, or highlight the results of studies financed by their own spheres of influence (such as think tanks or industry studies). MPs may not be aware that this input is biased, or may not have the time to assess the credibility of sources (OECD, 2021[4]). In some countries, like the Netherlands, provisions are included in the Code of Conduct to remind public officials of indirect ways in which they may be influenced by special interest groups (see Box 3.8).

Box 3.8. The Dutch Code of Conduct reminds public officials to consider indirect influence

Dealing with lobbyists

"You may have to deal with lobbyists in your work. These are advocates who try to influence decision making to their advantage. That is allowed. But are you always aware of that? And how do you deal with it? Make sure you can do your work transparently and independently. Be aware of the interests of lobbyists and of the different possibilities of influence. This can be done very directly (for example by a visit or invitation), but also more indirectly (for example by co-financing research that influences policy).

Consult with your colleagues or supervisor where these situations may be present in your work.

Sometimes it is in the public interest to avoid contacts with lobbyists."

Source: Extracts from the Dutch Code of Conduct on Integrity in Central Government, https://zoek.officielebekendmakingen.nl/stcrt-2019-71141.html.

To further guide MPs in their interactions with lobbyists and third parties, the Commissioner could consider strengthening the additional guidelines for MPs by adding a specific section on engaging with lobbyists and third parties, as is done in the additional guidelines for Ministers. This section could provide additional information and details on the provisions included and to be included in the Code of Ethics on engaging with lobbyists and third parties. For instance, the guidelines could provide information on registering relevant communications in the Transparency Register, by including key concepts such as relevant communication and relevant matter, and the timeframes to do so, based on the final provisions of the

Regulation of Lobbying Act. Guidance could also be included on how to assess the reliability of information received from lobbyists/third parties, with examples highlighting the different means lobbyists/third parties could use to provide unreliable or inaccurate information.[8]

The government of Malta could include provisions on the interactions between Ministers and third parties/lobbyists in the new Code of Ethics for Ministers and Parliamentary Secretaries

The Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries introduce several provisions on the interactions with lobbyists and third parties, specifically in the sections on "Gifts", "Retention of official records" and "Attempts at undue influence". **The government of Malta could consider including these provisions in the new Code of Ethics**, as they are aligned with international good practice (see Box 3.9):

- Ministers are expected not to accept any gift, benefit or hospitality for themselves, members of their families, or any other persons or bodies, if such gift could close them under an inappropriate obligation or compromise their judgement – which is further detailed on the additional guidelines.[9]
- Ministers are required to avoid associating with individuals who could place them under any obligation or inappropriate influence in the performance of their duties.
- Ministers are required to record all attempts at lobbying in a Transparency Register, and to keep minutes of meetings and communications with lobbyists.
- Ministers are required to hold meetings with persons who have an interest in obtaining permits, authorisations, concessions and other benefits from the state in an official setting in the presence of officials, unless this is impractical on account of justifiable circumstances.
- Ministers are required not to conduct official business through unofficial email accounts.
- Ministers are required to immediately report to the Prime Minister and to the competent authorities any attempt by third parties to influence their conduct as Ministers by means of corruption, pressure or undue influence.

Box 3.9. Examples of provisions guiding Ministers' interactions with lobbyists and third parties

In **Australia**, the Code of Conduct for Ministers states that Ministers are expected to ensure that dealings with lobbyists are conducted consistently with the Lobbying Code of Conduct, so that they do not give rise to a conflict between public duty and private interest.

In **Ireland**, the Code of conduct for Office Holders – which includes Ministers – states that in all cases where meetings are arranged for the purpose of transacting official business, office holders should be accompanied by an official who would act as a note-taker in the office holder's own interest.

In the **United Kingdom**, the Ministerial Code states that Ministers are expected to hold meetings on official business in the presence of a private secretary or official. If a Minister meets an external organisation or individual and finds themselves discussing official business without an official present – for example, at a social occasion or on holiday, any significant content should be passed back to the department as soon as possible after the event. Additionally, the Ministerial Code requires Ministers to make their ministerial diaries available to the public. The relevant Department publishes them on a quarterly basis. Meetings with newspaper and other media proprietors, editors and senior executives will be published on a quarterly basis regardless of the purpose of the meeting.

Source: (UK Cabinet Office, 2019[22]; Standards in Public Office Commission, 2003[25]; Australian Government, 2022[20]).

However, **the government of Malta could also include a separate section on engaging with lobbyists and third parties**. The provision could set out that "lobbying is a legitimate activity as long as it is carried out with transparency and integrity. It is a natural and beneficial part of the democratic process, as it allows different interest groups to inform public policy and decision making, but risks emerge when activities take place without due regard for transparency or integrity."

The government of Malta could also include provisions that set out **how Ministers are expected to engage with lobbyists/third parties**. The provisions could specify that:

- Ministers shall treat lobbyists and third parties equally by granting them fair and equitable access.
- Ministers shall check that the lobbyist or third party is registered or intends to register in the Register for Lobbyists within the specified deadlines, and report violations to the Commissioner for Standards in Public Life.

The government of Malta could also include a provision detailing the risk that **lobbyists and/or third parties may abuse the lobbying process by providing unreliable or inaccurate information, and requiring Ministers to ensure that information provided by lobbyists/third parties is accurate**. Finally, the existing provisions on registration in a Transparency Register, currently under "Attempts at undue influence", and the provisions on open meeting places and use of official email accounts, currently under "Retention of Official records", could be included under this new section.

Regarding the additional guidelines, the current proposal includes some provisions on engaging with lobbyists or third parties – i.e. Part 1 on Lobbying and the Transparency Register, and Part 2 on receiving and bestowing gifts, benefits and hospitality. However, **the Commissioner could clarify the information included in Part 1 of the additional guidelines in order to ensure coherence with the final Regulation of Lobbying Act**. Indeed, the OECD recommended the Commissioner some changes in the proposed framework, including on the definition of "relevant communication" – to include indirect forms of lobbying – and on the definition of "relevant matter" (OECD, 2022[26]). If adopted, such changes should be reflected in the additional guidelines for Ministers to ensure coherence with the Lobbying regulation. Additionally, to further guide Ministers in their interactions with lobbyists and third parties, **the Commissioner could consider strengthening the additional guidelines for Ministers by including in Part 1 more detailed information on the assessment of the reliability of information received from lobbyists/third parties** – including examples to create awareness about the different means lobbyists/third parties may use to provide unreliable or inaccurate information.

3.3.5. Strengthening provisions on managing and preventing conflicts of interest

Legislators face unique challenges regarding conflict of interest, as they have several sets of interests that could clash: the interests of their constituents, the interests of their political party, the interests of society, and their private interests. While the first three sets of interests are resolved through dialogue and debate, it is the fourth set of interests – those which are private – which are of concern. This is because legislators – like all public officials – are forbidden from using their public office for furthering private gain. While it is expected that legislator's private interests will at times compete with the public interest, and in that sense, having "conflicts of interest" are a normal part of public duty, it is imperative that private interests do not improperly influence the performance of official duties and responsibilities (OECD, 2004[27]). As such, having clear rules and guidelines in place to prevent and manage conflict of interest are essential for legislators to uphold public integrity in their role.

There are two core concepts for "conflict of interest": 1) real, potential and perceived conflict-of-interest situations, and 2) private interests. As regards the first, a real conflict of interest exists when there is a conflict between the public duty and private interests of an individual, in which their private-capacity interests could improperly influence the performance of their official duties and responsibilities. A *potential* conflict of interest exists when an individual has private interests that could lead to a conflict if they were

to become involved in relevant (e.g. conflicting) responsibilities in the future. A potential conflict of interest rests on the idea of foreseeability – e.g. there is the possibility that the official's private interest could lead to a conflict should their public duty and private interest collide in the future. A perceived conflict of interest exists when it appears that an individual's private interests could improperly influence the performance of their public duties but this is not in fact the case (OECD, 2004[27]).

Regarding the second concept, private interests are not limited to financial or pecuniary interests, nor are they limited to interests which lead to a direct personal benefit to a public official. Conflicts of interest can arise when otherwise legitimate private-capacity activity, personal affiliations and associations, and family interests, could be reasonably considered likely to improperly influence the performance of a legislator's duties (OECD, 2004[27]). As such, private interests can include assets, liabilities and debts, personal relationships, family relationships, business interests, external activities and positions (including secondary employment), and gifts, benefits and hospitality (OECD, 2004[27]).

The government of Malta could include a comprehensive framework on managing and preventing conflicts of interest in the new Code of Ethics for Members of the House of Representatives

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives introduce a new definition on conflict of interest to guide MPs in identifying, registering, and disclosing conflict-of-interest situations. The definition considers conflict of interest as arising "…where a personal interest may influence the independent performance of the duties and responsibilities of the members. Personal interests include, but are not limited to, any potential benefit or advantage to the members themselves or their family members. A conflict of interest does not exist where members are only concerned as a member of the general public or of a broad class of persons" (Commissioner for Standards in Public Life, 2020[5]). Additionally, the proposed revisions require MPs to declare any conflict "at the first opportunity before a vote is taken".

The accompanying guidelines provide further guidance on this provision, noting that the conflict-of-interest provisions apply from the first time the House sits after the Member is elected to almost every aspects of the Member's parliamentary duties. Throughout this period, MPs are required to declare any private interests (i) in the Chamber and in committees; (ii) when tabling any written notice; and (iii) when approaching others.

The guidelines also clarify that the declaration of interests is broader than the registration of interests, covering financial and non-financial interests that do not require registration but meet the "test of relevance". The "test of relevance" is defined as "whether those interests might influence, or reasonably be perceived by others to influence, their actions or words as members".

To strengthen the framework on managing conflict of interest in the Code of Ethics, the government of Malta could include additional provisions in the new Code of Ethics. First, **the government of Malta could include a new section on incompatibilities in the Code, setting out positions and activities that are incompatible with the role of MPs**. Currently, the proposed revisions to the Code contains only one provision on incompatibilities: section 5.2 notes that "Members shall not act as lobbyists, whether paid or otherwise." While this is a key incompatibility, good practice in OECD countries suggests including a list of incompatibilities between public functions and other public or private activities in regulation. Such incompatibilities can cover not only lobbying, but secondary employment and voluntary activities, of both the public official and (where necessary) family members.

The current system in Malta, where MPs are engaged in a part-time capacity, presents particular challenges for determining an appropriate range of incompatibilities between public and private activities. Nevertheless, it is possible to adopt a risk-based approach and set clear guidance for MPs on what is

acceptable and what is not when balancing their public duties with their private activities. To that end, the government of Malta could include additional incompatibilities, such as:

- **Preventing MPs from holding secondary employment in government departments, boards and commissions.** As noted in OECD (2022[28]), MPs play a critical accountability role over the actions of the executive. It is their duty to hold the executive accountable for how public monies are spent and public policies determined. The practice of placing elected officials in the executive therefore fundamentally undermines the accountability role of parliament. To that end, **the government of Malta could consider amendments to the Constitution so as to prohibit elected officials from obtaining secondary employment in all public functions**. A provision could be included in the new Code of Ethics for Members of the House of Representatives to reflect this.
- **Preventing MPs from participating in their "private capacity" in any role that would conflict with their duties as a public official.** Given the different professions MPs hold, there may be situations where their private employment will conflict with their role as a public official. In such cases, the government of Malta could include in the new Code a clear provision prohibiting MPs from participating in their 'private capacity' in any role or any file/project/issue that would conflict with their duties as a Member of Parliament.

Other incompatibilities that could be included are preventing MPs (i) from entering into a contract or employment relationship with their spouse, partner, children, siblings or parents in the exercise of their official duties, (ii) having any form of private interest or partnership in a private corporation that is party to a contract with public sector entity, or (iii) holding any asset whose value may directly or indirectly be affected by government decisions or policy.

Second, **the government of Malta could ensure that the new Code provides clear guidance for MPs on when to declare their conflicts of interest, and to whom.** In the Commissioner's proposed revisions, section 8.2 requires MPs to declare a conflict of interest at the first opportunity before a vote is taken, while the additional guidelines include more detail and require MPs to declare interests (a) in the Chamber and in committees, (b) when tabling any written notice, and (c) when approaching others. This difference between this section and the guidelines could present confusion. To that end, **the government of Malta could include a provision based on a revision of section 8.2 that states that "Members shall declare private interests to the Commissioner that could lead to an actual or potential conflict (i) upon taking up duty as a Member of the House of Representatives and (ii) at the first opportunity thereafter when they realise there is an actual or potential conflict of interest."**

The new code could also make it **clear that MPs have an obligation to manage their conflicts of interest**. Indeed, the disclosure of a private interest does not in itself resolve a conflict; rather it enables the necessary steps to be taken to determine what measures are needed to resolve or manage the conflict (OECD, 2004[27]). To that end, the government of Malta could include a provision stating that **"Members shall take the necessary measure (removal, recusal or restriction, reassignment or resignation) to manage actual or potential conflicts of interest**". Examples of how OECD countries define this obligation are included in Box 3.10 and Box 3.14 elaborates on these measures.

Box 3.10. Obligations to manage conflicts of interest: Examples from OECD countries

In Canada, the Conflict of Interest Act outlines a series of "Conflict of Interest Rules" to ensure that the activities of Public Office Holders (POH) are conducted in a fair and transparent manner. The Act further prescribes obligations for POHs to manage conflict-of-interest situations. These include: a requirement for POHs to "arrange his or her private affairs in a manner that will prevent the public office holder from being in a conflict of interest" and a requirement for POHs to recuse themselves from "any discussion, decision, debate or vote on any matter in respect of which he or she would be in a conflict of interest".

In the Czech Republic, Section 3 of the Act on Conflict of Interests establishes the obligation to manage potential conflicts of interest by stating that public officials are obliged to refrain from any action in which their personal interests may affect the performance of their duties and that in the cases, where the proper performance of a public function conflicts with a personal interest, a public official may not favour his or her personal interest over the interests which he or she is obliged to promote and defend as a public official.

In Australia, the Australian Public Service Commission's publication APS Practice Values and Code of Conduct in Practice provides guidance on managing conflicts of interest. In particular, the guidance lists several options, including withdrawing from particular discussions, restricting the flow of information, abstaining from decisions, reassignment of duties, or relinquishing the interest or the position.

Source: (Australian Public Service Comission, 2018[29]; Government of Canada, 2006[30]; Government of the Czech Republic, 2006[31])

In line with the proposed changes on managing conflict of interest in the Code, the **Commissioner could revise the guidelines to state that Members are required to declare interests upon taking up duties and at the first opportunity thereafter.** To further facilitate clarity, the **Commissioner could include in the guidelines a non-exhaustive list of examples of situations where MPs could encounter a conflict of interest**, for example, when legislation is before the House, when participating in a committee, when tabling a written notice, or in administrative matters, such as ordering office equipment or when recruiting staff or interns. The purpose of providing examples would be to raise MPs' awareness about the different types of situations that could lead to a potential conflict of interest.

The **Commissioner could also include in the guidelines a clarification that conflicts of interest can be real, potential, or perceived**. Box 3.11 provides examples of the definitions that could be included.

Box 3.11. Overview of perceived, potential and real conflict-of-interest situations

- A **perceived (or apparent) conflict of interest** exists where it appears that an official's private interests could improperly influence the performance of their duties but this is not in fact the case. For example, the senior official who owns shares in XYZ corporation may have made formal internal administrative arrangements, which are not known to the public at large but which are satisfactory to the official's organisation, to stand aside from all decision making in relation to the contract for which XYZ corporation is competing, in order to resolve the conflict.
- A **potential conflict of interest** occurs where a public official holds a private interest which would constitute a conflict of interest if the relevant circumstances were to change in the future. For example, where a MP is a practising lawyer, and their firm is employed to provide advisory services to the government, there is a potential conflict if the MP is part of the team providing advisory services.
- A **real (or actual) conflict of interest** involves a situation or relationship which can be current, or may have occurred in the past. For example, an MP personally owns shares in ABC corporation, while that company is in the process of competing for a contract to supply the government with services, can be said to have an 'actual' conflict of interest if the official concerned is involved in any aspect of decision making in relation to the contract.

Source: Adapted from (OECD, 2004[27]).

Moreover, the **Commissioner could include in Section 3.9 of the guidelines a non-exhaustive list of examples of non-financial interests, including secondary employment, personal affiliations and associations, and family interests** (see Box 3.12). Other examples include private interest that are developed as the result of political activities, such as when an individual has a strategic role in the MPs campaign, organises political fundraising event(s), co-ordinates the gathering or solicitation of donations, acting as an official campaign spokesperson, etc. Currently, the guidelines focus primarily on financial interests, and leave non-financial interests to the discretion of individual MPs to determine. While the intention may be to cast a wide net, additional guidance would help avoid loopholes and different interpretations. Moreover, it would help MPs understand the different types of non-financial interests that could lead to a potential conflict. It should be clear that the list is not exhaustive but meant to support MPs in thinking more broadly about what private interests could lead to a conflict-of-interest situation.

Box 3.12. External activities and positions that could lead to a conflict of interest

OECD countries have considered the following types of external activities and positions as those which could lead to a potential conflict of interest:

- External activities and positions in voluntary organisations
- External activities and positions in NGOs
- External activities and positions in elected public entities
- External activities and positions in trade unions
- External activities and positions in a political party
- Secondary employment in the public sector
- External activities and positions in an entity with relationships with the government,
- Positions in the private sector
- Secondary employment in the private sector.

Source: (OECD, 2003[32]).

The **Commissioner could also update the guidelines to include guidance on the types of measures available to MPs to prevent and manage conflict-of-interest situations, to align with the code.** Measures could include options for eliminating or mitigating the influence of a private interest on the MP, as well as options for limiting the influence of the MP with a conflict on the decision-making process (see Box 3.13).

Box 3.13. Measures for managing conflicts of interest

When a public official has a potential or real conflict of interest, there are a number of different measures that can be taken to manage the conflict and reduce the risk of undue influence. These measures can be categorised into "strategies that focus on the private interest" and "strategies that focus on the public official".

Strategies that focus on the private interest aim to eliminate or mitigate the influence a private interest can exert on a public official and include:

- **Divestiture:** the public official relinquishes their external interest entirely – for example, by selling shares or stocks. Transferring the private interest to a family member does not equal divestiture.
- **Resignation:** the public official resigns from their external employment position that is causing the conflict of interest.
- **Waiver:** the public official waives their involvement in particular activities of their external employment that could lead to a conflict of interest.
- **Establishing a bind management trust** to manage the financial interests (e.g. stocks, shares, other investments) of the public official while holding public office: the interests are transferred to a third party, who manages them independently. The official remains the beneficiary, but cannot interfere in the management of the assets, issue instructions, or know how the assets are being invested/used.

Strategies that focus on limiting the influence of the public official on the decision-making process include:

- **Recusal or restriction:** where a particular conflict is not likely to recur frequently, it may be appropriate for the public official concerned to maintain their current position but not participate in decision making on the affected matters, for example by having an affected decision made by an independent third party, or by abstaining from voting on decisions. Particular care must be taken to protect the integrity of the decision-making process where recusal is adopted. Likewise, an option to restrict access by the affected public official to particular information, by prohibiting them from receiving relevant documents and other information relating to their private interest, could be adopted.
- **Reassignment:** The public official is reassigned to a different set of functions, tasks or portfolios.
- **Resignation:** in some cases, the conflict of interest may be so difficult to manage and the potential negative consequences may be so serious, that resignation or termination may be the only feasible strategy to uphold the public trust. In the event of resignation of the public official from their public office, the conflict-of-interest policy (together with the relevant employment law and/or employment contract provisions) should provide the possibility that the official can be terminated in accordance with a defined procedure in such circumstances.

Source: Adapted from (OECD, 2004[27]; World Bank, OECD, UNODOC, 2020[33]).

The guidance could also direct MPs to the Commissioner for advice and guidance in case of doubt (see below for further details). Moreover, to keep track that the situation has been resolved or is being managed and allow further monitoring, the **Commissioner could keep a record of both declared conflicts of interest and the measures taken in the specific personnel file of the MP kept in the Commissioner's office**.[10]

The government of Malta could include a comprehensive framework on managing and preventing conflict of interest in the new Code of Ethics for Ministers and Parliamentary Secretaries

Section 3 of the Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries on managing and preventing conflicts of interest in the proposed contain a number of strengths, including providing clear parameters for when and to whom Ministers should declare conflicts of interest and clarifying that Ministers are responsible for resolving conflicts of interest when they arise. To that end, **the government of Malta could include a comprehensive framework on managing and preventing conflicts of interest in the new Code of Ethics for Ministers and Parliamentary Secretaries informed by Section 3 of the Commissioner's proposed revisions**, with several additional clarifications as laid out below.

The government of Malta could also include a section on incompatibilities in the new Code. The current provisions proposed by the Commissioner prohibit Ministers from continuing their private work, unless under exceptional cases where the national interest so requires. The government of Malta could include additional incompatibilities, such as a prohibition on (i) acting as a lobbyist, paid or otherwise, (ii) entering into a contract or employment relationship with their spouse, partner, children, siblings or parents in the exercise of their official duties, (iii) having any form of private interest or partnership in a private corporation that is party to a contract with public sector entity, or (iv) holding any asset whose value may directly or indirectly be affected by government decisions or policy.

Moreover, **the government of Malta could clarify the proposed definition on conflict of interest to strengthen understanding of "private interests".** Currently, the definition included in the Commissioner's proposals note that a conflict of interest may arise "where a personal interest may influence the independent performance of the duties and responsibilities of Ministers. Personal interests include, but are not limited to, any potential benefit or advantage to the Ministers themselves, their spouses, partners or direct family members" (Commissioner for Standards in Public Life, 2020[5]). It is not clear what would be considered as "any potential benefit or advantage" to the Ministers or their family members, which may limit the different interests that could be considered as leading to a potential or real conflict of interest. **The government of Malta could therefore revise the definition to clarify that (a) personal interests may include legitimate private-capacity interests which (b) cover financial interests, personal affiliations and associations, and family interests.**

Similar to the recommendations made above to strengthen the guidelines for MPs, **the Commissioner could strengthen the guidelines for Ministers to facilitate understanding and implementation of the Code.** Specific areas that could be strengthened include (i) clarifying that conflicts of interest can be real, potential or perceived, (ii) including examples of the types of private interests and situations that could lead to a conflict of interest, and (iii) including examples of the types of measures Ministers could take to manage or resolve a conflict of interest.

3.3.6. Strengthening provisions on declaration of assets and interests

Historically, many financial disclosure systems were designed for detecting illicit enrichment while overlooking the potential for using information reported on disclosures as a way of detecting and managing conflicts of interest (World Bank, OECD, UNODOC, 2020[33]). Information regarding non-financial interests,

such as outside activities or positions, was sometimes included with the disclosure of financial interests, was sometimes the subject of a separate disclosure, or was never requested (World Bank, OECD, UNODOC, 2020[33]). Experience has shown that when creating a new system or enhancing an existing one, gathering relevant information for conflicts-of-interest purposes should be strongly considered (World Bank, OECD, UNODOC, 2020[33]). Moreover, financial disclosure forms that focus strictly on financial interests and do not contain information on activities, gifts and relationships may have a limited use for the prevention and management of conflicts of interest.

The government of Malta could expand the scope of assets and interests to be declared and broaden the categories of persons whose data are to be disclosed in the new Code of Ethics for Members of the House of Representatives

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives require MPs to register their financial or other interests in a "Register of Interests", which will be publicly available. The additional guidelines go into more detail and present both the type of financial and non-financial interests that should be registered and the different moments in which interests should be registered by MPs:

- New MPs are expected to register all their current financial interests with the Commissioner within 28 days of taking their Oath of Allegiance.
- MPs are required to record their financial and non-financial interests in the *Register of Interests*, by 31 March of every calendar year. Information shall be recorded as of 31 December of the previous year, with respect to the following private interests: (a) work or profession, and if they are employed, the identity of their employer; (b) immovable property;[11] (c) shares in companies/business interests; (d) quoted investments, government stocks, treasury bills, deposit certificates and bank balances; (e) bank or other debts; and (f) directorships or other official positions in commercial companies, associations, boards, co-operatives or other groups, even if voluntary associations.
- MPs are required to register in the Register of Interests within 28 days, any change in the registrable interests (b), (c) and (f) of the previous paragraph.

In this sense, the revisions proposed by the Commissioner, along with the additional guidelines, amend a number of previous gaps including the recurrence of the reporting and ensuring that declarations are public and easily accessible. However, the proposals do not address other outstanding issues, including:

- The categories of persons whose data are to be disclosed is not broad enough to detect illicit enrichment.
- The scope of the information reported is limited, with intangible assets (cars, antiques, etc.), outside sources and amounts of income not included. This poses limitations for detecting illicit enrichment and potential conflicts of interest, but also misses an opportunity to strengthen the integrity of public officials. The act of completing a disclosure form should help strengthen the integrity of public officials. When filling out a form as part of a conflict-of-interest management regime, an official has to take stock of his or her interests and the interests of his or her family members, evaluate these interests in light of the duties performed and decide whether any additional steps need to be taken to manage conflict of interest (World Bank, OECD, UNODOC, 2020[33]). This initial self-identification and evaluation process can and should generate requests for assistance to those who provide advice and guidance on managing conflicts of interest.
- There is no guidance on the information to be reported that could help MPs clarify what the different categories of private interests mean and what is the scope of their interpretation.
- Third parties should have access to some of the information declared by MPs in a redacted manner, to allow a balance between privacy and access to information.

To that end, the government of Malta could consider expanding the scope of assets and interests to be declared and the persons whose data are to be disclosed in the Code of Ethics for Members of the House of Representatives, as laid out in Chapter 4.

The government of Malta could expand the scope of assets and interests to be declared and broaden the categories of persons whose data are to be disclosed in the new Code of Ethics for Ministers and Parliamentary Secretaries

Similarly to MPs, the Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries require Ministers to register their assets and financial and other interests as well as those of their spouses and/or partners and minor children in the "Register of Interests", which should be open for inspection by the public. Ministers are also expected to record the aforementioned interests upon being appointed to office and submit a copy to the Cabinet Secretary.

The additional guidelines go into more detail and present both the type of assets, financial and other interests that should be registered and the different moments in which interests should be registered by Ministers:

- Newly appointed Ministers are expected to register all their current financial interests within 28 days of taking their Oath of Office.
- Ministers are required to record in the Register of Interests, by 31 March of every calendar year, information pertaining to 31 December of the previous year with respect to: (a) immovable property;[12] (b) shares in companies/business interests; (c) quoted investments, government stocks, treasury bills, deposit certificates and bank balances; (d) positions of director or others; (e) total income; and (f) total sums of outstanding loans.
- Ministers are required to register in the Register of Interests within 28 days, any change in the registrable interests (a), (b) and (c) of the previous paragraph.

In this sense, the Commissioner's proposed revisions and additional guidelines intend to amend previous weakness, including the recurrence of the reporting. However, the proposed revisions do not address other outstanding issues, including:

- The categories of persons whose data are to be disclosed is not broad enough to detect illicit enrichment.
- The scope of the information reported is limited (e.g. intangible assets (cars, antiques, etc.) are not included).
- The scope of information to be declared when changes happen is limited (e.g. Ministers are not expected to record changes to their positions of director or others, their total income nor their outstanding loans should changes occur).
- There is no guidance on the information to be reported that could help Ministers clarify what the different categories of private interests mean and what is the scope of their interpretation.
- Third parties should have access to some of the information declared by MPs in a redacted manner, to allow a balance between privacy and access to information.

To that end, the government of Malta could consider expanding the scope of assets and interests to be declared and the persons whose data are to be disclosed in the new Code of Ethics for Ministers and Parliamentary Secretaries, as laid out in Chapter 4.

3.3.7. Strengthening provisions on receiving and bestowing gifts and other benefits

Conflicts of interest, or the perception of a conflict of interest, can also arise from different forms of gifts and benefits (OECD, 2004[27]). This strategy involves receiving gifts and benefits offered by third parties,

bestowing gifts and benefits to third parties, and creating opportunities for public officials and third parties to engage with each other, for example, by inviting decision makers to participate in seminars and conferences.

The government of Malta could include clear provisions on receiving and giving gifts and other benefits in the new Code of Ethics for Members of the House of Representatives

The Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives introduce provisions on the acceptance and giving of gifts and benefits. These proposals state that MPs are expected not to accept any gifts, benefits or hospitality for themselves, members of their families, or any other persons or bodies. MPs are also expected not to directly or indirectly give any gift to any person or body with a view to influencing that person or body on a matter in which the MPs have an interest. Both provisions indicate that there may be exceptions "in accordance with guidelines set up by the Commissioner".

The additional guidelines proposed by the Commissioner introduce more details on accepting and bestowing gifts and benefits:

- MPs are expected to register in the *Register for Gifts, Benefits and Hospitality* those gifts, benefits and hospitality received by them or their family members or bestowed by them or their family members to third parties if these have a value of more than EUR 250 (each or taken together in a calendar year coming or targeted from/to the same source) and are not aimed to influence the recipient.
- MPs are also expected to register all gifts, benefits or hospitality given by a third party to another third party (this, when an MP decides to pass on all or part of the benefit to a third party with the intention of furthering their personal interest) if the threshold for registration is exceeded.

Together, these proposed provisions aim to prevent gifts, benefits and hospitality from becoming means of undue influence. However, the government of Malta could simplify the provisions in the new Code on receiving and giving gifts and other benefits to encourage compliance, facilitate enforcement and allow public scrutiny. For instance, while the Commissioner's proposed revisions state that MPs are expected not to accept any gifts, benefits or hospitality for themselves, their family members, or any other persons or bodies, unless in accordance with such guidelines as may be set out for this purpose by the Commissioner, the additional guidelines are more straightforward and clarify that MPs are excepted not to accept gifts, benefits or hospitality for themselves, their family members or any other persons or bodies if those "would place them under an obligation in the performance of their duties or may reasonably be seen to do so".

This lack of alignment may lead to confusion. Moreover, by fairly universal social norm, all gifts create some sort of obligation on the part of the recipient – which may start in a verbal expression of gratitude but could include a more significant expression such as changing a decision to benefit the donor (World Bank, OECD, UNODOC, 2020[33]), meaning that all gifts, benefits or hospitality offered to MPs, if accepted, could be considered as placing them under an obligation. To avoid loopholes and encourage transparency, **the government of Malta could include in the new Code a provision which states that "Members are required to register in the Register for Gifts, Benefits and Hospitality all gifts, benefits and hospitality offered to them and their family members – whether they accepted them or not – and given by them and their family members".**

The government of Malta could include a threshold for the value of gifts, benefits and hospitality that can be accepted. This threshold should prevent MPs (and their family members) from accepting gifts and other benefits that might reasonably be seen as attempts to influence them. Indeed, the acceptance of gifts can create a sense of obligation on the part of the recipient, and concerns about the official's impartiality in current or future decisions. As such, good practice suggests regulating

the acceptance of gifts by including limitations on the value of acceptable gifts and/or the disclosure of certain gifts (World Bank, OECD, UNODOC, 2020[33]). Although values for acceptable gifts may differ by country – according to their particular context and risks (see Box 3.14), the chosen value should close the door to any concerns of undue influence.

Box 3.14. Guidelines on accepting gifts and benefits

Spain

The Code of Conduct of the *Cortes Generales* in Spain establishes that the Members shall refrain from accepting, for their own benefit or that of their families, gifts of value, favours, services, invitations or trips that are offered to them for reasons of their position or which could reasonably be perceived as an attempt to influence their conduct as parliamentarians. Gifts with a value greater than EUR 150 are understood as an attempt to influence Members' conduct as parliamentarians.

Gifts and presents received by Members on official trips or when acting on behalf of the Parliament must be delivered to the General Secretariat of the corresponding Chamber, provided that they are offered for reasons of their position and not a personal title and have an estimated value of more than EUR 150. These gifts will be inventoried and published on the website of the corresponding Chamber.

United States

The US House of Representatives Ethics Manual explicitly prohibits gifts offered by lobbyists. A Member, officer or employee of the House of Representatives may not accept any gift from a registered lobbyist, agent or a foreign principal, or a private entity that retains or employs such individuals.

Additionally, Members, officers and employees may accept virtually any gift below USD 50 from other sources, with a limitation of less than USD 100 in gifts from any single source in a calendar year. Invitations to travel, both in their official and personal capacities, are considered as gifts to Members, officers and employees, and are thus subject to the same prohibitions as other gifts.

Portugal

The Government Code of Conduct indicates that Members of Government are expected to refrain from accepting gifts from national or foreign private individuals and organisations and from foreign public legal entities, with a value equal to or greater than EUR 150. This value includes all the offers that come from the same natural or legal person within a calendar year. Whenever the refusal to accept a gift with a value equal to or greater than EUR 150 constitutes or could be interpreted as a breach of inter-institutional respect, namely in the context of relations between States, Ministers may accept the gift on behalf of the State. In such cases, Ministers must deliver the gift to the respective Secretary-General, where there should exist a public access record of gifts.

Sources: (Parliament of Spain, 2020[24]; OECD, 2021[4]; Government of Portugal, 2016[34])

Finally, considering that the acceptance of gifts, benefits and hospitality by a public official can create concern about that official's impartiality (World Bank, OECD, UNODOC, 2020[33]), it may be necessary to further regulate the acceptance of gifts by empowering an independent third party to verify whether the gifts, benefits and hospitality accepted by MPs and their family members may be seen to compromise their personal judgment or integrity. To that end, **the government of Malta could include a provision in the Standards Act that assigns responsibility to the Commissioner for reviewing gifts, benefits and hospitality accepted by MPs and their family members and having a final say on whether they**

should be donated or kept. To do so, the Commissioner could use the information registered by MPs in the *Register for Gifts, Benefits and Hospitality*.

The government of Malta could include clear provisions on receiving and giving gifts and other benefits in the new Code of Ethics for Ministers and Parliamentary Secretaries

The Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries introduce provisions on the acceptance and giving of gifts and benefits. These provisions state that Ministers are expected not to accept any gifts, benefits or hospitality for themselves, their family members or any other persons or body if this would place them under an inappropriate obligation or compromise their judgement, or if it may reasonably be seen as doing so. Ministers are also prohibited from giving any gifts, benefits or hospitality to any person or body with the aim of influencing them on a matter in which they have an interest.

The proposed additional guidelines introduce more details on accepting and bestowing gifts and benefits:

- Ministers are expected to record in the *Register for Gifts, Benefits and Hospitality* those gifts, benefits and hospitality received by them or their family members or bestowed by them or their family members to third parties if these have a value of more than EUR 250 (each or taken together in a calendar year coming or targeted from/to the same source) and are not aimed to influence the recipient.
- Ministers are expected to register all gifts, benefits or hospitality bestowed by a third party to another third party (this, when a Minister decides to pass on all or part of the benefit to a third party with the intention of furthering their personal interest).

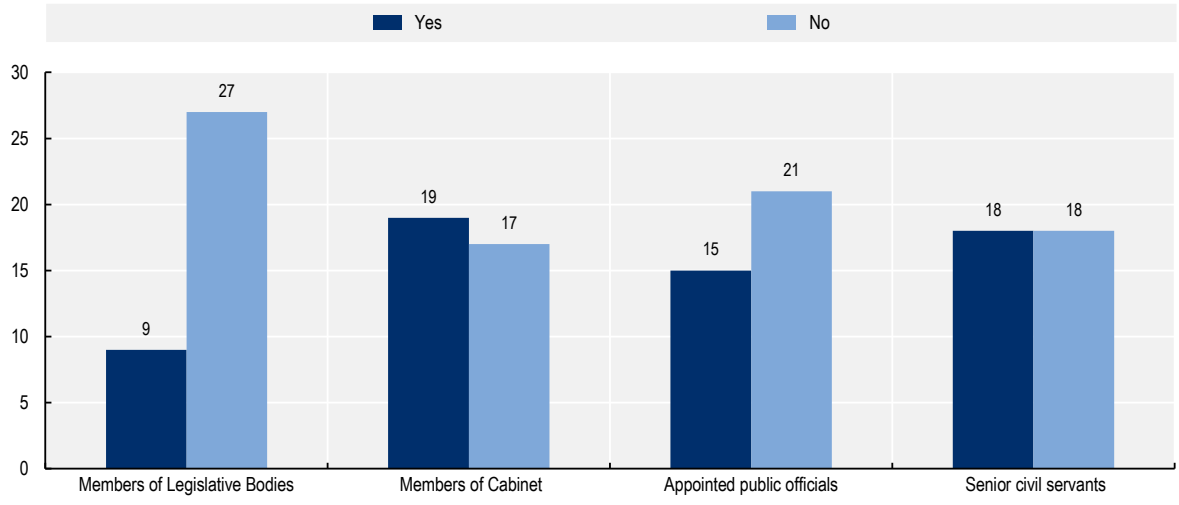
The set of provisions proposed by the Commissioner aim to prevent potential and actual conflicts of interest from arising. However, the government of Malta could simplify the provisions on receiving and bestowing gifts and other benefits to encourage compliance, facilitate enforcement and allow public scrutiny. To do so and further encourage transparency, **the government of Malta could include a provision that states that "Ministers are required to register in the Register for Gifts, Benefits and Hospitality all gifts, benefits and hospitality offered to them and their family members – whether they accepted them or not – and bestowed by them and their family members"**.

Additionally, as for MPs, **the government of Malta could set a threshold for the value of acceptable gifts to prevent Ministers (and their family members) from accepting gifts that might reasonably be seen as aimed to influence them**. Finally, an amendment to the Standards Act could assign responsibility to **the Commissioner for reviewing gifts, benefits and hospitality accepted by Ministers and their family members and having a final say on whether they should be donated or kept**.

3.3.8. Strengthening provisions on post-public employment

A key conflict-of-interest risk is the revolving-door – i.e. the movement between the public and private sectors. The revolving door can undermine the integrity of the decision-making process, exposing legislators to the risk of making decisions in the interest of future private employers before leaving public office or using confidential information obtained in their role as public officials for their personal gain or for the benefit of their new employee once in the private sector. Establishing rules of procedure for joining the public sector from the private sector and vice versa, and setting proportionate cooling-off periods can help prevent potential and real conflicts of interest (OECD, 2021[4]). Aware of the conflict-of-interest risks that the revolving door poses to the integrity of the decision-making process, OECD countries have been establishing cooling-off periods after leaving office in their national regulation for different categories of public officials (see Figure 3.1).

Figure 3.1. In your country, is there a national regulation establishing a cooling-off period after leaving office for different categories of public officials?



Note: data not available for the United Kingdom and for the United States at the national level.
Source: OECD PMR Economy Wide Database 2018.

The government of Malta could include post-public employment restrictions for MPs in the new Code of Ethics for Members of the House of Representatives

The fact that MPs in Malta are part-time, with many retaining secondary employment while serving in office, presents a particular challenge for post-public employment measures. Nevertheless, provisions could be introduced in the Code of Ethics for Members of the House of Representatives to address potential conflict-of-interest situations emerging from post-public employment. First, as noted in the section on proper use of information, **the government of Malta could include a provision in the new Code of Ethics for Members of the House of Representatives prohibiting MPs from using or disclosing confidential information after leaving office,** as the first step to mitigate post-public employment risks of undue influence.

Second, in the specific case of lobbying, the Commissioner's proposals on lobbying include a one-year ban on MP's for carrying out lobbying activities after their term ends. To ensure coherence with other integrity standards that apply to MPs, **the government of Malta could include this provision in the new Code of Ethics for Members of the House of Representatives**. The provision could state that "Members are not permitted to carry out lobbying activities for a period of one year after they cease to hold office". Such a restriction is aligned with international good practice that regulates movement between the public and private sectors by establishing cooling-off period for elected officials in at-risk positions, such as MPs – for instance, Canada, Israel, Korea, Latvia, Lithuania, the Slovak Republic, Slovenia and the United States have implemented cooling-off period for members of their legislative bodies (see Table 3.4).

Table 3.4. Duration of cooling-off period for members of the legislative branch in OECD countries

Country	Duration of the cooling-off period for members of the Legislative branch
Canada	Five years for parliamentarians
Israel	One year for Members of the Knesset
Korea	Two years for members of the Legislative branch
Latvia	Two years for members of the Legislative branch
Lithuania	One year for members of legislative bodies
Slovak Republic	Two years for members of the Legislative branch
Slovenia	One to two years for members of parliament (depending on the activity)
United States	One year for members of the Legislative branch

Source: (OECD, 2021[4]).

The government of Malta could include an obligation for Ministers to inform the Commissioner about their post-public employment plans and receive his clearance in the new Code of Ethics for Ministers and Parliamentary Secretaries

The Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries introduces some restrictions on activities after departure from office and cooling-off periods. In particular, the following provisions are proposed:

- For a period of up to three years following their resignation or the termination of their appointment, Ministers must not have a relationship of profit with any private enterprise or non-government body with which they would have dealt while serving as Ministers during the period of five years immediately preceding their resignation or the termination of their appointment (section 3.10).
- For a period of three years following their resignation or the termination of their appointment, lobby Government (section 3.11).

Both the three-year ban to lobby government after Ministers' resignation or the termination of their appointment and the three-year ban to have a relationship of profit with a private enterprise or non-government body with which Ministers had a relationship while in office aligns with good practices that aim to regulate movement between the public and private sectors. Indeed, several OECD countries prohibit Ministers from engaging in lobbying activities for between 1 to 5 years after they cease to hold office, while Spain offers an example of a two-year ban on Ministers to provide services in private entities that have been affected by decisions in which they participated (see Box 3.15). **To that end, the government of Malta could include these two provisions in the new Code of Ethics for Ministers and Parliamentary Secretaries**.

Box 3.15. Restrictions on post-public employment for Ministers

Ban on lobbying government

In **Australia**, the Code of Conduct for Ministers requires Ministers to undertake that, for an eighteen month period after ceasing to be a Minister, they will not lobby, advocate or have business meetings with members of the government, parliament, public service or defence force on any matters on which they have had official dealings as Minister in their last eighteen months in office.

In **Canada**, the Canadian Lobbying Act prohibits former designated public office holders from engaging in any consultant lobbying activities during the five-year period after they cease to hold office. Similarly, former designated public office holders who are employed by an organisation are also prohibited from engaging in any in-house lobbying activities for this same five-year period.

In **Ireland**, the Irish Lobbying Act prohibits Ministers from (a) carrying on lobbying activities in circumstances to which this section applies, or (b) being employed by, or provide services to, a person carrying on lobbying activities in such circumstances, for one year after ceasing to be a Minister, except with the consent of the Commission.

In the **Netherlands**, a circular adopted in October 2020 – "Lobbying ban on former ministries" – prohibits ministers and any officials employed in ministries to take up employment as lobbyists, mediators or intermediaries in business contacts with a ministry representing a policy area for which they previously had public responsibilities. The length of the lobbying ban is two years.

Ban on having a relationship of profit with private enterprises

In **Spain**, Article 15 of Law 3/2015 prohibits senior officials to provide services in private entities that have been affected by decisions in which they participated, during the two years after they cease to hold office. This prohibition extends both to the affected private entities and to those that belong to the same corporate group.

Sources: (Australian Government, 2022[20]; Government of Ireland, 2015[35]; OECD, 2021[4]; Government of Spain, 2015[36])

Moreover, the additional guidelines include a provision that serving or former Ministers may request a ruling from the Commissioner to determine whether entering into a particular relationship of profit after departure from office would constitute a breach of the Code. However, to effectively implement cooling-off periods and facilitate monitoring, some countries require public officials to disclose future employment plans and seek approval from the dedicated advisory body before taking new jobs (see Box 3.16). To that end, the government of Malta could include a provision stating that "**Ministers shall inform the Commissioner for Standards in Public Life about their post-public employment plans and receive clearance prior to taking up any post-public employment activity".** Such a provision will support awareness raising about potential conflicts of interest as well as to facilitate monitoring and enforcement.

Box 3.16. Control of post-public employment restrictions in other jurisdictions

The new Code of Conduct for Members of the **European Commission** adopted in 2018 sets clearer rules and higher ethical standards and introduces greater transparency in a number of areas. Regarding post-office activities, the new Code of Conduct extends the "cooling-off" period from currently 18 months to two years for former Commissioners and to three years for the President of the Commission. During the cooling-off period, former Members of the Commission need to inform the Commission before taking up a new job and are also subject to restrictions in certain activities, such as lobbying members or staff of the Commission.

In **France**, the High Authority for Transparency in Public Life monitors the revolving door of certain public officials and civil servants between the public and private sectors. According to article 23 of Law 2013-907, for a period of three years, former ministers, local executive chairmen and members of an Independent Administrative Authority (AAI) / Independent Public Authorities (API) must refer to the High Authority to examine whether the new private activities that they plan to exercise are compatible with their former functions. The High Authority verifies whether the envisaged activity poses difficulties of a criminal or ethical nature. When it identifies such difficulties, it can issue an opinion of incompatibility, which prevents the person from carrying out the envisaged activity, or of compatibility with reservations, in which it imposes precautionary measures likely to prevent the criminal and ethical risk.

Sources: (High Authority for Transparency in Public Life, n.d.[37]; European Commission, 2018[38]).

Additionally, to alleviate the burden that post-public employment restrictions may have on Ministers and Parliamentary Secretaries, **the Ministry for Justice could introduce a provision in the new Code of Ethics that requires Ministers to be provided a stipend — a proportionate arrangement such as indemnities, allowances or compensations involving all or part of the former salary – for a proportion of the three-year cooling-off period introduced in the proposed Code of Ethics.** Indeed, in cases where public officials who choose to seek private employment face a period of inactivity as a result of the cooling-off restrictions, some OECD countries provide proportionate arrangements to public officials. For instance, in France, members of the government receive an allowance for three months after termination of their public functions; the allowance is equivalent to their former monthly salary if they filed their end-of-function asset declaration to the relevant authority (OECD, 2021[4]).

To implement the post-public employment measures, the Commissioner could communicate post-public employment restrictions to all affected parties and the government of Malta could include relevant sanctions for breaches of the measures in the Standards Act

To facilitate implementation of cooling-off periods, public officials and prospective employers need to understand and follow the post-public employment rules (World Bank, OECD, UNODOC, 2020[33]). In Malta, efforts to strengthen the post-public employment system could be further enhanced by implementing communication actions and strengthening the enforcement system.

The **Commissioner could develop and deliver training on post-public employment restrictions for MPs, Ministers and Parliamentary Secretaries**. The training material could clarify what the post-public framework entails (e.g. what the rules are, to whom they apply and for how long, and sanctions for breaches), and why post-public employment measures are a key tool for preventing conflict of interest and corruption. Australia's Public Service Commission has prepared guidance on post-separation employment to support employees who are leaving the public service in understanding what their obligations are to prevent conflict-of-interest risks associated with post-public employment (Australian Public Service Comission, 2018[29]).

Moreover, to support the private sector in understanding and upholding the rules on post-public employment, the **Commissioner could develop a guidance document based on the training that explains the post-public employment framework, consequences for private sector employers for breaching the rules, and why such rules uphold the public interest.** The guidance could be shared with relevant chambers of commerce and industry associations.

While awareness raising and capacity building help facilitate observance of the rules, specific sanctions for breaches are needed to strengthen deterrence and support enforcement of the rules. Under the current system, the Commissioner is empowered to investigate and recommend sanctions to the Committee for Standards in cases of breaches of the Code of Ethics, including of post-public employment restrictions. However, **the government of Malta could further strengthen this enforcement function by including additional sanctions in the Standards Act in cases of breaches of post-public employment restrictions**. Potential sanctions for violating post-public employment restrictions could include reduction on the public pension of public officials breaching post-public employment restrictions and/or blacklisting the private sector employer from government contracts for a specific period of time.

3.3.9. Clarifying enforcement mechanisms for the respective Codes of Ethics

Enforcement mechanisms foster effective accountability, and are the principal means by which societies can ensure compliance with integrity standards and deter misconduct. Enforcing integrity rules and standards promote confidence in public governance by demonstrating that governments are committed to upholding standards and that public officials cannot act with impunity.

The government of Malta could clarify in the new Code of Ethics for Members of the House of Representatives the applicable enforcement mechanisms in case of breaches of the code

The Commissioner's proposed revisions to the Code of Ethics for Ministers and Parliamentary Secretaries clarifies the enforcement mechanisms in place. Indeed, Section 1.4 states that the Commissioner is responsible for investigating cases of breaches of the Code, and that the Committee for Standards in Public Life is responsible for deciding on them as provided for in the Standards Act, without prejudice to the powers and prerogatives of the Prime Minister in respect of Cabinet. **The government of Malta could include this proposed revision in the new Code of Ethics for Ministers and Parliamentary Secretaries.**

However, the Commissioner's proposed revisions to the Code of Ethics for Members of the House of Representatives does not include an equivalent provision clarifying the enforcement mechanisms that would apply in case of a breach. Although the Standards Act clearly states that the Commissioner is responsible for investigating cases of breaches of the Code (Article 13(1) (b)) while the Committee for Standards in Public Life decides on them and on the corresponding sanction (Articles 27(3) and 28), having these provisions in one place can help public officials understand the consequences of breaching the Code, encouraging transparency as well as compliance with public integrity rules. To that end, **the government of Malta could clarify the applicable enforcement mechanisms in the case of breaches in the new Code of Ethics for Members of the House of Representatives**. This could be done by including a short and clear subsection "Enforcement" within the introductory section that clarifies the responsibilities of the Commissioner and the Committee for Standards in Public Life in terms of investigating and deciding on potential breaches to the Code.

3.4. Supporting implementation of the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries

Developing a code of ethics is not an end in itself. Effective implementation requires raising awareness about the standards in the code, building capacity to implement the standards, and ensuring channels for guidance are available when public officials have doubts or questions about applying the standards in the course of their work (OECD, 2018[3]).

Awareness raising can take the form of internal information portals, e-mails, discussion forums, and electronic newsletters. Ideally, these platforms should provide a fast and two-way communication, although the simple action of diffusing integrity standards may have an impact if it is embedded within the broader integrity system (OECD, 2018[3]). Capacity building can take the form of lectures, online courses, coaching and mentoring, and ethical dilemma training. However, research has shown that training activities should not only focus on familiarising employees with the relevant rules and laws, so as to minimise the risk of engaging in unethical behaviours, but also provide decision tools to manage challenging ethical dilemmas (Menzel, 2015[39]). Channels of guidance may be institutionalised in different ways: within a central government body, through an independent or semi-independent specialised body, or through integrity units or advisors integrated within line ministries. Regardless of the institutional makeup, the purpose of having such channels is to support public officials in understanding the rules and ethical principles that should guide them (OECD, 2020[1]).

3.4.1. Strengthening awareness raising, capacity building and guidance

In Malta, measures to raise awareness on integrity standards amongst elected and appointed officials have been growing since the introduction of the Commissioner and his office in 2018. Awareness raising actions have included issuing guidelines on the proper use of public funds for advertising and promotional material and having direct communication with MPs on their declarations of assets. However, more is needed to develop an open organisational culture, effectively build capacity and systematically raise awareness amongst elected and appointed officials on key integrity areas, including conflicts of interest (including those raised by outside employment) and acceptance of gifts (GRECO, 2015[6]; GRECO, 2019[7]).

The Commissioner could consider developing and implementing systematic awareness-raising measures for MPs, Ministers and Parliamentary Secretaries

To further strengthen awareness raising and capacity building, **the Commissioner could develop and systematically implement integrity awareness-raising measures for MPs, Ministers and Parliamentary Secretaries**. This may include sending MPs, Ministers and Parliamentary Secretaries a copy of their corresponding code of ethics and presenting the Codes content upon assuming the exercise of their duties, as well as asking them to sign, upon entry, a statement that they have read, understood and agree to adhere to their code of ethics. Moreover, **the Commissioner could also consider approaches inspired by behavioural insights to promote ideas and discussions on integrity, such as e-mail reminders or references to core public values in the workplace** (see Box 3.17).

Box 3.17. Moral reminders

One straightforward strategy to induce ethical behaviour is to remind decision makers of moral standards. In **Mexico**, the Public Function Secretary in co-operation with the research centre CIDE applied behavioural insights to their gift registration policy, in order to enhance compliance. The Secretary sent out reminder emails to public employees required to register their received gifts. They randomly varied the text of the message. Five different types of reminder messages were sent:

- Legal: *It is your legal obligation to register received gifts.*
- Honesty: *We recognise your honesty as a public official. You are required to register gifts. Show your honesty.*
- Impartiality: *Receiving gifts can compromise your impartiality. When you receive a gift, register it.*
- Social: *More than 1 000 registrations per year are made by your colleagues. Do the same!*
- Sanction: *If you receive a gift and you do not inform us, someone else might. Don't get yourself punished. Register your gifts.*

The study then observed the number of gifts registered around the Christmas period (peak season for gifts), and compared this with previous years and against a control group who did not receive any of the messages. The study demonstrated that receiving a reminder email increased the number of gifts registered. However, some messages were more effective than others: reminding public officials of their legal obligations and appealing to their impartiality and honesty encouraged more people to register gifts than referring to sanctions or registrations made by colleagues.

In **New Zealand**, the poster of the Standards of Integrity and Conduct, which is displayed both within public organisations and publicly for citizens, reminds public officials of what the values mean by providing concrete examples.

Note: To access the Standards of Integrity and Conduct: https://www.publicservice.govt.nz/resources/code/.
Source: (OECD, 2018[9]).

The Commissioner could consider developing and implementing a series of trainings for MPs, Ministers and Parliamentary Secretaries, which could focus on the core values and standards of conduct outlined in their respective codes of ethics

In Malta, discussions with key stakeholders highlighted the need to continue strengthening integrity awareness and building capacities amongst those covered by the Standards Act. Indeed, stakeholders agreed on the lack of consensus on the core integrity values and standards in Malta and the difficulties to translate such standards into day-to-day actions. These challenges demonstrate the need to develop a more proactive role of the Commissioner and his office, including developing and implementing integrity trainings that help building awareness and capacities on public integrity.

The **Commissioner could consider providing MPs, Ministers and Parliamentary Secretaries induction training on the standards of conduct established by their respective Code of Ethics.** Induction training provides an opportunity to set the tone regarding integrity from the beginning of the working relationship, and familiarise public officials with the specific conduct and behaviour that is expected from them in their day-to-day activities (OECD, 2018[3]). For instance, after the 2019 General Election, the UK Parliamentary Commissioner for Standards organised workshops to introduce the values, the Code of

Conduct and the Guide to the Rules of the Parliament and invited each of the new 140 MPs to an individual briefing to advise them on, amongst others, the Code of Conduct (UK House of Commons, 2020[40]).

Additionally, for sustainable capacity building, training needs to be repeated over time, and may be adjusted to the needs of specific target groups such as at-risk positions or management (OECD, 2018[9]). Although ethical training may include lectures, online courses, coaching and mentoring, research shows that interactive components where participants are confronted with realistic situations are more likely to generate a personal mental commitment to integrity than mere presentations by trainers (OECD, 2018[9]). In this sense, **the Commissioner could consider developing and implementing 'ethical dilemma' training, whereby participants are presented with practical situations in which they face an ethical choice with no clear path to resolving the situation, and discuss in small groups what actions they would take to resolve those dilemmas**. Examples can be found in other jurisdictions, where ethical dilemma training has been used to support delivery of integrity training to public officials (see Box 3.18).

Box 3.18. Training to guide public officials in handling ethical dilemmas

Flemish Region, Belgium

To raise awareness and capacities on public integrity, the Agency for Government Personnel of the Flemish Region developed a series of guidelines for integrity actors to discuss ethical dilemmas and organise ethical dilemma training among employees within their own departments or agencies. Ethical dilemma training provides participants with practical situations in which they face an ethical choice with no clear path to resolving the situation in a good, moral way. In such training, the facilitator encourages discussion between the participants about how to resolve the situation and helps them explore the different choices. The focus of the ethical dilemma training is the debate rather than possible solutions, as the objective is to help participants identify how different values might act in opposition to one other.

Examples of ethical dilemma situations include the following:

Situation 1: "*I am a policy officer. The Minister needs a briefing within the next hour. I have been working on this matter for the last two weeks and should have already been finished. However, the information is not complete. I am still waiting for a contribution from another department to verify the data. My boss asks me to submit the briefing urgently as the Chief of Cabinet has already called. What should I do?*

1. *I send the briefing and do not mention the missing information.*
2. *I send the briefing, but mention that no decisions should be made based on it.*
3. *I do not send the briefing. If anyone asks about it, I will blame the other department.*
4. *I do not send the information and come up with a pretext, and promise to send the briefing tomorrow."*

Situation 2: "*I am head of a department. My senior official asks me to carry out an interesting assignment that will help my department score well. We need that after the recent blunders of my department. The content of that assignment actually belongs to another department. What am I doing?*

1. *After I have notified the other department of the assignment, my department will carry out the job.*
2. *I inform the other department that I have received the assignment and ask them for input.*
3. *I refuse the assignment because I don't think I can do it in front of the other department.*
4. *I carry out the assignment and do not inform the other department myself: after all, this is the task of my senior official."*

Source: (Flemish government, n.d.[41]) (unofficial English translation, original in Dutch).

The Commissioner could strengthen proactive guidance for MPs, Ministers and Parliamentary Secretaries on implementing the standards of the Codes of Ethics

To date, the Commissioner has focused on giving recommendations on whether an action or conduct is prohibited by the applicable Code of Ethics or by any other particular statutory if a person subject to the Act requests such an opinion ('negative clearance' role). However, the Commissioner could also provide proactive guidance to support those covered by the Standards Act, particularly – but not exclusively – if a new version of the codes of ethics for MPs, Ministers and Parliamentary Secretaries is approved.

Indeed, although integrity is ultimately the responsibility of all public officials, having a dedicated integrity body in place to support public officials in understanding the rules and ethical principles and providing advice on solving ethical dilemmas is fundamental for shaping integrity (OECD, 2020[1]). To that end, **the Commissioner could prepare guidance on the values and behaviours expected by elected and appointed officials regarding the following key integrity issues:**

- on conflict-of-interest management measures;
- on receiving and bestowing gifts;
- on post-public employment; and
- on any other key integrity issue as it comes up.

Moreover, the Commissioner and his office could provide regular communications and guidelines drawn from advice requested by public officials over a period of time ('negative clearance') or from recurring systemic or sector-specific issues (e.g. parliamentary ethics, proper use of publicly provided resources, etc.). Such regular communications and guidelines should always be done respecting confidentiality of the exchanges between the Commissioner and those requesting advice.

3.5. Summary of recommendations

The following provides a detailed summary of the recommendations to the government of Malta for preparing a new Code of Ethics for Members of the House of Representatives, as well as a new Code of Ethics for Ministers and Parliamentary Secretaries. The recommendations contained herein mirror those contained in the analysis above.

Recommendations are also provided for the Commissioner for Standards in Public Life concerning the accompanying guidelines to support understanding and implementation of the new Codes.

3.5.1. Recommendations to the government of Malta on the current Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries

Issue	Recommendations
Code of Ethics for Members of the House of Representatives	To create a comprehensive integrity framework for MPs, the government of Malta could prepare a new Code of Ethics for Members of the House of Representatives that replaces the current Code in Schedule I of the Standards in Public Life Act, and table it in the House of Representatives for approval. The new Code prepared by the government could build on the Commissioner's proposed revisions.
Code of Ethics for Ministers and Parliamentary Secretaries	To create a comprehensive integrity framework for Ministers and Parliamentary Secretaries, the government of Malta could prepare a new Code of Ethics for Ministers and Parliamentary Secretaries that replaces the current Code in Schedule II of the Standards in Public Life Act and table it in the House of Representatives for approval. The new Code prepared by the government could build on the Commissioner's proposed revisions.

3.5.2. Recommendations to the government of Malta on the new Code of Ethics for Members of the House of Representatives

Issue	Recommendations
Including clear and common definitions	The government of Malta could include all relevant key terms and definitions (e.g. abuse of power and privileges, gift, benefit, hospitality, undue influence, misconduct, family members, conflict of interest, personal interest, lobbying, and lobbyists) in the new Code of Ethics for Members of the House of Representatives.
Assigning memorable and meaningful values	The government of Malta could include key values in the new Code of Ethics for Members of the House of Representatives by means of a participatory process with key stakeholders.
	If values such as sense of service, diligence and leadership, as proposed by the Commissioner, are included in the new Code, the government of Malta could consider clarifying the existing definitions.
Ensuring proper use of information	The government of Malta could include clear provisions on the proper use of information in the new Code of Ethics for Members of the House of Representatives. The provisions could state that: • "Members shall be truthful and transparent with Parliament and the public, and shall only withhold information when its disclosure would be prejudicial to the national interest. Members should correct immediately any incorrect information given." • "Information received in confidence in the course of a Member's duties shall be used only in connection with those duties and never for personal gain or to advantage or disadvantage any person or persons." • "Members shall not disclose and make use of confidential information even after leaving office."
Engaging with lobbyists and third parties	The Government of Malta could include provisions on the interactions between MPs and third parties/lobbyists in a specific section on lobbying in the new Code of Ethics for Members of the House of Representatives, such as: • "Lobbying is a legitimate activity as long as it is carried out with transparency and integrity. Lobbying is a natural and beneficial part of the democratic process, as it allows different interest groups to inform public policy and decision making, but risks emerge when activities take place without due regard for transparency or integrity." • "Members shall treat lobbyists and third parties equally by granting them fair and equitable access." • "Members shall check that the lobbyist or third party is registered or intends to register in the Register for Lobbyists within the specified deadlines, and report violations to the Commissioner for Standards in Public Life." • "Members shall record all relevant communications (including meetings) with lobbyists/third parties in the Transparency Register. Providing an adequate degree of transparency on the actors who are influencing government policies or engaging in lobbying is a key element to ensure that public officials, citizens and business can obtain sufficient information for the public scrutiny of the public decision-making process."
	The government of Malta could include a provision reminding MPs that while lobbying is legitimate, there is a risk that lobbyists and/or third parties may abuse this legitimate process by providing unreliable or inaccurate information.

Managing and preventing conflicts of interest	The government of Malta could include a comprehensive framework on managing and preventing conflicts of interest in the new Code of Ethics for Members of the House of Representatives, with provisions such as:
	• a section on incompatibilities that sets out positions and activities that are incompatible with the role of MP, including:
	  ○ not acting as a lobbyist.
	  ○ not holding secondary employment in government departments, boards or commissions.
	  ○ not participating in their private capacity in any role that would conflict with their duties as a public official.
	  ○ not entering into a contract or employment relationship with their spouse, partner, children, siblings or parents in the exercise of their official duties.
	  ○ not having any form of private interest or partnership in a corporation that is party to a contract with a public sector entity.
	• not holding any asset whose value may directly or indirectly be affected by government decisions or policy.
	  ○ a section detailing when and to whom MPs should declare their conflicts of interest, including:
	  ○ "Members shall declare private interests to the Commissioner for Standards in Public Life that could lead to an actual or potential conflict (i) upon taking up duty as a Member of the House of Representatives and (ii) at the first opportunity thereafter when they realise there is an actual or potential conflict of interest."
	  ○ "Members shall take the necessary measure (removal, recusal or restriction, reassignment or resignation) to manage actual or potential conflicts of interest."

	The government of Malta could consider amendments to the Constitution so as to prohibit elected officials from obtaining secondary employment in all public functions.
Declaring assets and interests	The government of Malta could expand the scope of assets and interests to be declared and broaden the categories of persons whose data are to be disclosed in the new Code of Ethics for Members of the House of Representatives. Detailed recommendations will be provided in the forthcoming OECD report on asset and interest declarations.
Receiving and bestowing gifts and other benefits	The government of Malta could include a clear provision on receiving and giving gifts and other benefits in the new Code of Ethics for Members of the House of Representatives. The provision could state that "Members are required to register in the Register for Gifts, Benefits and Hospitality all gifts, benefits and hospitality offered to them and their family members whether they accepted them or not and given by them and their family members."
	The government of Malta could include a threshold for the value of gifts, benefits and hospitality that can be accepted.
	The government of Malta could include a provision in the Standards Act that assigns the responsibility to the Commissioner for Standards in Public Life for reviewing gifts, benefits and hospitality accepted by MPs and their family members and having a final say on whether they should be donated or kept.
Managing post-public employment	The government of Malta could include post-public employment restrictions for MPs in the new Code of Ethics as follows: • A provision that prohibits MPs from using or disclosing confidential information after leaving office. • A provision stating that "Members are not permitted to carry out lobbying activities for a period of one year after they cease to hold office".
	The government of Malta could further strengthen the enforcement function by including additional sanctions in the Standards in Public Life Act in case of breaches of post-public employment restrictions.
Enforcing the code	The government of Malta could clarify the new Code of Ethics for Members of the House of Representatives the applicable enforcement mechanisms in case of breaches of the code. This could be done by including a short and clear subsection "Enforcement" within the introductory section that clarifies the responsibilities of the Commissioner and the Committee for Standards in Public Life in terms of investigating and deciding on potential breaches to the Code.

3.5.3. Recommendations to the government of Malta on the new Code of Ethics for Ministers and Parliamentary Secretaries

Issue	Recommendations
Including clear and common definitions	The government of Malta could include all relevant key terms and definitions (e.g. abuse of power and privileges, gift, benefit, hospitality, undue influence, misconduct, family members, conflict of interest, personal interest, lobbying, and lobbyists) in the new Code of Ethics for Ministers and Parliamentary Secretaries.
Assigning memorable and meaningful values	The government of Malta could include key values in the new Code of Ethics for Ministers and Parliamentary Secretaries, by means of a participatory process with key stakeholders.
	If values such as sense of service, diligence and leadership, as proposed by the Commissioner, are included in the new Code, the government of Malta could consider clarifying the existing definitions.
Ensuring proper use of information	The government of Malta could include the Commissioner's proposed revisions on use of information, as set out in Section 7, in the new Code of Ethics for Ministers and Parliamentary Secretaries.
Engaging with lobbyists and third parties	The government of Malta could include provisions on the interactions between Ministers and third parties/lobbyists in the new Code of Ethics for Ministers and Parliamentary Secretaries, such as: • "Lobbying is a legitimate activity as long as it is carried out with transparency and integrity. It is a natural and

	beneficial part of the democratic process, as it allows different interest groups to inform public policy and decision making, but risks emerge when activities take place without due regard for transparency or integrity." • "Ministers shall treat lobbyists and third parties equally by granting them fair and equitable access." • "Ministers shall check that the lobbyist or third party is registered or intends to register in the Register for Lobbyists within the specified deadlines, and report violations to the Commissioner for Standards in Public Life."
	The government of Malta could include a provision detailing the risk that lobbyists and/or third parties may abuse the lobbying process by providing unreliable or inaccurate information, and requiring Ministers to ensure that information provided by lobbyists/third parties is accurate.
Managing and preventing conflicts of interest	The government of Malta could include a comprehensive framework on managing and preventing conflicts of interest in the new Code of Ethics for Ministers and Parliamentary Secretaries as laid out in Section 3 of the Commissioner's proposed revisions, with several revisions as detailed in the following recommendations.
	The government of Malta could include a section on incompatibilities in the new Code of Ethics for Ministers and Parliamentary Secretaries, including: • Not continuing their private work, unless under exceptional cases where the national interest so requires. • Not acting as a lobbyist, paid or otherwise. • Not entering into a contract or employment relationship with their spouse, partner, children, siblings or parents in the exercise of their official duties. • Not having any form of private interest or partnership in a private corporation that is party to a contract with a public sector entity. • Not holding any asset whose value may directly or indirectly be affected by government decisions or policy.
	The government of Malta could clarify the definition on conflict of interest in section 3.1 of the Commissioner's proposed revisions to strengthen understanding of personal interest. In particular, the government of Malta could revise the definition to clarify that (a) personal interests may include legitimate private-capacity interests which (b) cover financial interests, personal affiliations and associations, and family interests.
Declaring assets and interests	The government of Malta could expand the scope of assets and interests to be declared and broaden the categories of persons whose data are to be disclosed in the new Code of Ethics for Ministers and Parliamentary Secretaries. Detailed recommendations will be provided in the forthcoming OECD report on asset and interest declarations.
Receiving and bestowing gifts and other benefits	The government of Malta could include a clear provision on receiving and giving gifts and other benefits in the new Code of Ethics for Ministers and Parliamentary Secretaries. The provision could state that "Ministers are required to register in the Register for Gifts, Benefits and Hospitality all gifts, benefits and hospitality offered to them and their family members whether they accepted them or not and given by them and their family members".
	The government of Malta could set a threshold for the value of acceptable gifts to prevent Ministers (and their family members) from accepting gifts that might reasonably be seen as aimed to influence them.
	The government of Malta could amend the Standards Act to assign responsibility to the Commissioner for Standards in Public Life for reviewing gifts, benefits and hospitality accepted by Ministers and their family members and having a final say on whether they should be donated or kept.
Managing post-public employment	The government of Malta could include provisions 3.10 and 3.11 as proposed in the Commissioner's revisions in the new Code of Ethics for Ministers and Parliamentary Secretaries.
	The government of Malta could include a provision stating that Ministers shall inform the Commissioner for Standards in Public Life about their post-public employment plans and receive clearance prior to taking up any post-public employment activity.
	The government of Malta could introduce a provision in the Code of Ethics that requires Ministers to be provided a stipend for a proportion of the three-year cooling-off period introduced in the proposed Code of Ethics.
	The government of Malta could further strengthen the enforcement function by including additional sanctions in the Standards Act in cases of breaches of post-public employment restrictions.
Enforcing the code	The government of Malta could include the proposed revision by the Commissioner, as laid out in Section 1.4, in the new Code of Ethics for Ministers and Parliamentary Secretaries.

3.5.4. Recommendations to the Commissioner for Standards in Public Life on the Guidelines to accompany the new Code of Ethics for Members of the House of Representatives

Issue	Recommendations
Memorable and meaningful values	To help MPs better understand how public values are applied in their daily choices and actions, the Commissioner could complement the values laid out in the Code of Ethics for the Members of the House of Representatives by including examples of more concrete expected behaviours in an accompanying handbook.
Engagement with lobbyists and third parties	The Commissioner could strengthen the additional guidelines for MPs by adding a specific section on engaging with lobbyists and third parties with information on (i) the registration of relevant communications on the Transparency Register and (ii) on the assessment of the reliability of information received from lobbyists/third parties.

Managing and preventing conflicts of interest	The Commissioner could revise the guidelines to state that Members are required to declare interests upon taking up duties and at the first opportunity thereafter.
	The Commissioner could include in the guidelines a non-exhaustive list of examples of situations where MPs could encounter a conflict of interest.
	The Commissioner could include in the guidelines a clarification that conflicts of interest can be real, potential, or perceived.
	The Commissioner could include in Section 3.9 of the guidelines a non-exhaustive list of examples of non-financial interests, including secondary employment, personal affiliations and associations, and family interests.
	The Commissioner could update the guidelines to include guidance on the types of measures available to MPs to prevent and manage conflict-of-interest situations, to align with the code.
	The Commissioner could keep a record both declared conflicts of interest and the measures taken in the specific personnel file of the MP kept in the Commissioner's office.
Post-public employment	The Commissioner could develop and deliver training on post-public employment restrictions for MPs.
	The Commissioner could develop a guidance document based on the training for MPs that explains the post-public employment framework, consequences for private sector employers for breaching the rules, and why such rules uphold the public interest.

3.5.5. Recommendations to the Commissioner for Standards in Public Life on the Guidelines to accompany the new Code of Ethics for Ministers and Parliamentary Secretaries

Issue	Recommendations
Memorable and meaningful values	The Commissioner could elaborate concrete examples in the form of a handbook to help Ministers better understand how public values translate into their daily choices and actions, and how they are expected to act under specific circumstances.
Engagement with lobbyists and third parties	The Commissioner could strengthen the additional guidelines for Ministers by clarifying the information included in Part 1 in order to ensure coherence with the final Regulation of Lobbying Act.
	The Commissioner could strengthen the additional guidelines for Ministers by adding in Part 1 more information on the assessment of the reliability of information received from lobbyists/third parties and including guidelines on the assessment of the reliability of information received from lobbyists/third parties.
Managing and preventing conflicts of interest	The Commissioner could strengthen the guidelines for Ministers to facilitate implementation of the Code, in particular by strengthening the following areas: • clarifying that conflicts of interest can be real, potential or perceived. • including examples of the types of private interests and situations that could lead to a conflict of interest. • including examples of the types of measures Ministers could take to manage or resolve a conflict of interest.
Post-public employment	The Commissioner could develop and deliver training on post-public employment restrictions for Ministers and Parliamentary Secretaries.
	The Commissioner could develop a guidance document based on the training for Ministers and Parliamentary Secretaries that explains the post-public employment framework, consequences for private sector employers for breaching the rules, and why such rules uphold the public interest.

3.5.6. Recommendations to the Commissioner for Standards in Public Life to support implementation of the new Codes of Ethics

Issue	Recommendations
Awareness raising	The Commissioner could develop and systematically implement integrity awareness-raising measures for MPs, Ministers and Parliamentary Secretaries.
Capacity building	The Commissioner could provide MPs, Ministers and Parliamentary Secretaries induction training on the standards of conduct established by their respective Code of Ethics.
	The Commissioner could consider developing and implementing ethical dilemma training, whereby participants are presented with practical situations in which they face an ethical choice with no clear path to resolving the situation, and discuss in small groups what actions they would take to resolve those dilemmas.
Guidance	The Commissioner could prepare guidance on the values and behaviours expected by elected and appointed officials regarding the following key integrity issues: • on conflict-of-interest management measures. • on receiving and bestowing gifts. • on post-public employment. • on any other key integrity issue as it comes up.

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Notes

[1] The gaps concerning registration of assets are explored in chapter 4.

[2] Article 13(g) of the Standards Act empowers the Commissioner for Standards in Public Life to make recommendations for the improvement of any code of ethics applicable to persons covered by the Standards Act and on several integrity topics.

[3] Article 3(4) of the Standards Act provides for the amendment of the schedules containing the two codes by means of an order in the Government Gazette issued by the Minister for Justice upon a recommendation of the Committee and with the support of a resolution of the House of Representatives.

[4] It is worth noting that a number of provisions in the Commissioner's proposals could be included "as is" by the government of Malta in the respective new Codes. To that end, unless otherwise stated in this chapter, the government of Malta could adopt the provisions in the Commissioner's respective proposed codes "as is".

[5] Under the project "*Improving the integrity and transparency framework in Malta*", in consultation with the Commissioner and his team, the OECD will elaborate a handbook to the Code of Ethics and Guidelines for Members of Parliament containing practical examples adapted to the Maltese context. The examples proposed in this recommendation could be taken from the corresponding handbook.

[6] Under the project "*Improving the integrity and transparency framework in Malta*", in consultation with the Commissioner and his team, the OECD will elaborate a handbook to the Code of Ethics and Guidelines for Ministers and Parliamentary Secretaries containing practical examples adapted to the Maltese context. The examples proposed in this recommendation could be taken from the corresponding handbook.

[7] The new provisions on the acceptance, bestowing and registration of gifts, benefits and hospitality will be further analysed in a following section on receiving and bestowing gifts and other benefits.

[8] Under the project "*Improving the integrity and transparency framework in Malta*", in consultation with the Commissioner and his team, the OECD will elaborate a handbook to the Code of Ethics and Guidelines for Members of Parliament containing practical examples adapted to the Maltese context. The examples proposed in this recommendation could be taken from the corresponding handbook.

[9] The new provisions on the acceptance, bestowing and registration of gifts, benefits and hospitality will be further analysed in a following section on receiving and bestowing gifts and other benefits.

[10] This issue is further addressed in chapter 4.

[11] MPs shall also record the immovable property of their spouse and/or partner, and that of their and their spouses and/or partner's minor children.

[12] Ministers shall also record the immovable property of their spouse and/or partner, and that of their and their spouses and/or partner's minor children.

4 Improving the collection and verification of asset and interest declarations for elected and appointed officials in Malta

This chapter provides recommendations for improving the collection and verification of asset and interest declarations for Members of the House of Representatives, Ministers, and Parliamentary Secretaries in Malta. In particular, this chapter identifies strategies to strengthen the current system, including by expanding the scope of officials covered by the requirements and the items to be disclosed. This chapter also proposes measures to streamline the submission process, for example through an electronic system and adoption of a risk-based methodology for the review of submissions.

4.1. Introduction

Asset and interest declarations are used globally to identify unjustified variations in the assets of public officials, prevent conflicts of interest, improve integrity, and promote accountability. Many countries have introduced systems of asset declarations for public officials to prevent corruption (OECD, 2011[1]).

Financial disclosures of assets or interests play an important role in national anti-corruption systems. Asset declarations cover the disclosure of pecuniary interests, they are usually verified with specific and pre-determined frequency, as their role is mainly to reveal inconsistencies and significant variances when comparing declarations for successive years. Asset declarations are not intended as a preventive tool, but rather as a *post factum* verification of unjustified wealth and illicit enrichment. Interest disclosures on the other hand may include both pecuniary and non-pecuniary interests, and are used to report, manage, and therefore prevent a conflict of interest from arising. By indicating whether the public official has an economic interest that may influence the decision making process, a conflict-of-interest system may help prevent unlawful situations from arising in the first place. Interest declarations may be reviewed in an *ad hoc* manner, when the conflict or interest arises, providing flexibility as a preventive tool.

Asset declarations are a useful tool to enhance transparency and accountability, and fight against corruption. In particular, managing and analysing asset declarations' data enables investigators and law enforcement agencies to detect and prove irregularities. By enabling transparency regarding public officials' assets, declarations can also serve as a deterrent. In some countries the idea is accepted that declarations of public officials should serve as a special tool of wealth monitoring. The rationale is that public officials should be subject to stronger scrutiny than the rest of the population (OECD, 2011[1]).

According to World Bank research, more than 160 countries have introduced a system of asset, interest disclosure, or both, for public officials (World Bank, 2021[2]). Yet, many of them struggle to make use of its full potential. Cumbersome filing procedures, gaps in disclosure forms, and lack of enforcement limit their role. Similarly, ineffective verification of declarations undermines their utility as an anti-corruption tool. When seeking to strengthen their integrity and anti-corruption systems, countries should have a clear vision of why they are introducing these reporting obligations, what goals they are pursuing in this process, and what outcomes they expect to achieve (World Bank/UNODC, 2023[3]).

This chapter provides recommendations to improve the collection and verification of assets and interest declarations for Malta's elected and appointed officials, including Members of the House of Representatives (MPs), Ministers, and Parliamentary Secretaries, as set forth under the Standards in Public Life Act in its First and Second schedules (Parliament of Malta, 2018[4]). These recommendations focus on broadening the scope of asset declarations, streamlining their submission process, setting in place a risk-based review process, and strengthening the sanctions for non-compliance.

4.2. Towards an effective system of asset and interest declarations for elected officials in Malta

4.2.1. Institutional and legal framework of asset and interest declarations in Malta

Several types of regulations can provide the legal basis for public officials' declarations. Usually, asset declarations are regulated by a special law or section setting out the purpose, scope and design of the system. These will vary depending on whether declarations are a major part of an overarching anti-corruption legislation, or just one of many procedures in the legal framework. The type of legal basis is also likely to depend on whether declarations are viewed as a general tool for promoting public accountability among the political class or as a more comprehensive anti-corruption tool for the state as a whole (OECD, 2011[1]).

In Malta, Article 5(1) of the First Schedule of the Standards in Public Life Act (Code of Ethics of Members of the House of Representatives) calls for every member of the House of Representatives to annually indicate in a register, kept by the Speaker and opened to inspection by the public, the following information (Parliament of Malta, 2018[4]):

- The MPs' work or professions, and if employed, the identity of their employers.
- Own immovable property, that of spouses if the community of assets applies, that of minor children as well as, if the MP so wishes, the manner of its acquisition and of its use.
- Shares in commercial companies, investments including money deposited in banks and any other form of pecuniary interest.
- Directorships or other official positions in commercial companies, associations, boards, co-operatives, or other groups, even if voluntary associations.

Moreover, Article 5(2)(a) of the First Schedule requires MPs who have a professional interest with persons, groups or companies which themselves have a direct interest in legislation before the House, to declare their interests, at the first opportunity, before a vote is taken on the Second Reading of a Bill. Annual declarations by MPs are filled by hand and submitted to the Speaker of the House by 30 April of each year.

Ministers and Parliamentary Secretaries must comply with the standards set forth in the Second Schedule of the Standards in Public Life Act (Code of Ethics for Ministers and Parliamentary Secretaries) (Parliament of Malta, 2018[4]). Article 7(3) requires them to annually submit a declaration of assets and interests to the Cabinet Secretary, including any interest that may give rise to a perception of conflict of interest or an actual conflict of interest ("Register of Interests"). To support implementation of this requirement, the Manual of Cabinet Procedures provides a declaration form, which can be filled by hand, containing the items to be declared, including:

- Real estate/immovable property belonging to the Minister or over which the Minister holds any title (including any held by the spouse if it forms part of a community of assets, and minor children).
- Shares, bonds, other participations in commercial companies or partnerships, whether public or private (including from spouse if it forms part of a community of assets, and minor children).
- Total amount of deposits in banks and any other financial interests (including from spouse if it forms part of a community of assets, and underage children).
- Positions as directors and other positions in commercial companies, associations, boards, public and private co-ops.
- Income for the reference year.
- Total amount of outstanding loans.

The Manual provides for the form to be submitted by Ministers and Parliamentary Secretaries to the Secretary of the Cabinet Office within 2 months of their appointment and no later than 31 March of each year thereafter. The form does contain some additional indications on the way it should be filled in.

Additionally, each year asset declarations by Ministers and Parliamentary Secretaries are tabled in the House of Representatives, as a result of which they become freely downloadable. The declarations kept by the Cabinet Secretary are, in principle, public. The Code of Ethics for Ministers and Parliamentary Secretaries (Article 8.1) also requires Ministers and Parliamentary Secretaries to ensure that "there is no conflict between their public duties and private interests, financial or otherwise" (Government of Malta, 2018[5]), and to immediately inform the Prime Minister if there is a change in their personal circumstances which may give rise to a conflict.

MPs who act as Ministers or Parliamentary Secretaries are subject to dual requirements and expected to declare their assets and interests both as members of the House of Representatives – as provided by the

Code of Ethics for Members of the House of Representatives – and as Ministers – as provided by the Code of Ethics for Ministers and Parliamentary Secretaries.

Discussions with key stakeholders as well as other reports by international bodies have pointed to several shortcoming in the legal framework for asset declarations. Although both codes of ethics require MPs, Ministers and Parliamentary Secretaries to complete and submit their asset declarations on a regular basis, the current provisions included in such codes are narrow in scope and pose limitations.

For instance, the categories of persons whose data is to be disclosed is not broad enough, and the scope of the information reported is limited. Certain intangible assets such as patents, brand, trademark, or copyrights, as well as outside sources and amounts of income, are not included. Overall, the asset and interest declaration system focuses on financial assets, which is key for detecting unjustified wealth and illicit enrichment but limits reporting, managing and preventing conflict-of-interest situations. Assessed against international good practice (Box 4.1), Malta could consider implementing several measures to improve its current system, including broadening the scope of officials covered by the requirements, the items to be disclosed and the way the information is collected and reviewed.

Box 4.1. Recommendations on the disclosure and registration of assets and interests provided in the Technical Guide to the United Nations Convention Against Corruption (UNCAC)

- Disclosure covers all substantial types of incomes and assets of officials (all or from a certain level of appointment or sector and/or their relatives).
- Disclosure forms allow for year-on-year comparisons of officials' financial position.
- Disclosure procedures preclude possibilities to conceal officials' assets through other means or, to the extent possible, assets held by those against whom a state party may have no access (e.g. held overseas or by a non-resident).
- A reliable system for income and asset control exists for all physical and legal persons – such as within tax administration – to access in relation to persons or legal entities associated with public officials.
- Officials have a strong duty to substantiate/prove the sources of their income.
- To the extent possible, officials are precluded from declaring non-existent assets, which can later be used as justification for otherwise unexplained wealth
- Oversight agencies have sufficient manpower, expertise, technical capacity and legal authority for meaningful controls.
- Appropriate deterrent penalties exist for violations of these requirements.

Source: (UNODC, 2009[6])

4.2.2. Broadening the scope of asset declarations

The Ministry of Justice could consider amending the Codes of Ethics for members of the House of Representatives, Ministers and Parliamentary Secretaries to expand the type of information to be declared and the existing categories of declarants

The Commissioner for Standards in Public Life (hereafter "the Commissioner") has made proposals to improve the asset declaration regime, including through amendments to the Codes of Ethics for Members of the House of Representatives and for Ministers and Parliamentary Secretaries and the "Register of Interests". These proposals include additional guidelines that go into more detail and present both the type

of financial and non-financial interests that should be registered and the different moments in which interests should be registered:

- New MPs would be required to register all their current financial interests with the Commissioner within 28 days of taking their Oath of Allegiance.
- MPs would be required to record their financial and non-financial interests in the Register of Interests, by 31st March of every calendar year. Information shall be recorded as of 31st December of the previous year and cover the following: (a) work or profession, and if they are employed, the identity of their employer; (b) immovable property; (c) shares in companies/business interests; (d) quoted investments, government stocks, treasury bills, deposit certificates and bank balances; (e) bank or other debt; and (f) directorships or other official positions in commercial companies, associations, boards, co-operatives or other groups, even if voluntary associations.
- MPs would be required to register in the Register of Interests within 28 days, any change in the registrable interests (b), (c) and (f) of the previous paragraph (OECD, 2022[7]).

However, these proposed amendments could be further strengthened to provide for an increasingly robust asset declarations' system, in particular by expanding the range of officials subject to reporting obligations and the type of information that elected and appointed officials are required to disclose.

Categories of declarants

In Malta, persons of trust, one of the categories of public officials covered by the Standards Act, are not required to disclose their assets and/or interests. This is problematic as a high number of public officials are appointed via the "persons of trust" mechanism. Furthermore, some occupy central roles in decision making and further transparency mechanisms would strengthen public trust in their functions (see Chapter 2). Other international organisations (IO) have been of the view that Malta could apply current regulations to a broader number of categories of such persons (GRECO, 2018[8]). Malta could consider broadening the category of declarants, by including persons of trust as a category of declarants, when their role involves management or administration of public funds or decision-making.

Similarly, under current regulations the situation of the spouse and other family members is captured within a very limited scope, for the declarations of both MPs and Ministries. In particular, information concerning a spouse's assets is only included if the property is part of a community of assets. In case of another matrimonial property regimes, the level of transparency decreases (GRECO, 2018[8]). Mechanisms to track the financial assets and interests of not only public officials but also their close relatives and household members can help prevent concealment of assets under the names of family members, spouses or other individuals (OECD, 2011[1]). The primary rationale of this requirement is to manage potential conflicts of interest by providing more transparency on the individuals vis-à-vis whom the official may have interests. For example, in Lithuania, officials are required to identify any "close persons or other persons he/she knows who may be the cause of a conflict of interest" in the opinion of the person concerned.

The Ministry of Justice could consider including and expanding the categories of public officials who submit an asset declaration in the proposed amendments to the Code of Ethics for Members of the House of Representatives, and in the proposed Code of Ethics for Ministers and Parliamentary Secretaries to include the mentioned categories. The inclusion of persons of trust could be made by amending the Public Administration Act or by including an *ad hoc* clause in the Standards in Public Life Act. The Ministry of Justice could also consider proposing an enhanced due diligence for related persons, for example, when notice of a possible violation is received or a probe is initiated. During the consultations on the asset and interest declarations system, authorities in Malta were of the view that, in any case, all efforts should be made to ensure that any improvements to the system do not translate in a dissuasive barrier, perceived or otherwise, to serve in public life. For example, in Slovenia, if the comparison of the data submitted with the actual situation provides reasonable grounds for an assumption that an official is transferring property or income to family members for the purpose of evading supervision, the Commission of the National

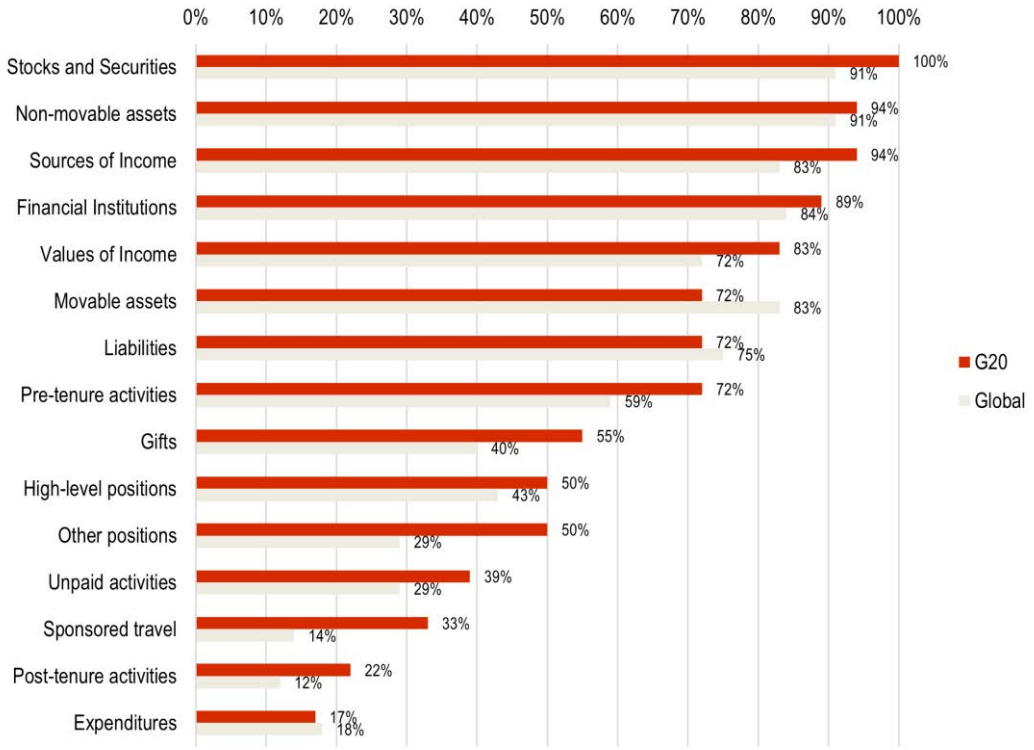
Assembly may, at the proposal of the Commission for the Prevention of Corruption, also request the official to submit data for his/her family members (OECD, 2011[1]).

Scope and categories of assets to be declared

The categories of assets, amount of information and level of detail that an official may be required to disclose, vary from country to country depending on the objectives of the disclosure system and the laws, regulations, and administrative guidelines governing the conduct of public officials. However, most declaration forms require a combination of the following information: movable and non-movable assets, liabilities, financial and business interests, positions outside of office, and information on the sources and values of income.

G20 countries follow the global trend of having greater coverage of financial aspects such as non-movable assets rather than outside activities or business relationships that may create conflicts of interest (Figure 4.1) (OECD/World Bank, 2014[9]).

Figure 4.1. Categories of information covered in disclosure requirements



Notes: World Bank analysis of 138 countries with disclosures systems. For G20, percentages are calculated only considering those countries that have a disclosure system.
Source: (OECD/World Bank, 2014[9])

In Malta, even though declarations for both MPs as well as Ministers and Parliamentary Secretaries cover a reasonably broad range of assets and interests, discussions with key stakeholders underscored that further details could be included to strengthen the usefulness of the declarations. The category in the declaration form referring to “any other types of financial interests” would in principle cover all sorts of assets and movable property of a certain value (cash held in a safety deposit box or outside a financial institution, precious metals and stones, an art collection etc). However, according to several stakeholders,

the current template falls short of allowing a proper analysis of unjustified assets, laundering of criminal proceeds and violations of conflict-of-interest rules. As real control of assets regardless of the nominal owner, and the use of assets, may show hidden ownership or lifestyle not commensurate with the official's position or income, disclosure of beneficial ownership of assets should therefore extend to all types of tangible or intangible property and income (World Bank, 2021[2]).

Considering some of these limitations, a new asset declaration template was put in place in 2019 by the Commissioner to provide a better understanding of MPs' source of wealth and source of funds. The template requested information on:

- Details of income.
- Immovable property.
- Purchases of movable property exceeding EUR 5 000 during the year of reference.
- Investments, bank deposits, debt.
- Gifts and benefits received during the year of reference.

For each of these categories, MPs were required to list information pertaining both to them and to their spouse or partner.

However, there was limited uptake of the new template by appointed and elected officials, in part because it expanded the reporting requirements prescribed by the legal framework. Therefore, the Ministry of Justice could consider amending the Codes of Ethics for members of the House of Representatives, Ministers and Parliamentary Secretaries to formally expand the scope of information to be reported in asset declarations in Malta, and possibly include:

- Income as a category in MPs declarations, as is the case for Ministers and Parliamentary Secretaries.
- Luxury and tangible assets (e.g. movable assets such as antiques, luxury cars, etc.) considered valuable assets. These are regularly used to hide profits from money laundering or corruption.
- Clear dates, for example on when a property was bought, as this would help in contrasting information on a later stage and understanding patrimonial increases over time.
- Disclosure of all types of income as well as gifts and sponsored travel, including disclosure of the identification details of the legal entity or individual who was the source of the income, gift, or sponsored travel.
- Use of virtual assets (e.g. cryptocurrencies). The reporting of such assets in the form is an important step towards bringing transparency to this new mode of wealth accumulation.
- Disclosure of national and foreign bank accounts and safe deposits boxes (vaults) to which the declarant or family members have access, even if formally opened by another person.
- Blind trusts, as these are often channels used to evade tax as well as launder proceeds of corruption.
- Loans given or received, including to/from private individuals.
- Deferred corporate rights (e.g. options to purchase shares) and investments regardless of their form.
- Disclosure of expenditure above a certain threshold. This is essential to track significant changes in wealth by comparing income, savings and expenditures over time. Expenditures should cover not only acquisition of assets but also payment for services and works.
- Disclosure of expenditure above a certain threshold (it should consider individual or aggregate expenditures that surpass the determined threshold). This is essential to track significant changes in wealth by comparing income, savings and expenditures over time. Expenditures should cover not only acquisition of assets but also payment for services and works.

- Disclosure of interests not related to income or assets, notably contracts with state entities of the declarant and family members or companies in their control, prior employment, and any link with legal entities and associations (e.g. membership in governing bodies). (World Bank, 2021[2])

To ensure compliance, Malta could consider introducing new asset declaration requirements through explicit legal provisions within the relevant Codes. Legislation could also consider empowering the Commissioner to amend the template as necessary, including new categories that may potentially help it fulfil his role in the review of declarations.

The Commissioner for Standards in Public Life could develop tailored guidance to support Ministers, Parliamentary Secretaries and Members of the House of Representatives in completing the interest declaration forms

Asset declarations do not only depend solely on the legal obligation to report, but also the quality of the information provided by public officials. Therefore, ensuring forms are understood and filled in correctly, and having access to guidance when needed, is a key part of the success of any system. Indeed, the act itself of completing a declaration can strengthen the integrity of public officials as they need to first self-evaluate which assets they have, and the extent to which these could lead to a potential conflict of interest or undermine their ability to serve the public interest. Through access to impartial guidance, officials also benefit from opportunities to discuss potential doubts and dilemmas concerning their assets and interests. This can have the dual benefit of preventing potential conflict-of-interest situations before they arise, as well as strengthening the awareness and capacity of officials to apply integrity standards in their day-to-day activities.

Discussions with MPs underscored the need of standardised rules and guidance on completing their asset declarations. In particular, stakeholders noted that many of the criteria included in the current forms were unclear, which made it difficult to complete the form to a satisfactory standard. For example, in many cases, categories of the current form are not clear, including the level of detail required by these provisions. Similarly, stakeholders were of the view that more needs to be done to increase awareness amongst declarants of the importance of asset declarations and the proper reporting of this information. A compilation of asset declarations submitted by MPs and Ministers in 2022 provides a clear overview of the challenges with some declarants providing very detailed information, whereas others were scarcer or simply reproduced information from previous years (Government of Malta, 2022[10]). An example of this difficulty has been evidenced by the Commissioner who has reported that incidents of incorrect declarations are a consequence of this, rather than the hiding of income.

Similarly, consultations demonstrated the need of improving the resources available to MPs for the fulfilling of their functions. As things stand, MPs in Malta serve on a part-time basis, with no support or assistance. All MPs, both backbenchers on the Government side and Opposition MPs, should be given proper research and communications assistance for the proper fulfilling of their role. MPs interviewed for this report were of the view that in any case, Malta could start discussions to consider MPs fulfil their role on a full-time basis with a salary commensurate with the level of responsibility that comes with their Constitutional and legislative role.

The Commissioner has taken several steps to address this situation, including providing MPs who were making incorrect declarations an opportunity to amend the information. However, given that most of these declarations were not scrutinised before and given that there was no misrepresentation and no hidden income, the Commissioner did not consider it necessary to open any formal investigations emerging from the verification of declarations. Advice is given on a case-by-case basis, but no additional training or systematisation of these experiences for future reference is done by the Commissioner.

In other countries. much of this information has been systematised and clear channels established for consultation (Box 4.2). The Commissioner could consider preparing guidelines on completing asset

declarations for MPs, Ministers and Parliamentary Secretaries, including a syllabus with lessons learned from previous cases on incorrect declarations. This guidance could also include a range of examples on financial and economic interests, debts and assets. More focused examples of unacceptable conduct and relationships could be provided for those groups that have a secondary employment, such as the public/private sector interface (OECD, 2003[11]). Furthermore, the Commissioner could consider creating institutionalised channels of communication with MPs to provide advice as may be necessary. This could be done, for example, when MPs and Ministers are first appointed and a few weeks before filing their declarations.

Box 4.2. Guidance on Asset and Interest Declarations in Brazil, Canada and the United States

Countries may provide support mechanisms to asset declarations filers through for example websites, media, designated staff, telephone-hotlines, detailed guidelines and frequently asked questions attached to blank forms.

In **Brazil**, the Comptroller General Office manages the disclosure system for federal public officials and its website provides information on who, what, when and how to disclose as well as the legal framework on the disclosure process. The Brazilian tax authorities also publish guidelines and information online for public officials completing the declarations. For the Chamber of Deputies, there are three websites that provide guidance: the first covers who, when and how to declare; the second provides a list of documents deputies must complete before assuming public office; and the third is a guidance note on how to fill in the tax form used as the financial disclosure.

In **Canada**, the Office of the Conflict of Interest and Ethics Commissioner advises MPs and public office holders on conflict of interest and disclosures. The Conflict of Interest and Ethics Commissioner also works with sub-national governments on training and filing declarations.

In the **United States**, the Office of Government Ethics carries out a range of activities, from providing second level reviews of the disclosures, to educating and training ethics officials and public officials.

Source: (OECD/World Bank, 2014[9])

Malta could consider separating its "asset" and "interest" declarations, to allow better comprehension amongst elected officials of the purpose of each

Disclosure forms help create and maintain a sound integrity system. However, the content of these declarations as well as their objective can vary. Therefore, it is important to have clarity with respect to the objectives, the information requested and its subsequent use. When filling out a form as part of a conflict-of-interest management regime, an official must take stock of his or her interests and the interests of his or her family members, evaluate these interests in light of the duties performed and decide whether any additional steps need to be taken to manage any conflicts of interest. This initial self-identification and evaluation process can and should generate requests for assistance to those who provide advice and guidance on managing conflicts of interest and help supplement the advice and guidance provided based simply on a subsequent official review (OECD, 2005[12]). On the other hand, financial disclosures are a tool used to identify illicit enrichment by contrasting financial information and would rarely be used to prevent a conflict of interest in a decision-making process.

Similarly, "interests" may come into conflict in an "*ad-hoc*" manner, whereas assets change less often. Furthermore, separating declarations may keep the focus of the asset declaration on illicit wealth monitoring, while simultaneously building a better understanding amongst elected officials about the "natural" occurrence of conflicts of interest. Even while asset declarations can serve to identify some potential conflicts of interest, they cannot replace the management of conflicts of interest, which needs to be done differently.

Malta has chosen a single declaration for the reporting of both assets and interests of elected officials. This is done by way of a single unified and centralised form. However, the information is being used for the sole purpose of identifying mistakes in asset reporting rather than a system that allows identifying relevant interests, contrasting these against votes in parliamentary debates or to establish a preventive and management system that provides advice on the management of these interests. Furthermore, reporting *ad-hoc* interests is not a possibility within the current system and the management of conflicts of interest is solely focused on recusals when taking a vote.

Malta could consider the use of a single declaration *vis a vis* separating into a system of multiple declarations. The experience of OECD countries such as Portugal and Lithuania, who use separate declaration forms or separate procedures for submission and processing, may provide relevant examples. Similarly, consideration could be given to running a single declaration for all categories of elected and appointed officials, with some differences, for example, for information requested for the first time and the information that is requested to be submitted annually (Box 4.3).

In any case, having separate declarations for interests and assets recognises the different nature of such diverse goals as wealth monitoring and preventing and managing conflicts of interest (OECD, 2011[1]). Separate processes may also provide a more tailor-made approach to the needs of the verification agency considering that verification of assets requires yearly declarations and a contrast method against other relevant financial information whilst an interest declaration and verification may be made on an *ad-hoc* basis or when an emerging conflict of interests arises.

Box 4.3. Categories of Asset and Interest Declaration Forms

The specific types and scope of declaration forms can vary depending on the purpose for which they are used or the types of officials that are required to comply with them:

Separate declarations for interests and assets

This approach recognises the different nature of such diverse goals as wealth monitoring and control of conflicts of interest. For example, in Portugal political office holders and some other categories of public officials submit both declarations of assets and declarations of interests where the latter are directed at the control of incompatibilities.

Tax declarations and declarations of interests

Subject to the obligation to submit assets and/or income declarations to tax authorities. In addition, officials have the duty to submit separate declarations of interests to an ethics commission or anti-corruption agency. The principal rationale here is that public officials' assets and income are to be monitored in the same way and within the same system that covers other residents.

Different declarations for different categories of public officials

Declarations are varied on the levels of seniority of officials. The rationale is that officials of higher rank must be subject to stricter requirements. An example of this approach is Ukraine, where declaration forms consist of six parts. All officials fill in Parts 1-3 where income and financial liabilities are declared. Only higher categories of officials fill in Parts 4-6 where data about assets are required.

Different declarations for public officials and for related persons

This option is relevant in systems that not only oblige public officials to state data in their declarations about their spouses and other related persons, but also request separate declarations from these related persons.

Source: (OECD, 2011[1])

4.2.3. Streamlining the submission process of asset declarations

The Standards in Public Life Act provides for the submission and review mechanism of asset declarations in Malta. For Ministers and Parliamentary Secretaries, the Cabinet Secretary is responsible for receiving and checking the information contained in the declarations, who then tables them in the House of Representatives. Similarly, MPs' declarations are submitted to the Speaker of the House of Representatives. The Speaker then forwards only declarations by MPs as Ministerial declarations become public when tabled.

The review of asset declarations for MPs, Ministers and Parliamentary Secretaries falls under the Commissioner's remit, who is responsible for examining and verifying these declarations. The Commissioner may also provide recommendations in the form of guidelines with regard to any person who fails to make any declaration or who makes an incorrect declaration in a manner which materially distorts its purpose, in accordance with Article 13(1).

The Ministry of Justice could consider a legal reform to amend the Standards in Public Act to allow declarations to be submitted directly to the Commissioner

The compilation process of asset declarations entails several particularities. First, the process must be made through the Speaker, which only adds a layer to an already complex process. Second, the Commissioner does not have direct and expedite access to the summary of income tax and as a result, to access this information, the Speaker must ask for the consent of each MP every year to pass this information to the Commissioner. This procedure relies on the submission of the following information per elected or appointed official:

- The corresponding declaration (after his/her appointment and on an annual basis)
- A summary of the income tax return
- The declaration of annual income (only in the case of ministers)

Similarly, the compilation procedure includes an excel sheet for each official, that is drawn up by the Commissioner's office to facilitate comparisons of the data on a yearly basis. The excel sheet also enables the Commissioner to identify and request further clarifications if inconsistencies arise. Depending on the outcome of the analysis, the official may need to re-submit the annual declaration.

Asset declarations by MPs, as established in Article 5(1) of the Code of Ethics specifies that they should be received and kept by the Speaker. Stakeholders expressed a need for a more streamlined process on compiling and verifying assets declarations. As explained, the current process requires the intervention of the Speaker, Cabinet Secretary and compilation of the information by other institutions such as the Commissioner for Tax Revenue. These delays may mean that by the time the Commissioner gets the information, much of the data might be irrelevant.

The Ministry of Justice could consider amending the Standards Act to allow the Commissioner to receive all the submissions, for example via an electronic system, rather than the declarations going to two different individuals in writing. Similarly, an amendment to Article 4(5)(a) of Chapter 372 would enable the Commissioner for Revenue to share tax declarations submitted by Members of Parliament directly with the Commissioner for Standards in Public Life (in the same manner as such information is currently shared with the Speaker of the House). Online access by the Commissioner may also be a possibility, by way of having a shared folder, in which the Commissioner for Revenue uploads relevant information. According to Maltese authorities, these options may require further internal discussions between relevant authorities to help the fine-tuning and materialisation of these options.

In any case, it would be beneficial for the Commissioner to have access to relevant tax information which is pertinent to their functions. Furthermore, the system of electronic submission could be configured to allow access to as many institutions and individuals as it may be necessary. In this respect, access to information could be simultaneously shared with the Speaker, the Cabinet Secretary and the Commissioner, compiling all relevant information in one single system.

The Commissioner for Standards in Public Life could consider establishing an electronic system for submission of asset declarations

Currently, in Malta, there is no electronic submission system to simplify and streamline the asset declaration process or ease comparison of different sources. This may result in cumbersome reporting obligations and act as a deterrent to reporting information quality. In particular, stakeholders noted that many institutions required the same information and that the lack of information sharing among them was contributed to inefficiencies in the system.

Indeed, setting clear and proportionate procedures to manage assets declarations is key for the success of the system. As is the case in other countries, an electronic system simplifies the submission process by making the declaration form more user-friendly, reduces the number of mistakes made in the forms, facilitates further analysis and verification of declarations, and improves data management and security (Box 4.4). Electronic filing (e-filing) may help raise the level of compliance with submission requirements (Kotlyar and Pop, 2019[13]).

In addition, electronic submission also allows for an effective automated risk analysis. This analysis would certainly depend on external factors, like access to external sources of information through automated data exchange. There are also challenges of data quality and availability. These issues create a complex process involving various legal, technological, financial, and institutional aspects. It requires inter-agency co-operation and high-level political commitment (World Bank, 2021[2]).

Box 4.4. Electronic submission of asset declarations in France

The current asset and interest disclosure system in France is regulated by the 2013 Law on Transparency in Public Life, which is administered by the High Authority for Transparency in Public Life (*Haute Autorité pour la Transparence de la Vie Publique, HATVP*). The initial scope of the Law covered approximately 10 000 public officials. It incrementally expanded to reach about 15 800 public officials as of 2018.

Public officials must submit to the High Authority, within two months of taking office or beginning of their mandate, two declarations: a declaration of assets and a declaration of interests. Public officials must also submit a declaration of assets no later than two months after termination of their functions or before the end of term for elected officials. In between, they must update their declaration of assets in case of substantive change (inheritance, acquisition of a property, etc.). If there is no substantial change in assets, the filers do not need to file a new declaration.

In 2014, all declarations were received in paper format only. Starting in March 2015, declarations submitted to the High Authority could either be sent by registered letter with a confirmation receipt or submitted in person at the High Authority, which issued a receipt confirming the submission or through the online service ADEL. Since October 2016, all declarations are filed online. Filers may contact a dedicated hotline (by phone or email) if they have questions, and guidelines are provided online for each step of the process. Beyond the declarations, the High Authority recommends online submission of all documents accompanying the declaration (e.g. blind trust, official notice of appointment etc.).

To register in the electronic filing system, filers need to use a mobile phone number and a valid email address. Registration is validated through text message. Text message validation is also used when a new declaration is filed or when public officials try to access their confidential personal information. The official can also choose to register using an official email address (gouv.fr, assemble-nationale.fr or senat.fr).

Source: (HATVP, 2022[14]) (Kotlyar and Pop, 2019[13])

Electronic disclosure systems can also vary significantly in functionality, design, level of complexity, or authentication methods. In some systems, for example, declarations are collected with the aim to do a preliminary data validation, followed by a more in-depth analysis of emerging discrepancies (Box 4.5). There is also large variation in how to authenticate the data, as in some systems digital signatures are used, while in others, authentication relies on a two-step process using cell-phone numbers or email confirmations (Kotlyar and Pop, 2019[13]).

Box 4.5. Electronic disclosure systems in Argentina and Mexico

Argentina

Argentina transited to an online system for the submission and management of asset declarations when it became clear that the filing requirements would rapidly overwhelm the oversight entity's ability to fulfil its mandate, as the number of public officials required to file an asset declaration currently stands at approximately 36 000.

As a result, the system became highly automated, including online declaration forms; online submission and submission compliance processes; and electronic data storage, records management and reporting. Software was developed in-house by a consultant which filers can download from the Anti-Corruption Office's (OAC) website or access on a CD-ROM.

The software requires filers to complete all required fields before the form can be submitted, reducing the number of formal errors or incomplete or incorrectly filed declarations. It also automates the detection of discrepancies between a filer's declared income and changes in income and assets over time. The system also enables the systematic verification of the top 5% of most senior officials as well as electronic verification and targeted audits of disclosures based on categories of risk of the remaining 95%. The Asset Declaration Unit is able to verify around 2 500 declarations a year.

Mexico

In Mexico, since 2002, all federal public servants are required to complete and present their declarations through the "*Declaranet system*". The first step consists of establishing the public servant's electronic identity, which is completed online in a few minutes, resulting in the generation of a pair of passwords and a digital certificate. Public servants can use these protected keys and certificate to electronically sign the declaration for a period of five years.

Once the *Declaranet* application has been downloaded, public servants enter the required information. All data is encrypted, and the information is kept confidential. Properly completed declarations are digitally signed and electronically filed with the *Secretaria de Contraloria y Desarrollo Administrativo* (*SECODAM*) which electronically acknowledges receipt of the declarations.

SECODAM is responsible for verifying the asset declarations and for initiating investigations when illicit enrichment is suspected. Information from reports is organised as a matrix of facts that can be analysed along vertical and horizontal dimensions, making it possible to track the history of assets through examination of the acquisitions, sales, donations and inheritances of the public servant. It also allows examination of bank records to ensure that savings and expenditures are consistent and in line with the public servants' known sources of income. SECODAM then also cross-checks the reported information using information collected by other public institutions.

Source: (U4, 2015[15])

Overall, the benefits of an electronic system must be analysed in detail against its cost and existing technological barriers and conducting a preliminary assessment becomes of the outmost importance. This must also go hand in hand with a preliminary risk assessment exercise to determine the fields and information to be requested, verified and ultimately contrasted. In any case, systems of electronic submission will save, in the long term, financial and human resources by eliminating the need for physical storage space and allowing a proper and automatised preliminary review. Both of these help institutions save time and resources that could very well be invested in other stages of the review process (Kotlyar and Pop, 2019[13]).

Considering the difficulties of manual collection and the advantages of a system of electronic submission, Malta could consider a few issues when moving forward. First, it must conduct an initial assessment of probable amendments to its legal system that allow for electronic submission. The Ministry of Justice could conduct such an assessment, and cross-reference legislation pertaining to privacy, use of confidential information and data protection. In this respect, the Ministry of Justice could conduct a review of the Standards in Public Life Act, the Income Tax Management Act and the House of Representatives Privileges and Powers Ordinance. For Ministers, the Cabinet Manual should be amended to reflect any changes. A balanced approach and protecting confidential information are key parts of this assessment.

Second, the Commissioner could assess human resources and/or expertise to develop and maintain the system or even the needs of declarants in terms of training. This also includes assurances on how to maintain security and stability of the system. For example, like in other OECD countries, Malta could consider the web-based application ADEL used by the French government, which complies with the "*Référentiel Général de Sécurité* (The General Security Standard) in terms of data security and is based on an asymmetric encryption.

Third, Malta could consider from an early stage to whom to grant access to this system, as much of this information could be useful for other agencies with an anti-corruption remit. In particular, Malta could consider locating the system with the Commissioner and granting direct access to the Office of the Attorney General, the Financial Intelligence Analysis Unit and the Police, as much of this information could be useful in the investigation and prosecution of money laundering and corruption cases. Such access would also need to be explicitly catered for in an upcoming legal reform.

Finally, Malta could consider including within its electronic submission systems a few automatic filters to help streamline the process and lower the reporting burden (see for example Box 4.6).

Box 4.6. Pre-populated information in asset declarations in the United States

Under the Ethics in Government Act (EIGA), as amended, the U.S. Office of Government Ethics (OGE) is responsible for establishing and supervising a public financial disclosure program for the executive branch. This public financial disclosure system has existed since 1978. In 2012, the Stop Trading on Congressional Knowledge Act, as amended, directed the President, acting through the Director of OGE, to develop an electronic system for filing executive branch public financial disclosure reports. As a result, OGE developed a system named Integrity to collect, manage, process, and store financial disclosures.

Pre-Population Tool: Integrity allows a filer to "pre-populate" a financial disclosure report with data from a prior new entrant or annual report. Integrity can also import data from any number of previously filed periodic transaction reports (OGE Form 278-T), and the system specifically allows the filer to choose which periodic transaction reports to include or exclude.

Filer Wizards: Integrity improves accuracy by using wizards to prompt filers to provide information they might otherwise forget to report in an initial submission. Aiming to reduce the burden on the filer, however, OGE limited this targeted assistance to areas where filers make the most mistakes. In OGE's experience, these areas involve financial interests related to the outside employment and retirement plans of the filer and the filer's spouse. Integrity's wizards pose only those questions that are relevant to an individual filer. For example, if the filer lists a position outside the government, Integrity will walk the filer through the wizard with questions focused on the types of income and assets associated with that position; if a filer has no outside positions, the system will skip the wizard. Example: filer selects "university/college", position – "professor or dean", then the system will choose a specific path through the wizard and ask only the most relevant questions. "Wizard" is a dynamic system that asks questions as needed; eliminates the risk that the filer will forget to supply some information later, as it happened with paper forms.

Auto Complete: OGE has programmed the names of over 13 000 financial interests into Integrity and plans to add additional names in the future. The asset name autocomplete feature suggests possible matches for entries as a filer is typing. Another auto-complete feature will help filers with more complex holdings. For filers with private investment funds that do not qualify as excepted investment funds, Integrity allows the filer to report the underlying holdings of the funds and associate them with the "parent" asset. The auto-complete feature will suggest a list of possible parent assets by drawing from the names of assets that the filer has already entered.

Source: (Kotlyar and Pop, 2019[13])

4.2.4. Amending the legal and institutional framework for the compilation and risk-based review process of asset declarations

As is currently the case, once the information has been received by the Commissioner, an internal review mechanism is triggered. This mechanism was developed by the first Commissioner and consists of a methodology for the review and verification of asset declarations (Box 4.7).

Box 4.7. Internal procedure for the review of asset declarations by MPs, Ministers and Parliamentary Secretaries in Malta

- The Commissioner maintains an excel sheet for each official (MP, Minister, and Parliamentary Secretary). To assess the information available on each official each year, data from different sources is inputted into the excel sheet allowing to compare how the amounts and assets have changed from one year to another. Each source of information is clearly identified.
- A senior official within the Commissioner's office reviews the information populated and lists any queries or clarifications that are necessary.
- In cases where a public official has carried out a property transaction during the year, a copy of the public deed is requested. This, to understand the financing of property acquisitions as well as the possible movements in bank balances/investments and the possible sources of financing of future property acquisitions.
- In cases where the movement of assets and/or liabilities do not make sense with i) the income illustrated on the return completed by public officials; ii) with the extracts of income derived from the Commission for Revenue in the case of MPs; and/or iii) with other facts known by the Commissioner, specific clarifications are requested.
- The respective public official is given 14 days to reply. All communications are done in writing and a separate file is opened to maintain all correspondence.
- The senior official within the Commissioner's office reviews the documentation received. If deemed necessary, further information or clarification is requested.
- Depending on the outcome of the analysis, the public official may need to re-submit the annual declaration. Depending on the error or omission, further actions may be taken, or the file could be concluded satisfactory. In all cases, a concluding memo is included in the respective file.

Source: Questionnaire on the office of the Commissioner for Standards in Public Life, 2021

While the Commissioner for Standards serves a critical role in reviewing asset declarations, the current set-up could be reinforced. First, the means allocated to the Commissioner to fulfill this role are insufficient, both in terms of the legal instruments and human resources. For example, the Commissioner has a very limited number of personnel for the review and verification of all declarations. Similarly, no expedite access has been granted to databases and registries in other parts of Government, such as tax returns. Bank accounts and assets from other jurisdictions are also out of his remit, as Mutual Legal Assistance (MLA) requests can be accessed only through law enforcement agencies. Malta could consider amending Art 4 (5) (a) of the Income Tax Management Act to allow access of the Commissioner to this information. Without accessing this information, it is difficult for the Commissioner to identify significant issues in asset declarations, including illicit enrichment and hidden or unreported assets. In sum, without the capacity to contrast relevant financial information, asset declarations for elected and appointed officials in Malta have become an exercise of verification rather than a tool to detect and prevent corruption. The following recommendations aim at providing feasible solutions to these outstanding issues in the review process.

Malta would benefit from a more co-ordinated approach to its asset declaration system, including by providing the Commissioner with the necessary tools to access and verify relevant information

For an asset declaration system to be effective, an independent body with the necessary human and financial resources must verify the data. Most importantly, it is necessary to protect the institution responsible for asset declaration systems against undue influence (OECD, 2011[1]). Providing such

institution with the necessary human and financial resources to comply with its task is vital for its success. Although the current legal set-up of the Commissioner fits well within these features, some concerns remain regarding the necessary breadth to carry out his functions.

The Commissioner should consider strengthening its asset declaration review team. This could be done by assigning a larger team for the review of declarations and providing the team with the necessary technological tools and trainings for assessing declarations. For example, by creating specific profiles in accordance with the needs of the Commissioner and merit-based processes for selection. Other issues that may affect the transition to an electronic system may be a weak digital culture across the administration, modest resources, as some initial technical difficulties. Therefore, at the inception of the system, and to overcome public officials' resistance to new technologies, the Commissioner may develop an online instruction portal for its existing and future review team, on the usage and functionalities of electronic submission and how to better use this information in the identification of "red flags".

As stated, a verification agency should have sufficient powers and resources to perform its duties. Such powers could include access to government registers and databases, including tax information, company register and registers of real estate and vehicles, right to obtain information and records from public and private entities, access to banking and other financial data, and the possibility to request or access information abroad. At the same time, the verification agencies are usually not law enforcement bodies and lack certain tools that a criminal investigation can employ, e.g. special investigative techniques. This highlights the need to understand the limitations of administrative bodies in charge of verification and the importance of co-operation with law enforcement bodies. It also affects the debate on the level of dissuasive sanctions, as shown below (World Bank/UNODC, 2023[3]).

As stated before, comparing data from different sources allows for the identification of manifest discrepancies and for the verification of inaccuracies and omissions in declarations. While some useful data sources – including property land and vehicle registries – are publicly available in many countries, others – such as company securities registry, where the identity of holders of company securities are registered, international and domestic banks or other financial institutions – may require enabling provision in the law as well as special collaboration arrangements. In this sense, an effective verification process – and potential further investigation process – depends on an effective collaboration between the controlling agency(ies) and other institutions. In certain cases, a verification process to cross check information involving criminal investigative bodies, equipped with the legal means to obtain information from various sources, could be potentially useful (OECD, 2011[1]).

In Malta, there are major challenges for effective co-ordination between stakeholders and for ensuring that relevant information is shared in a timely manner. As stated previously, the mere process of accessing assets declarations and income tax returns by the Commissioner requires several steps, considering that the Commissioner is not empowered to directly receive nor access any of these, despite being directly responsible for examining and verifying the declarations (Government of Malta, 2018[5]).

There are several avenues Malta could consider when addressing co-ordination challenges. First, Malta could conduct the necessary legal reforms in order to allow the Commissioner access to certain information necessary for the fulfilment of its duties. Such legislative reform would include giving the Commissioner the autonomy to enter into inter-agency agreements and Memorandums of Understanding (MoU). These could include a specific MoU with the office of the Attorney General and the Police to include the possibility of referring a matter for criminal investigation if suspicions of illegal activity arise (GRECO, 2018[8]). One possible avenue would be to introduce within the MoU a system whereby the Commissioner investigates and where the Commissioner is aware of suspected criminal wrongdoing, he/she is to report the same to the Police with the possibility of sharing the same report/information with the FIAU. Similarly, another MoU could be signed with the Financial Information Unit to allow the possibility to discuss specific cases on asset declarations being analysed by the Commissioner, as well as to share and discuss the results of the review of asset declarations on a policy level. In line with this, the FIAU can use that information received

from the Commissioner as part of it processes which could also lead to further disseminations to the Police, if deemed necessary. During consultation meetings, Maltese authorities were of the view that co-operation and support may also extend to specific training support offered to officials of the Commissioner by the FIU (such as when it comes to transaction monitoring).

Moreover, as previously stated, legal provisions could be in place to allow access to other data that is not already publicly available, e.g. banking and financial data, when in the course of an investigation. Maltese authorities were also of the view that the Commissioner should be legally empowered to be able to ask for such information and obtain it directly from the source (e.g. credit institutions). This approach could help solve several existing difficulties in the institutional framework, including the lack of co-ordination and lack of relevant provisions on sharing relevant information.

Regardless, such agreements could aim at clarifying their relations, specifying the conditions of their co-operation, and formalising information sharing procedures. Regarding the latter, access to information can be subject to further conditions – for example, it can be granted in order to investigate specific violations only or when a criminal case has been opened, or it can simply require that requesters provide grounds for their request (OECD, 2011[1]). Examples from other jurisdictions could be used as inspiration by the Commissioner to define and set the inter-agency agreements and memorandums of understanding required to fulfil their duties (Box 4.8).

Second, the Commissioner lacks important powers such as the rights to access documents/records from other public authorities – tax, land/real estate, motor vehicle and other registers, and personal ID databases, etc. – and data from banks and other commercial entities. However, they can conduct property searches and obtained access to the central personal ID database.

Discussions with key stakeholders underscored the need to ensure the Commissioner's access to information held by other agencies in order to identify discrepancies and verify inaccuracies and omissions. This cross-check would be key to ensure an effective verification and audit process of asset and interest declarations.

Box 4.8. Co-operation and databases cross-checking within the declaration system in France

To fulfil its mandate, the French High Authority for Transparency in Public Life (*Haute Autorité pour la Transparence de la Vie Publique, HATVP*) requires a high level of co-ordination and co-operation with institutions and individuals who detain information useful for the monitoring process of asset and interest declarations.

Considering this, the HATVP has signed several inter-agency agreements and protocols with public institutions aimed at ensuring better co-ordination and facilitating the exchange of relevant information:

- In 2016, the HATVP and the tax administration signed a protocol to clarify their relations. Since January 2017, staff members of the HATVP are allowed to connect directly to some of the tax administration databases and applications to carry out routine checks, especially to value real estates, to access the list of registered bank accounts or to access cadastral information.
- In September 2017, the HATVP and the National Anti-Money Laundering Service signed a protocol. This protocol, together with legislative developments conducted in December 2016, allows both institutions to share relevant information to their respective controls and investigation procedures.
- Regarding co-operation with courts, the HATVP and the Directorate for Criminal Matters and Pardons and the HATVP and the Attorney General signed a memo and an instruction, respectively, to formalise information sharing procedures with prosecutors and audit courts.
- In 2019, the HATVP signed a protocol with the French Anticorruption Agency to ensure better co-ordination of actions between the two institutions with complementary missions.

Source: (High Authority for Transparency in Public Life, 2022[16])

Finally, international co-operation is critical in fighting corruption (Burdescu et al., 2009[17]). Interaction and co-operation with relevant international institutions and counterparts may facilitate knowledge sharing as well as project supporting for the development of specific institutional and legal standards. Considering this, the Commissioner could develop a strategy to engage in both formal and informal agreements with authorities in other jurisdictions to facilitate technical assistance and co-operation activities for the verification of assets and interest declarations. Similarly, it could consider inviting some of them to participate as observers in the technical working group on asset and conflict-of-interest declarations to compare and measure the capabilities of its system against other examples.

The Commissioner for Standards in Public Life could develop a risk-based methodology that considers inherent risks such as inconsistencies in the disclosure form, unjustified changes in wealth and external risk factors

Automated risk or "red/risk flag" analysis helps to filter declarations and prioritise verification by ranking declarations according to their risk level. It also increases the capacity of the agency tasked with verifying assets and interests of officials by focusing the agency's limited resources on the verification of high-risk declarations. Moreover, automation can remove discretion, minimises manual processes, and improve the system's impartiality and credibility (World Bank, 2021[2]). An automated revision would allow the verification process to be streamlined and prevent unnecessary impediments, such as short time limits for verification procedures or reduce the possibility to challenge each step of the proceedings by declarants.

There are different approaches that can be taken, depending on the specific needs of the country when defining "red flags". In some cases, a mere review of declarants and their level of risk would suffice. This could very well include the usage of categories of officials as the basis of defining risk (e.g. politically exposed persons, decision-makers, directives or officials involved in public procurement processes, etc). In Malta, the review of declarations of elected and appointed officials has two characteristics. First, the sample of declarations is quite limited: currently the Commissioner for Standards reviews declarations from 89 MPs in Parliament, of whom 19 are Ministers and 6 are Parliamentary Secretaries. Since every Minister and Parliamentary Secretary submits a separate declaration in addition to his/her declaration as MP, this makes for a total of 114 declarations. Therefore assigning categories of officials as a risk factor would not be appropriate. Similarly, all elected and appointed official are always considered high risk and require the application of enhanced due diligence measures, considering their level of exposure and decision making capacity at a policy level. Therefore, in Malta, a risk-based methodology must be based solely on the kind of information reported and the content of other sources of "*red-flags*".

To develop a risk analysis process, the Commissioner must first consider developing a risk analysis framework. Several guides provide the basis for this preliminary analysis (Box 4.9). When determining risk factors, the Commissioner could consider, for example, the external sources such as media reports on assets declarations, the comparison of declarations over time to detect inconsistencies, and the cross checking with other government databases. Whether the selection of declarations to be verified is random, risk-based or made using another method, some balance appears useful between systematic verification according to rigid criteria and an ad-hoc approach acting on particular warning notifications or other signals (OECD, 2011[1]).

An electronic system would then allow the use of algorithms to detect risks in the submitted declarations according to these pre-set "red flags" or indicators. External sources also may point to at-risk individuals or at-risk situations and can be used to inform the risk analysis.

Box 4.9. Developing a Risk Analysis Framework: General Considerations

The automated risk analysis limits the number of declarations that undergo the more labour-intensive manual verification and focuses such verification on high-risk declarations. The automated risk analysis is both a prioritisation and detection tool. It helps prioritise the verification of numerous declarations. In addition, it can be used to better detect violations following the risk indicators identified by the analysis. The automated risk analysis helps to remove or limit the discretionary decision-making concerning the targets of verification. General considerations include:

- Use of a risk-based approach to trigger and prioritise verification when inherent risks are found in the disclosure form, such as the position/duties of the declarant. Systems which automatically trigger the verification on formal grounds (e.g. late submission) are ineffective as they overburden the verification agency. This is especially relevant for systems where the number of disclosures is substantial and not matched with the resources to verify them.
- When the number of mandatory verifications is substantial, the verification agency has to prioritise its work by focusing on high-risk declarations. Such prioritisation should be transparent and based on clear criteria limiting discretionary decision-making. The system may categorise declarations submitted by certain top officials as high-risk by default. This will give credibility to the system and avoid focus on low-level officials or petty inconsistencies.
- External signals (e.g. media reports, complaints of citizens or watchdog NGOs, referrals from other authorities) should take priority. The agency should verify them if they give rise to a substantiated suspicion of irregularity. Anonymous reports about verifiable facts should also be included.
- The verification should include IT solutions that automate certain operations. Such solutions can perform a risk analysis of each declaration, compare several declarations of the filer or compare with declarations of similar filers. Applying analytical software to the disclosure data can help to find patterns that can be then used to develop red flags for future verifications.
- Cross-checking disclosures with other government held registers and databases is an important element of the verification that effectively uses government data. The system can also automate such cross-checks and perform them shortly after the declaration is filed or even at the time of the submission.

Source: (World Bank, 2021[2])

Considering this, the Commissioner could include as risk factors the following criteria and, based on those, assign thresholds for an automatic review in the system (OECD, 2017[18]). A key part of assigning these risk factors is analysing financial flows. In particular, the internal coherence of declaration should be the first review conducted by the Commissioner. In the review process, risk factors may be triggered when the financial relation between declared items does not add up. An example of this is determining as an alert any asset acquired above annual salary (or above XX % of annual salary) for the elected official or that of a family member. Other financial criteria to be considered is (OECD, 2017[18]):

- **Analysis of financial information against market value**: Stocks that should be pricier or assets that are declared at a lower absolute numerical threshold. This review could be sequenced, to reflect the differing income and wealth levels.
- **Outstanding disparities between years**: Do incoming and outgoing financial flows balance over the duration of several years (separately for the public official and for the entire family)?

- **Drop in wealth**: total amount of savings drops by at least XX % and at least XX € while at the same time the value of all other assets and loans granted to third parties remains the same (or with only little deviation).
- **Logical relation between items**: determine a threshold that detects combinations of fields that in reality can usually not work (e.g. reporting income from business, but not reporting ownership of business).
- **Analysis of patrimony, related to income and savings**: any asset above "initial savings + income in office" (initial = beginning of period/year), current savings above "initial savings + income in office/as declarant", current savings above "initial savings + salary received".
- **Loans granted to third parties**: establish as a red flag any loans that have been given to a Politically Exposed Person (PEPs) or people within international debarment lists.
- **Sub-annual expenses related to the purchase date of movable or real estate**: enough accrued income (+ savings) available at the time of purchase, or only by the end of the year.

Similarly, as stated previously, asset declarations need to be compared against other databases over time, so that "red flags" can have a method of contrast. Normally, a filer will "pre-populate" the report with information from a previous report before adding, deleting, or revising entries. In that case, an official assigned to review the report can use an automated comparison tool to examine only items that have changed since the previous report (Kotlyar and Pop, 2019[13]). This tool significantly reduces the workload of the reviewing agency and makes their reviews more effective by highlighting items that have not previously been reviewed. Moreover, the financial baseline for the beginning of the period generally comes from a previous declaration and so changes in the declarations are one of the fastest ways to identify risks. Malta could consider establishing the following as risk factors in the contrast review (OECD, 2017[18]):

- **"Jump" in income**: more than XX % increase in annual income.
- **Patterns of income**: more than XX years in a row or within a total of XX years receipt of monetary gifts or similar "income for free" (casino/lottery winning, etc.).
- **Selling assets**: An asset disappears without relevant income for selling it.

The risk analysis could also consider as "red flags" external sources of information. Although these sources are not part of the declaration nor its information in other government databases, it can be useful to analyse whether due diligence is required in any of the declarations being reviewed by the Commissioner. Such external sources of information are, for example:

- **Media review**: journalist and civil society analyse publicly available asset declarations against other information provided to them by whistleblowers or journalists in other jurisdictions. When verifying declarations, the reviewing institutions could consider conducting a review of publicly available information and include this as a "red flag" in their review process.
- **Secondary employment**: as MPs in Malta may have secondary employment, the Commissioner may consider compiling and updating a list of these secondary employments and rank them by level of risk. This would allow them to determine which officials are at higher risks and therefore which declarations to consider in further detail. Sources of second income and data on the employer are of key importance for this.
- **Information provided by partnering organisations (law enforcement agencies)**: Review together high-risk areas and share information when "red flags" are triggered. Similarly, law enforcement agencies may point to individual cases which are already triggering "red flags" in their own systems.

Another tool that may be useful when determining “red flags” is determining key words that flag patterns or empty fields, in particular: family members exist, but there is no information for family members’ income or assets or it is all set at zero, assets with value “unknown”, new movables without purchase price, savings/bank deposits empty or zero, income empty or zero.

Finally, a draft set of risk criteria should be tested and run on the electronic system to see how many declarations are flagged by the rules. If necessary, some of the thresholds can be lowered or raised manually to adapt the number of flagged declarations down/up to an appropriate, workable level (OECD, 2017[18]).

The Commissioner for Standards in Public Life could elaborate a process for the verification of asset declarations, and pilot its electronic submission tool against identified risks

Implementing an automated risk analysis entails additional and complex challenges. Verification agencies may lack in-house IT expertise or the funds to outsource the development of a system or assure its support. Standard processes ensure that institutional memory of what verification means in detail is documented in all steps, disregarding any staff changes. Documenting the standard steps can also facilitate awareness and co-ordination among the oversight bodies (OECD, 2017[18]). In fact, criteria can be expanded over time and adjusted within the process. Regardless, a few issues should be considered when drafting this process.

First, there must be non-ambiguity of the data being requested. When selecting the risk criteria or “red flags”, information requested must be clear and readable by a software in a non-ambiguous way. Pull-down menus are extremely helpful in this task, but it is up to the verifying authority to determine clear and simple fields, as well as the thresholds to be reviewed.

Second, define with as much clarity as possible the steps of verification, including an overview/flow-chart with the basic steps for the review of the declaration. For example, it could include a formal check to see if all minimum information is filled, if the information matches the required format, plausibility checks on the completeness of lists based on a random selection of data/lists, arithmetic/logical check, etc. Furthermore, notifications by citizens, media, a random selection of declarations could be a final step to be considered if an inconsistency shows up. This manual could also include the notification of prosecutors and other authorities when necessary (OECD, 2017[18]).

Third, the verifying institution (e.g. the Commissioner), must determine the steps to be followed once one of the “red flags” shows up in the system. For example, whether this would trigger a stand-alone audit or an enhanced due diligence on the declarant and its family. Similarly, how many and what kind of risks trigger these special processes. For example, if once two or more risks are identified above a certain threshold, an audit is triggered. Another option could be that some risks could trigger a full audit, and some would simply be kept under “special vigilance”.

The Commissioner for Standards in Public Life could consider making declarations publicly available, to remove barriers encountered by non-state actors in the access and scrutiny of declarations

Publishing information from asset and interest declarations for purposes of public scrutiny can have a deterrent effect and promote integrity and trust in the public administration (World Bank, 2021[2]). In Malta, declarations by Ministers (as submitted to the Cabinet Secretary) are tabled in Parliament, whereupon they become freely downloadable. Declarations by MPs are kept by the Speaker and made publicly available for review. There are no specific arrangements in place to proactively make the declarations available easily on-line year after year (GRECO, 2018[8]). Stakeholders underscored the weaknesses of the system by stating that access not only takes too long, but the information is also scattered and not user friendly.

Considering it is important to strike the right balance between public disclosure and protection of privacy, the Commissioner could consider the disclosure of asset declarations in a manner that provides this balance. For example, the proposed system of electronic submission could make the information available as soon as officials fill it, alongside a user-friendly explanation of the basic information contained in the declarations. This is of the outmost importance, considering that stakeholders may use this information to advocate new approaches in the verification of declarations and even provide additional independent scrutiny and research in certain cases.

4.2.5. Strengthening the sanctions system when irregularities arise

The Ministry of Justice could consider amending the Standards Act to strengthen the sanctions system when irregularities arise in the review of asset declarations

Under the review process, the Commissioner might find irregularities in the review of the information. In these cases, the Commissioner should be able to impose corrective measures or sanctions. Currently, the extent of controls in Malta is limited. In many countries, the administrative procedure would need to be supported by a law or government policy to be enforceable. Failure to provide a complete return when required could be made the subject of sanctions (for example, disciplinary action or disqualification from public office for a public servant, or removal from elected office for an elected official), or criminal sanctions as appropriate (OECD, 2005[12]).

Currently, the result of a false declaration or failure to file a declaration triggers Art.13(1) (a), which merely refers to the issuance of “recommendations in the form of guidelines” (GRECO, 2018[8]). In accordance with Art. 13 (1)(b) the Commissioner could also investigate any person on any matter alleged to be in breach of any statutory or any ethical duty of any person to whom the Act applies. However, if the Commissioner would detect discrepancies in the declarations, no sanctions could be applied after the investigation. In fact, the Commissioner passes this information to the Committee for Standards for it to determine a sanction.

There are a few issues concerning the referral of information by the Commissioner of irregularities in asset declarations. If criminal offences are found, the Commissioner must transfer the information to law enforcement authorities, in accordance with guiding principles of criminal law. However, the process will continue without the Commissioner being notified of the results and actions the report might trigger. The Commissioner is not actually obliged to share information with a person under investigation at the outset, but the Standards in Public Life Act (SPLA) does oblige the Commissioner to disclose evidence to the person under investigation and to give them the right to be heard before the Commissioner finalises their report. Sharing this information with the person under investigation may create additional problems. Even if guarantees are to be given to all parties within any criminal, administrative or disciplinary process, it is concerning that the information be required to be shared, especially if criminal activity was found to be present. Most concerning is that this would mean triggering an alert on the person under investigation and endangering the investigation conducted in parallel by law enforcement authorities.

Therefore, the Ministry of Justice could consider: (i) amending the Standards Act to allow the Commissioner to impose corrective measures in the review process of asset declarations and (ii) modifying the stage in which sharing of information with the official is made, to provide enough safeguards in the investigation process.

4.3. Summary of recommendations

The following provides a detailed summary of the recommendations for improving the collection and verification of asset and interest declarations for elected and appointed officials in Malta. The recommendations contained herein mirror those contained in the analysis above.

Issue	Recommendations
Broadening the scope of asset declarations to respond to corruption	• Broaden the category of declarants to include persons of trust, by amending the Public Administration Act or by including an ad hoc clause in the Standards for Public Life Act (SPLA).
	• Propose an enhanced scrutiny for related persons, for example, when notice of a possible violation is received or a probe is initiated.
	• Amend the Codes of Ethics for members of the House of Representatives, Ministers and Parliamentary Secretaries to expand the scope of information to be reported in asset declarations.
	• Assign to the Commissioner, by way of legislation, the power to amend the template as may be necessary, to include categories that may potentially help him fulfilled his role in the revision of declarations.
	• Develop tailored guidance in relation to completing the interest declaration forms, such as the establishment of guidelines on completing assets declarations for MPs, Ministers and Parliamentary Secretaries
	• Create institutionalised channels of communication with MPs to provide regular advice.
	• Separate “asset” and “interest” declarations, to allow better comprehension amongst elected officials of the purpose of each.
Streamlining the process for the submission of asset declarations in order to increase the efficacy of the system	• Amend the Standards Act, First Schedule, Art. 5 to allow the Commissioner to receive all the submissions, for example via an electronic submission system.
	• Amend the Standards Act, in particular Art. 4(5)(a) of Chapter 372 to enable the Commissioner for Revenue to share tax declarations submitted by Members of Parliament directly with the Commissioner for Standards in Public Life.
	• Conduct an initial assessment of probable amendments of the legal system that allow for electronic submission. The Ministry of Justice could conduct such an assessment, and cross-reference legislation pertaining to privacy, use of confidential information and data protection.
	• Assess human resources and/or expertise to develop and maintain the system or even the needs of declarants in terms of training. This also includes assurances on how to maintain security and stability of the system.
	• Locate the system of electronic submission at the Commissioner for Standards in Public Life’s office and grant direct access to the Office of the Attorney General, the Financial Intelligence Analysis Unit and the Police.
	• Include a few automatic fillers in the electronic submission systems to help streamline and standardised the process and therefore lower the reporting burden.
Amending the legal and institutional framework for the compilation and review process of asset declarations, including the development of a risk-based methodology to analyse asset declarations	• Strengthen the asset declaration review team of the Commissioner through assigning a larger team for the review of declarations and providing the team with the necessary technological tools and trainings for assessing declarations.
	• Develop an online instruction portal for existing and future review teams, on the usage and functionalities of electronic submission and how to better use this information in the identification of “red flags”.
	• Establish Inter-agency agreements and Memorandums of Understanding (MoU) to address co-ordination challenges, including a specific MoU with the office if the Attorney General, the Financial Information Unit and the Police to allow the possibility to discuss specific cases as well as to share and discuss the results of the review of assets declarations on a policy level.
	• Establish legal provisions to allow access to data that is not already publicly available, during an investigation, to enhance co-ordination and the sharing of relevant information.
	• Develop a strategy to engage in both formal and informal agreements with authorities in other jurisdictions to facilitate technical assistance and co-operation activities around verification of assets and interest declarations.
	• Invite authorities to participate as observers in the Commissioner’s technical working group on asset and conflict-of-interest declarations to compare and measure the capabilities of its system against other examples.
	• Develop a risk analysis framework which includes the review of external sources such as media reports, the comparison of declarations over time and the cross checking with other government databases.
	• Assign risk factors, and based on those, assign thresholds for an automatic review in the system.

Issue	Recommendations
	• Conduct contrast reviews, to allow asset declarations to be compared against other databases so that "red flags" can have a method of contrast.
	• Develop a process for the verification of asset declarations and pilot its electronic submission tool against identified risks.
Strengthening the sanctions system when irregularities arise in the review of asset declarations	• Amend the Standards Act to allow the Commissioner to impose corrective measures in the review process of asset declarations.
	• Modify the stage in which sharing of information with the official is made, to provide enough safeguards in the investigation process.

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5 Establishing a framework for transparency and integrity in lobbying and influence in Malta

This chapter reviews the Commissioner's proposals to introduce a lobbying framework in Malta. While the proposals are in line with international best practices, this chapter provides tailored recommendations to improve the proposed framework and close potential loopholes. It also proposes measures for strengthening integrity standards on lobbying and identifies avenues to establish sanctions for breaches of lobbying framework.

5.1. Introduction

Public policies determine to a large extent the prosperity and well-being of citizens and societies. They are also the main 'product' people receive, observe, and evaluate from their governments. While these policies should reflect the public interest, governments also need to acknowledge the existence of diverse interest groups, and consider the costs and benefits of the policies for these groups. In practice, a variety of private interests aim to influence public policies in their favour. This variety of interests allows policy makers to learn about options and trade-offs and ultimately decide on the best course of action on any given policy issue. Such an inclusive policy-making process leads to more informed and ultimately better policies.

In Malta, one of the primary avenues through which business associations, trade unions and civil society organisations provide input to draft laws and policy proposals is through the social dialogue mechanism. Input pertaining to domestic laws and policies can be made through the Council for Economic and Social Developments, which is an advisory body providing a forum for consultation and social dialogue between social partners and civil society organisations. The Council's main task is to advise the government on issues relating to sustainable economic and social development in Malta, and its functions are regulated under the Malta Council for Economic and Social Development Act (No. 15 of 2001). Input related to laws and policies at the EU level is facilitated via European Service of Malta (Servizzi Ewropej f'Malta or SEM).

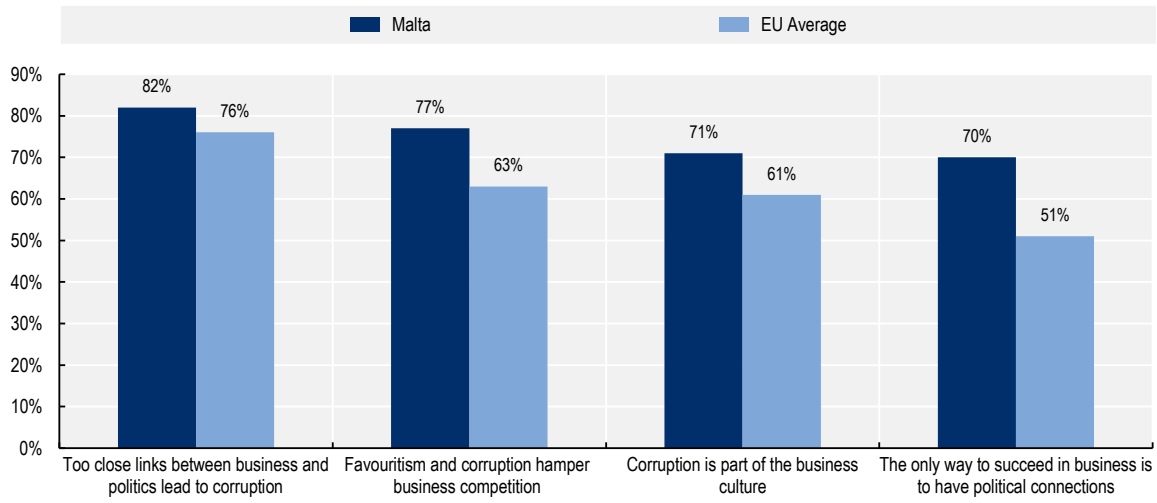
Social dialogue mechanisms play a critical role in the policy-making process, and require an effective legislative framework, a commitment to implementation, and appropriate accountability measures to ensure governments comply with the principles of engaging stakeholders effectively. Stakeholders in Malta indicated that these mechanisms operate effectively, and enable interest groups to access government in a transparent manner.

However, social dialogue mechanisms are not the only way in which policies are influenced. While "professional" lobbying – that is, individuals whose formal occupation is to approach government on behalf of specific interests to influence a policy – is not a common occurrence in Malta, different interest groups have access to policy makers outside the social dialogue mechanisms that are currently unregulated and opaque. While the act of lobbying itself is beneficial for society as a whole, because it enables different groups to provide input and expertise to the policy-making process, it has a profound impact on the outcome of public policies. If non-transparent, lobbying poses a risk to inclusiveness in decision making and trust in government, possibly resulting in the dissatisfaction of the public as a whole. Missing or ineffective lobbying regulation may also negatively affect the appetite of (foreign) investors and lower the country's trustworthiness at the international level.

In Malta, non-transparent lobbying is a serious issue. Perception indices show that the perception of undue influence and an opaque relationship between the public and private sectors is significant in Malta. Recent Eurobarometer surveys found that 71% of respondents considered corruption to be a part of the business culture in government, with 70% responding that the only way to succeed in business was through political connections (see Figure 5.1) (European Commission, 2019[1]). In all these categories, Maltese respondents are above the EU average, showing that there are higher levels of perceived corruption when doing business in Malta.

Figure 5.1. Maltese perceive that close ties between business and politics lead to corruption

"Total Agree"



Source: (European Commission, 2019[1]).

Similarly, in the most recent Corruption Barometer for the European Union, less than half (48%) of Maltese respondents think that the government takes their views into account when making decisions, and almost half (49%) think that the government is controlled by private interests.

Other institutions in Malta have highlighted the impact of non-transparent lobbying on policy making. For example, a 2018 report by the National Audit Office (NAO) found that undue influence was a factor in awarding high-value energy-supply contracts (National Audit Office, 2018[2]). In particular, the NAO found that a 2013 proposal for the construction of a new power station "raised serious concerns regarding the technical specifications for the construction of the power station set by Enemalta, which were influenced, if not dictated, by parties who had a direct interest in this contract" (National Audit Office, 2018[2]). The report further stated that the companies involved in putting forward the proposal were later awarded the contract (National Audit Office, 2018[2]).

Additionally, the Commissioner for Standards in Public Life has indicated several specific concerns related to lobbying in Malta. These include the concerns about the secrecy in which lobbying takes place – e.g. people do not know who is influencing a decision, and those who take a different view do not have the opportunity to rebut arguments and present alternative views; that some individuals and organisations have greater access to policy makers because of their contacts, because they are significant donors to a political party, or simply because they may have more resources; and that lobbying may be accompanied by entertainment or other inducements, or that there is lack of clarity about who is financing particular activities (Office of the Commissioner for Standards in Public Life, 2020[3]).

Recognising the challenges to integrity in decision making posed by the lack of transparency in lobbying, the Government of Malta is taking steps towards introducing regulation. The Standards in Public Life Act empowers the Commissioner for Standards in Public Life "to identify activities that are to be considered as lobbying activities, to issue guidelines for those activities, and to make such recommendations as it deems appropriate in respect of the regulation of such activities".

The Commissioner for Standards in Public Life ("the Commissioner") presented in February 2020 a document "Towards the Regulation of Lobbying in Malta: A Consultation Paper" ("Consultation Paper"). The Commissioner outlined a proposal for regulating lobbying activities in Malta, informed by international good practice. This proposal has been welcomed at the international level, including most recently in the compliance report by the Group of States against Corruption (GRECO).

This chapter reviews the Commissioner's proposals to introduce a lobbying framework to Malta and provides recommendations to help the Government of Malta develop the most feasible lobbying regulation. The recommendations are tailored for the specific influence landscape in Malta and aim to improve the proposed framework and close potential loopholes.

5.2. Setting the legal and institutional framework for transparency and integrity in lobbying

When determining how to address governance concerns related to lobbying, countries need to weigh the available regulatory and policy options to select the appropriate solution. The specific context, constitutional principles, and established democratic practices (such as public hearings or institutionalised consultation practices) need to be factored in.

The OECD Recommendation on Principles for Transparency and Integrity in Lobbying (herein "OECD Lobbying Principles") emphasise that Adherents should provide a level playing field by granting all stakeholders fair and equitable access to the development and implementation of public policies (Principle 1). Likewise, the OECD Lobbying Principles state that countries should consider the governance concerns related to lobbying practices (Principle 2), as well as how existing public governance frameworks can support this objective (Principle 3) (OECD, 2021[4]).

5.2.1. Establishing the legal framework

Currently in Malta, measures are in place to address some of the broader risks that could lead to undue influence, including conflict-of-interest and post-public employment. For example, the Standards in Public Life Act, which covers MPs, ministers, parliamentary secretaries and persons of trust, contains measures on conflicts of interest and acceptance of gifts and benefits in the Codes of Ethics for Members of the House of Representatives and Ministers and Parliamentary Secretaries, which are found in the first and second Schedule, respectively. Similarly, Article 4 of the Public Administration Act, which covers public officials, provides for rules on post-public employment, whereas the Code of Ethics contains measures on preventing and managing conflict of interest.

The broader legal framework, as noted above, also includes measures to facilitate public access to decision making. For example, rules pertaining to stakeholder engagement are set out in Malta Council for Economic and Social Development Act (No. 15 of 2001), and measures regulating access to information can be found in the Freedom of Information Act (Chapter 496 of the Laws of Malta).

Despite this existing framework, regulatory gaps remain when it comes to influencing policy makers. As noted above, there is a lack of transparency regarding which interest groups have access to which policy makers, and on what issues. Moreover, there is limited guidance for both public officials and those seeking to influence the policy-making process on how to engage with one another in a way that upholds the public interest.

Recognising this challenge, the Standards in Public Life Act made provisions for further guidance to be issued to regulate lobbying. This entry point is set out in Article 13(1) of the Standards in Public Life Act, which empowers the Commissioner for Standards in Public Life to "issue guidelines" and "make such recommendations as he deems appropriate" with respect to the regulation of lobbying.

The Government of Malta could regulate lobbying through a dedicated law

The Commissioner for Standards in Public Life has proposed to regulate lobbying through a dedicated law, rather than by issuing lobbying guidelines or amending the Standards in Public Life Act. Given the context in Malta, the proposal to regulate lobbying through a dedicated law has merit on several grounds.

First, the Standards in Public Life Act does not include any provisions that would make rules on lobbying included in it binding. Therefore, issuing guidance through the Standards Act would make the provisions voluntary, thereby undermining their effectiveness. Indeed, experience from OECD members has shown that voluntary methods are insufficient to deal with the challenges posed by lobbying (OECD, 2014[5]). For example, a select committee of the United Kingdom House of Commons produced a study in 2009 strongly recommending the adoption of a mandatory lobbying regulation. The report found that efforts at self-regulation fell short of expectations, and that a mandatory regulation was needed to achieve transparency on the extent to which interest groups are able to access and influence decision makers in Government (Box 5.1). The report later led to the adoption of a mandatory lobbying disclosure scheme in 2014.

Box 5.1. The United Kingdom: from self-regulation to mandatory regulation

In 2008 and 2009, a select committee of the United Kingdom House of Commons produced a study strongly recommending the adoption of a mandatory lobbying regulation. The report found that the conditions were not in place for effective self-regulation of lobbying activities by those who carry out these activities. At the time, many umbrella bodies, such as the Association of Professional Political Consultants (APPC), the Public Relations Consultants Association (PRCA) and the Chartered Institute of Public Relations (CIPR), had codes of conduct for their members and made several commitments to transparency of lobbying activities. These schemes however had inherent flaws:

- First, there was no consistent approach across the sector. Umbrella organisations had diverse views on what constitutes appropriate conduct and some codes of conduct could be seen as the lowest common denominator. In addition, the codes and registration requirements only applied to those who were members of these umbrella organisations. Many law firms and think tanks who were heavily involved in influencing public policies did not participate in these association-run voluntary schemes. Lastly, the situation allowed consultancies to pick and choose the rules that applied to them. In sum, voluntary schemes applied unequally.
- Second, the schemes did not provide an adequate level of transparency because a commitment to voluntary transparency in lobbying is always a relative concept. The report considered that how private interests achieve access and influence are among the trade secrets lobbyists are not willing to disclose voluntarily, and that a degree of external coercion was required to achieve sufficient transparency across the board.
- Third, the complaints and disciplinary processes of the lobbying umbrella bodies were under-used and ineffective. Umbrella organisations had varying enforcement capacities, disciplinary process were scarcely ever used and reprimands were usually the only outcomes for disciplinary breaches.
- Lastly, the three umbrella groups had an in-built conflict of interest, in that they attempted to act both as trade associations for the lobbyists themselves and as the regulators of their members' behaviour.

Source: (House of Commons Public Administration Select Committee, 2009[6]).

Evidence has also shown that businesses may make high-profile voluntary commitments to address major global challenges such as environmental sustainability, and then contradict these commitments through their less-visible lobbying (Box 5.2).

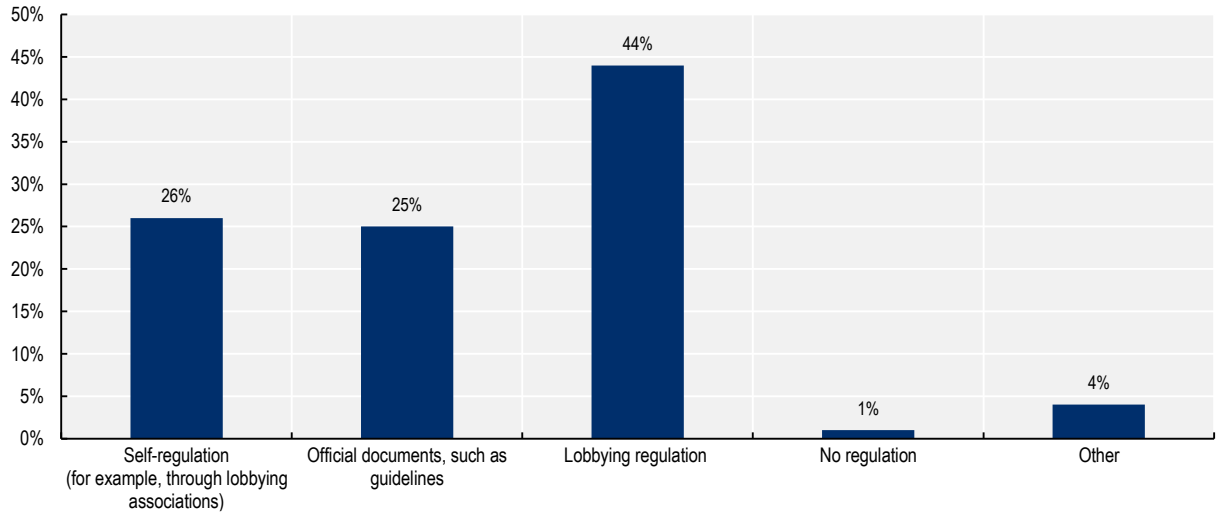
Box 5.2. Voluntary initiatives and self-regulatory pledges have shown limited impact in the climate policy area and may even be used to lobby against binding climate policy

Evidence shows that self-regulatory pledges and voluntary corporate programmes by companies may fall short of the impact they claim, and may even be used to mask lobbying efforts to block or delay binding climate policies (Lyon et al., 2018[7]). A study found that industry stakeholders in the United States primarily mobilised to maintain the status quo regarding cap and trade systems in 2009 and 2010, but simultaneously joined the cap and trade coalition in order to favourably shape potentially inevitable climate legislation (Grumbach, 2015[8]).

Another study showed that participants to the chemical industry's "Responsible Care" programme actually made less progress in reducing their emissions of toxic chemicals than did nonparticipants (King and Lenox, 2000[9]). Chemical industry documents have shown that one of the programme's main goals was pre-empting tighter regulations (Givel, 2007[10]). Lastly, an analysis of the Climate Challenge Program, a former partnership between business and the US Government to encourage electric utilities to voluntarily reduce their greenhouse gas emissions, found that there were no difference in emission reductions overall between participants and non-participants of the programme (Delmas and Montes-Sancho, 2009[11]). Similarly, public statements the electric utility industry made indicated that it formed Climate Challenge to avoid new regulations.

Lastly, surveys show that lobbyists themselves are generally supportive of mandatory regulations and public disclosure of lobbying activities. A recent OECD survey of professional lobbyists conducted in 2020 found that lobbyists favoured a mandatory lobbying regulation.

Figure 5.2. Best means for regulating lobbying activities, according to lobbyists



Source: OECD 2020 Survey on Lobbying.

Second, those who are lobbied are subject to various integrity standards and transparency requirements, but these regulations are insufficient in their coverage and do not have a specific focus on lobbying. For example, the scope of the current Standards in Public Life Act is limited to select officials, in particular those who are elected or appointed. While there is a case to be made for expanding the scope of the Act (see Chapter 2) the envisioned expansion would still miss key actors, including policy makers in the civil service. Good practice has found that making the provisions applicable across all branches of government is critical, as policy making takes place across a variety of public entities in all branches and levels of government. Moreover, as pointed out by the Commissioner, while the scope of the Act could be expanded through a sub-section to other entities, this would create legal confusion as well as potential gaps with other key legislation (e.g. the Act on Public Administration), in turn undermining implementation of and compliance with the law.

Finally, by setting out a separate law, the provisions of the law would be debated article by article in the House of Representatives. This would ensure that the Act itself, when passed, had undergone proper scrutiny and benefitted from public debate (Commissioner for Standards in Public Life, 2020[12]). However, in moving forward with the proposal to regulate lobbying through a separate law, the Commissioner could co-ordinate with the Ministry of Justice, in particular on the proposed reforms to the integrity provisions under the Public Administration Act. As indicated several times throughout the stakeholder interviews, the various regulatory instruments that govern integrity, including integrity in decision making, must be coherent and co-ordinated to ensure there are no overlaps or gaps.

5.2.2. Assigning responsibilities for implementation

Setting clear and enforceable rules and guidelines for transparency and integrity in lobbying is necessary, but this alone is insufficient for success. Transparency and integrity requirements cannot achieve their objective unless the regulated actors comply with them and oversight entities effectively enforce them (OECD, 2021[4]).

To that end, oversight mechanisms are an essential feature to ensure an effective lobbying regulation. All the countries that require transparency in lobbying activities have an oversight entity (OECD, 2021[4]). At the same time, all countries with a register on lobbying activities have an institution or function responsible for monitoring compliance. While the responsibilities of such bodies vary widely among OECD member and partner countries, three broad functions exist: 1) enforcement; 2) monitoring; and 3) promotion of the law.

The Commissioner for Standards in Public Life could be entrusted with responsibilities for overseeing and enforcing the Regulation of Lobbying Act

The Commissioner has proposed that the operation of key aspects of the Regulation of Lobbying Act and its enforcement should be entrusted to the Commissioner for Standards in Public Life. The Commissioner has also proposed that his office should host and maintain the register of lobbyists and enforce the requirement for lobbyists to register and submit regular returns, as well as enforce the requirement for designated public officials to list communications with lobbyists on relevant matters.

Some stakeholders noted reticence in assigning the Commissioner authority for overseeing the implementation of the Regulation of Lobbying Act. In particular, stakeholders noted that the Commissioner does not have the mandate to oversee conduct of public officials covered under the Act on Public Administration. To these stakeholders, the current set-up would limit the scope of the Regulation of Lobbying Act to only those falling under the Act on Standards in Public Life.

To address this limitation, the Commissioner has, as noted above, recommended to set out the rules on lobbying in a separate regulation in order to enable broader coverage and include those covered by the Standards in Public Life Act and the Public Administration Act. This legislative underpinning would therefore give the Commissioner the necessary authority. In addition, the Office's existing institutional arrangements make it well-placed to administer the law: it enjoys functional independence and garners broad respect both from the government and society more broadly.

The proposal for the Commissioner's office to be delegated responsibilities for enforcing and overseeing the lobbying regulation aligns with good practice from OECD members. It is not uncommon to assign the oversight body responsible for integrity standards of elected and appointed officials with responsibilities for policies pertaining to those in the civil service as well (such as lobbying). For example, in Ireland, the Standards in Public Office Commission oversees the administration of legislation in four distinct areas, including the Ethics in Public Office Act, which sets out standards for elected and appointed public officials, and the Regulation of Lobbying Act, which regulates lobbying for elected and appointed public officials, as well as officials in the civil service (see Box 5.3).

Box 5.3. The Irish Standards in Public Office Commission

The Irish Standards in Public Office Commission has supervisory roles under four Acts:

- The Ethics in Public Office Act 1995, as amended by the Standards in Public Office Act 2001, (the Ethics Acts), which sets out standards for elected and appointed public officials. Under these Acts, the Commission processes complaints and examines possible wrongdoing, oversees tax compliance by people appointed to 'senior office' and candidates elected to Dáil Éireann and Seanad Éireann, amongst others.
- The Electoral Act 1997, which regulates political financing, including political donations and election expenses. Under this Act, the Commission provides guidance and advice to stakeholders (e.g. on disclosure of political donations, limits on the value of donations which may be accepted, prohibited donations, limits on election spending), oversees compliance, amongst others.
- The Oireachtas (Ministerial and Parliamentary Activities) (Amendment) Act 2014, which regulates expenditure of public funds to political parties and independents. Under this Act, the Commission reviews the disclosures by party leaders and Independents on how they spend their annual allowance, issues guidelines (e.g. on the parliamentary activities allowance and the Exchequer funding under the Electoral Acts), oversees the Act, amongst others.
- The Regulation of Lobbying Act 2015, which makes transparent the lobbying of public officials. Under this Act, the Commission manages the register of lobbying, ensures compliance with the Act, provides guidance and assistance, and investigates and prosecutes offences under the Act.

Source: (Standards in Public Office Commission, 2021[13]; Standards in Public Office Commission, 2021[14]).

In order for the Commissioner to effectively carry out an oversight and enforcement role of the lobbying regulation, it will require sufficient financial and human resources. Indeed, the Office of the Commissioner is currently small in number, with only 9 people assisting the Commissioner: six officers/employers and three people on a contract-for-service basis. Although having a small office has been a strength in terms of management, engagement and co-ordination of the staff, it has also been a challenge in terms of ensuring that functions are fulfilled in a timely and efficient manner. In this sense, adding new functions on lobbying would substantially increase the workload of the Office, threatening further its capacity to deliver on its different responsibilities.

Considering this, if the Commissioner is assigned the mandate to oversee lobbying, it is fundamental to ensure that the Commissioner has the appropriate financial and human resources to carry out the new functions effectively. To that end, the Commissioner could undertake a workforce planning exercise, and request the House Business Committee of the House of Representatives for additional financial resources for the coming years (see the Organisational Review of the Office of the Commissioner for more details).

5.3. Ensuring transparency in lobbying

Transparency is the disclosure and subsequent accessibility of relevant government data and information (OECD, 2017[15]), and when applied to lobbying, is a tool that allows for public scrutiny of the public decision-making process (OECD, 2021[4]). Policies and measures on lobbying therefore should “provide an adequate degree of transparency to ensure that public officials, citizens and businesses can obtain sufficient information on lobbying activities” (OECD, 2010[16]). There are several ways in which transparency can be achieved: first, through clearly defining the terms ‘lobbying’ and ‘lobbyist’ (OECD, 2010[16]), and second, by implementing a “coherent spectrum of strategies and mechanisms” to ensure compliance with transparency measures (OECD, 2010[16]).

5.3.1. Clarifying definitions

In line with this good practice, the Commissioner has proposed clear definitions of “lobbying” and “lobbyist”. Moreover, the Commissioner has proposed that two key registers be set up: a Lobbying Register and a Transparency Register. The following reviews these proposals in turn and provides tailored recommendations to strengthen where necessary.

Clearly defining the terms ‘lobbying’ and ‘lobbyist’ is critical for ensuring effective lobbying regulation. While definitions should be tailored to the specific context, both 'lobbying' and 'lobbyists' should be defined robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes (OECD, 2010[16]). Experience from other countries has found that providing effective definitions remains a challenge, in particular because those who seek to influence the policy-making process are not necessarily 'de facto' lobbyists. Indeed, avenues by which interest groups influence governments extend beyond the classical definition of lobbying and moreover, have evolved in recent years, not only in terms of the actors and practices involved but also in terms of the context in which they operate (OECD, 2021[4]).

To address this challenge, when setting up lobbying regulation, it is critical to ensure that the definition of lobbying activities is broadly considered, and focuses on inclusivity; in other words, aims to provide a level playing field for interest groups, whether business or not-for-profit entities, which aim to influence public decisions (OECD, 2010[16]). Box 5.4 provides an overview of OECD member experience in setting out clear, comprehensive and broad definitions on lobbying.

Box 5.4. Examples of broad definitions of 'lobbying' amongst OECD members

Australia

"Lobbying activities" means communications with a Government representative in an effort to influence Government decision making. "Communications with a Government representative" includes oral, written and electronic communications.

Belgium

Lobbying activities are activities carried out with the aim of directly or indirectly influencing the development or implementation of policies or the Chamber's decision-making processes.

Canada

Communications considered as lobbying include direct communications with a federal public office holder (i.e. either in writing or orally) and grass-roots communications. The Lobbying Act defines grassroots communications as any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion. For consultant lobbyists (lobbying on behalf of clients), arranging a meeting between a public office holder and any other person is considered as a lobbying activity.

France

Three types of activities are considered as communications that may constitute lobbying activities: 1. A physical meeting, regardless of the context in which it takes place; 2. A telephone or video conference call; 3. Sending a letter, an email or a private message via an electronic communication service.

Ireland

Relevant communications means communications (whether oral or written and however made), other than excepted communications, made personally (directly or indirectly) to a designated public official in relation to a relevant matter.

European Union

Activities carried out with the objective of directly or indirectly influencing the formulation or implementation of policy and the decision-making processes of the EU institutions, irrespective of where they are undertaken and of the channel or medium of communication used, for example via outsourcing, media, contracts with professional intermediaries, think tanks, platforms, forums, campaigns and grassroots initiatives.

Source: (OECD, 2021[4]).

The current proposals set out by the Commissioner clearly and comprehensively defines the terms lobbying and lobbyist (see Table 5.1). These definitions are well adapted to the specific context in Malta. Broad in scope and covering a wide range of actors, the definitions make it possible to implement regulation on lobbying within a context where lobbying as a professional activity is not well-known, decision makers in government are easily accessible, and constituency politics are a key attribute of political life. Indeed, by separately defining "who" (i.e. "designated public officials" targeted by lobbying activities), "what" (i.e. what is "relevant matter") and "how" (i.e. how the relevant matter turns into influencing – "relevant communication to a designated public official"), the definition enables any activity that fits both the "what" and "how" criteria to be subject to lobbying regulation.

Table 5.1. Proposed definitions on "lobbying" and "lobbyist" by the Commissioner for Standards in Public Life

Lobbying	*Any relevant communication* on a *relevant matter* to a *designated public official*, with further delineation of the three core concepts as follows: • **Relevant communication** includes any communication that is made (i) in writing or orally, (ii) on a relevant matter, and (iii) personally – either directly or indirectly – to a designated public official. • **Designated public officials** include the Prime Minister, ministers, parliamentary secretaries and (if appointed) parliamentary assistants; other members of the House of Representatives; the heads and deputy heads of the secretariats of ministers and parliamentary secretaries; the Principal Permanent Secretary, permanent secretaries and directors-general in the public service of Malta; mayors, other local councillors, and executive secretaries in local councils; chairpersons and chief executive officers in companies owned by the state, government agencies, foundations set up by the government (on its own or in conjunction with other bodies), and other government entities as defined in the Public Administration Act; members of the Executive Council, the Planning Board and the Planning Commission within the Planning Authority; and members of the board of the Environment and Resources Authority. • **Relevant matters** include the following: (a) the initiation, development or modification of any public policy, action or programme; (b) the preparation or amendment of any enactment, that is to say, law or other instrument having the force of law; (c) the award of any grant, loan or other forms of financial support, and any contract or other agreement involving public funds, land (including concessions of public land) or other resources; (d) the grant of any license, permit or other authorisation; and (e) the award of development permits and the zoning of land. The current proposal also clarifies what relevant matters *do not* include: communications by public bodies or by public officials in their official capacity trade union negotiations).
Lobbyist	Any person (natural or legal) who makes a relevant communication on a relevant matter to a designated public official.

Source: (Office of the Commissioner for Standards in Public Life, 2020[3]).

The current definition of lobbyist, as defined by the Commissioner, is well-suited to the context in Malta. It enables coverage of a broad range of actors, including those that have not traditionally been viewed as "lobbyists" (e.g. think tanks, research institutions, foundations, non-governmental organisations, etc.).

However, while the proposed definitions regarding "lobbying" are broad in scope, several potential loopholes remain that could, if exploited, weaken the overarching legislation. The following addresses each of the potential loopholes in turn, and provides recommendations to strengthen them.

The Commissioner could strengthen the definition of "lobbying"

The advent of digital technologies and social media has made lobbying and influence more complex than the way it has been traditionally defined in regulations, usually as a direct oral or written communication with a public official to influence legislation, policy or administrative decisions. The avenues by which interest groups influence governments extend beyond this definition, however, and have evolved in recent years. With regards to the definition of relevant communications, the current proposal suggests that the communication may be either written or oral. This however leaves out other forms of communication, like sign language or the use of social media as a lobbying tool. The Commissioner could include in the definition of a relevant communication indirect forms of lobbying, going beyond direct written or oral communications. Within the OECD, Canada and the European Union cover such types of lobbying communications. In Canada, lobbyists are required to disclose any communication techniques used, which includes any appeals to members of the public through mass media, or by direct communication, aiming to persuade the public to communicate directly with public office holders, in order to pressure them to endorse a particular opinion. The Lobbying Act categorises this type of lobbying as "grassroots communication." Similarly, the EU Transparency Register covers activities aimed at "indirectly influencing" EU institutions, including through the use of intermediate vectors such as media, public opinion, conferences or social events (Box 5.5). Moreover, the wording "is made personally (directly or indirectly) to a designated public official" may pose a loophole due to the term "personally". In the age of the internet and social media, a lobbyist could deliver their message via, for example, targeted advertising. The wording may be simplified to "*is made (directly or indirectly) to a designated public official*".

Box 5.5. Indirect forms of lobbying covered in Canada and the European Union

Canada

In Canada, paid lobbying through grass-roots communication can require registration under the *Lobbying Act*, even if there is no related direct lobbying. "Grass-roots communication", also referred to as grass-roots lobbying, is defined in paragraph 5(2) (j) of the *Lobbying Act* as any appeals to members of the public through the mass media or by direct communication that seek to persuade those members of the public to communicate directly with a public office holder in an attempt to place pressure on the public office holder to endorse a particular opinion.

The Lobbying Commissioner considers that appeals to the public may include letters and electronic messaging campaigns, advertisements, websites, social media and platforms such as Facebook, Twitter, LinkedIn, Snapchat, YouTube, etc.

European Union

In the European Union, the Inter-institutional agreement between the European Parliament, the Council of the European Union and the European Commission on a mandatory transparency register defines "covered activities" as: (a) organising or participating in meetings, conferences or events, as well as engaging in any similar contacts with Union institutions; (b) contributing to or participating in consultations, hearings or other similar initiatives; (c) organising communication campaigns, platforms, networks and grassroots initiatives; (d) preparing or commissioning policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material, and commissioning and carrying out research.

Source: Office of the Commissioner of Lobbying Canada, Applicability of the Lobbying Act to Grass-roots Communications, Bulletin current to 2017-08-02 and last amended on 2017-08-02, https://lobbycanada.gc.ca/en/rules/the-lobbying-act/advice-and-interpretation-lobbying-act/applicability-of-the-lobbying-act-to-grass-roots-communications/; Transparency Register Guidelines, https://ec.europa.eu/transparencyregister/public/staticPage/displayStaticPage.do?locale=en&reference=GUIDELINES.

With regards to the definition of designated public officials, the proposed list aligns with good practice, however as the influence landscape has advanced, the range of those who can be on the receiving end of lobbying activities has also increased. To ensure that the definitions remain fit-for-purpose, the list of designated officials could build, to the maximum extent possible, on the lists laid out in Schedules of the Public Administration Act. In particular, it is recommended that all those from the "List of those posts within the public administration that, due to the nature of their role and responsibilities, are considered to be high-risk positions" (Sixth Schedule of the Public Administration Act) fall under the lobbying regulation. Moreover, it is recommended that in addition to state-owned companies, all companies funded by the state (even partially and in any form) be included. It is recommended that exceptions like state-owned health insurance providers are not introduced in the lobbying regulation.

In order to promote transparency and accountability, it is recommended the list of "designated public officials" be publicly available and kept up-to-date. In Ireland, each public body must publish and keep up-to-date a list of designated public officials under the law; the Standards in Public Office Commission also publishes a list of public bodies with designated public officials (Box 5.6).

Box 5.6. Requirement to publish designated public officials' details in Ireland

In Ireland, Section 6(4) of the Lobbying Act of 2015 requires each public body to publish a list showing the name, grade and brief details of the role and responsibilities of each "designated public official" of the body. The list must be kept up to date. The purpose of the list is twofold:

- To allow members of the public to identify those persons who are designated public officials; and
- As a resource for lobbyists filing a return to the Register who may need to source a designated public official's details.

The list of designated public officials must be prominently displayed and easily found on the homepage of each organisation's website. The page should also contain a link to the Register of Lobbying http://www.lobbying.ie.

Source: Standards in Public Office Commission, Requirements for public bodies, https://www.lobbying.ie/help-resources/information-for-public-bodies/requirements-for-public-bodies/.

With regards to the definition of relevant matter, the current scope covers communication that concerns (i) the initiation, development or modification of any public policy or of any public programme; (ii) the preparation or amendment of any law; or (iii) the award of any grant, loan or contract, or any licence or other authorisation involving public funds.

For the first category of activities, it is not clear whether the entire policy cycle is covered. In particular, three key phases (policy adoption, policy implementation, and policy evaluation) are not clearly identified. Within each of these stages, there are specific risks of influence, and a number of actors that could be targeted by those intending to sway decisions towards their private interests (see Table 5.2). While the intention could be that the existing term "modification" covers these three phases, the Commissioner could consider revising the definition to clarify these specific phases.

Table 5.2. Risks of undue influence along the policy cycle

		Agenda-setting	Policy development	Policy adoption	Policy implementation	Policy evaluation
Risk of undue influence on		Priorities	Draft laws and regulations, policy documents (e.g. project feasibility studies, project specifications)	Votes (laws) or administrative decisions (regulations), changes to draft laws or project specifications	Implementation rules and procedures	Evaluation results
Main actors targeted	Legislative level	Legislators, ministerial staff, political parties	Legislators, ministerial Staff, political parties	Legislators, parliamentary commissions and committees, invited experts	-	Parliamentary commissions and committees, invited experts
	Administrative level	Civil servants, technical experts, consultants	Civil servants, technical experts, consultants	Heads of administrative bodies or units	Civil servants	Civil servants, consultants (experts)

Source: (OECD, 2017[17]).

The current proposals list a number of exemptions from what would be considered "relevant matters". In general, an exemption from a definition should be only used in the last resort. Often, an alternative solution can be found for addressing the underlying concern. To that end, the Commissioner could consider revising the exemptions from relevant matters as follows:

- Communications by an individual concerning his or her own private affairs: This exemption is in line with best practices in OECD countries, but could be further clarified to specify that it covers individual opinions expressed by a natural person on a relevant matter in a strictly personal capacity, but does not exempt activities of individuals associating with others to represent interests together (Box 5.7).

Box 5.7. Exemptions on communications by natural persons in OECD countries

European Union

In the European Union, the purpose of the Register is to show organised and/or collective interests, not personal interests of individuals acting in a strictly personal capacity and not in association with others. As such, activities carried out by natural persons acting in a strictly personal capacity and not in association with others, are not considered as lobbying activities. However, activities of individuals associating with others to represent interests together (e.g. through grassroots and other civil society movements engaging in covered activities) do qualify as interest representation activities and are covered by the Register.

Germany

In Germany, the Act Introducing a Lobbying Register for the Representation of Special Interests vis-à vis the German Bundestag and the Federal Government (Lobbying Register Act – Lobbyregistergesetz), excludes the activities of natural persons who, in their submissions, formulate exclusively personal interests, regardless of whether these coincide with business or other interests.

Ireland

In Ireland, the Regulation of Lobbying Act exempts "private affairs", which refer to communications by or on behalf of an individual relating to his or her private affairs, unless they relate to the development or zoning of land. For example, communications in relation to a person's eligibility for, or entitlement to, a social welfare payment, a local authority house, or a medical card are not relevant communications.

Lithuania

In Lithuania, Law No. VIII-1749 on Lobbying Activities exempts individual opinions expressed by a natural person with regards to legislation.

United States

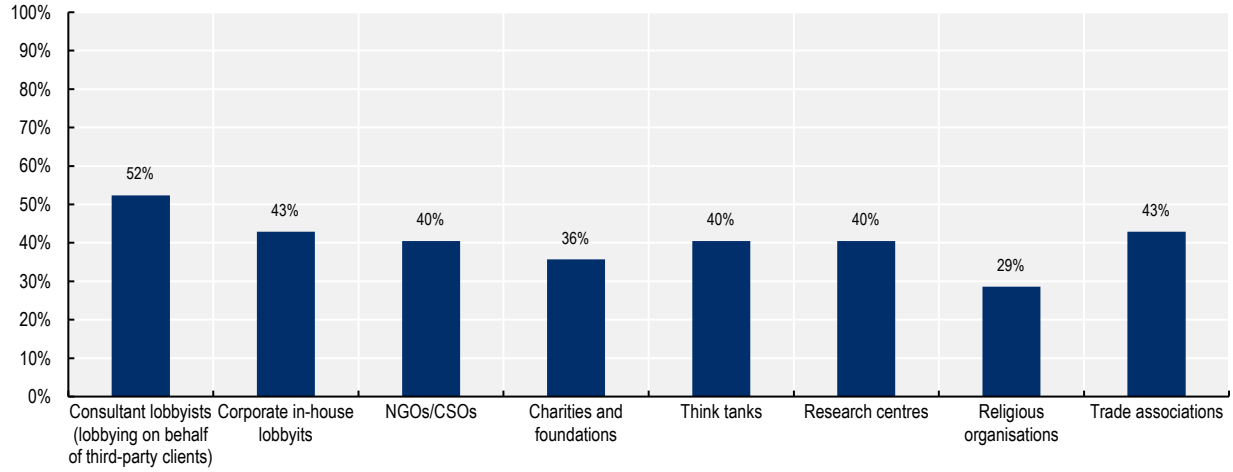
In the United States, communications made on behalf of an individual with regard to that individual's benefits, employment, or other personal matters involving only that individual with respect to the formulation, modification, or adoption of private legislation for the relief of that individual are not considered as lobbying activities under the Lobbying Disclosure Act.

Source: (OECD, 2021[4]).

- Communications by or on behalf of religious entities and organisations, and political parties: third-party communications on behalf of religious entities and organisations and political parties should not be exempt, and these subjects must communicate for themselves to have the communication

automatically exempt from lobbying regulation. In 29% of OECD countries, religious organisations are bound by transparency requirements on their religious activities (Figure 5.3). Among the 22 countries that have lobbying transparency requirements, 12 consider the influence communications of religious organisations as lobbying activities, while 10 explicitly exempt them. In order to take into account the specific cultural and social context of Malta, a balance could be found by exempting religious denominations while including the activities of other religious organisations or groups representing religious interests in the scope of the law. In Canada for example, corporations without share capital incorporated to pursue, without financial gain to its members, objects of a religious character are considered as lobbying activities.

Figure 5.3. Percentage of countries covering different actors through their lobbying transparency requirements



Source: (OECD, 2021[4]).

- Requests for factual information: exempting "requests for factual information" seems to be perfectly logical and innocent. However, it is not specified whether the exempted communications are requests for factual information by public officials or lobbyists. Such a blanket exemption may open the window for flooding a designated public official with "requests for factual information", which may amount to massive lobbying campaigns. Based on the suggested exemption, such a campaign would remain undetected and unreported. The exemption could further be clarified in order to avoid any misinterpretations. First, the exception could cover communications by lobbyists made in response to a request from a public official concerning factual information or for the sole purpose of answering technical questions from a public office holder, and provided that the response does not otherwise seek to influence such a decision or cannot be considered as seeking to influence such a decision. In the United Kingdom for example, if a designated public official initiates communication with an organisation and in the subsequent course of the exchange, the criteria for lobbying are met, then the organisation is required to register the activity. It should also be clarified that such an exemption does not apply to appointed experts. The Commissioner had previously highlighted that "attention must be given to the possibility that persons will be engaged as consultants in order to avoid registration as lobbyists and the promotion of certain interests" and that "the consultative process with any such individuals should be adequately registered, minuted and reported". As such, to address the mentioned concern, the exemption may include on appointed experts. Second, the law could further clarify which requests for information by lobbyists are covered by the exemption, for example when they consist of enquiring about the status of an administrative procedure, about the interpretation of a law, or that are intended to inform a client on a general legal situation or on his specific legal situation. Several examples are provided in Box 5.8.

Box 5.8. Exemptions on requests for factual information by lobbyists in OECD countries

In **Belgium**, activities relating to the provision of legal and other professional advice are not covered to the extent that they:

- Consist of advisory activities and contacts with public authorities, intended to inform a client on a general legal situation or on his specific legal situation or to advise him/her on the opportunity or admissibility of a specific legal or administrative procedure in the existing legal and regulatory environment.
- Are advice provided to a client to help ensure that its activities comply with applicable law.
- Consist of analyses and studies prepared for clients on the potential impact of any changes in legislation or regulations with regard to their legal situation or field of activity.
- Consist of representation in conciliation or mediation proceedings aimed at preventing a dispute from arising, brought before a judicial or administrative authority.
- Affect the exercise of a client's fundamental right to a fair trial, including the right of defence in administrative proceedings, such as the activities carried out by lawyers or any other professionals concerned.

In **Canada**, the following activities are not considered as lobbying activities:

- Any oral or written communication made to a public office holder by an individual on behalf of any person or organisation with respect to the enforcement, interpretation or application of any Act of Parliament or regulation by that public office holder with respect to that person or organisation; or
- Any oral or written communication made to a public office holder by an individual on behalf of any person or organisation if the communication is restricted to a request for information.

In **Chile**, any request, verbal or written, made to enquire about the status of an administrative procedure is not considered as a lobbying activity.

In **France**, communications that are limited to factual exchanges that are not likely to have the purpose of influencing a public decision are not considered as lobbying activities:

- When an organisation requests factual information, accessible to any person, to a public official.
- When an organisation asks a public official how to interpret a public decision in force.
- When an organisation sends information to a public official on its functioning or activities, without any direct connection with a public decision.

In **Ireland**, communications requesting factual information or providing factual information in response to a request for the information (for example, a company asking a public servant how to qualify for an enterprise grant and getting an answer) are not considered as lobbying activities.

Source: (OECD, 2021[4]).

- **Trade union negotiations:** exempting trade union negotiations can be interpreted broadly and may include also, e.g. lobbying for the lowering of taxes for the employed – a matter where transparency is needed. It is recommended that only those trade union negotiations that directly relate to employment should be exempt from lobbying regulation. In the European Union for example, the activities of the social partners as participants in the social dialogue (trade unions, employers' associations, etc.) are not covered by the register where those social partners perform the role assigned to them in the Treaties. European social dialogue refers to the planned and/or

institutionalised discussions, consultations, negotiations and joint actions involving social partners at EU level. However, employer or labour organisations that hold bilateral encounters with the EU institutions aimed at promoting their own interests or the interests of their members or carry out other activities not strictly related to European social dialogue, which are covered by the Register, do qualify as interest representatives and are eligible to (apply to) be entered in the Register. Similarly, in Ireland, communications forming part of, or directly related to, negotiations on terms and conditions of employment undertaken by representatives of a trade union on behalf of its members are not considered as lobbying activities.

- **Risky communication:** while the reasoning behind exempting communications "which would pose a risk to the safety of any person" is sound, and a similar provision can be found in many lobbying regulations, such an exemption creates a potential loophole in the regulation. It is recommended that this exemption is omitted on the grounds that if a lobbyist feels a communication on a relevant matter towards a designated public official would pose any risk, he or she better not perform such communication.
- **Communications that are already in the public domain:** the widespread use of the internet and the rise of social media, in particular, have blurred the line between what is and what is not in the public domain. Thus, exempting "communications that are already in the public domain" from a lobbying regulation seems to have the potential to create a loophole in the regulation. It is recommended to reconsider the need for such communication being exempt. If the need is confirmed, some other wording could be used to achieve the goal of excluding such communication. For example, the exemption could be limited to information provided to a Parliamentary committee and that are already in the public domain. In Canada, the Lobbying Act exempts "any oral or written submission made to a committee of the Senate or House of Commons or of both Houses of Parliament or to any body or person having jurisdiction or powers conferred by or under an Act of Parliament, in proceedings that are a matter of public record".
- **Diplomatic relations** (communications by or on behalf of other states and supranational organisations): while many countries also exempt these types of communications, it is recommended to limit this exemption to diplomatic activities. Foreign governments increasingly rely on lobbyists and other forms of influence to promote their policy objectives at national and multilateral levels. The risks involved in lobbying and influence activities of foreign interests are therefore high for all countries, and more transparency is needed on the influence of foreign governments. In Canada for example, consultant lobbyists representing the interests of foreign governments are bound by the same disclosure requirements as other actors specified in the Lobbying Act. Under the EU Inter-Institutional Agreement, activities by third countries are also covered, when they are carried out by entities without diplomatic status or through intermediaries.

The Commissioner could enhance the definition of relevant matters to include appointments of key government positions

A final area in which the definition of "relevant matters" could be strengthened refers to appointments of key government positions. Indeed, personnel decisions can be a key focus area for lobbyists, as it can be useful to further their policy agenda if a person responsive to their specific interests is placed in the relevant position. Thus, it would be beneficial to include personnel matters as a "relevant matter". If left unregulated, it would pose a severe threat to any lobbying regulation. If lobbyists make it to have "their person" in the right position, they will roam free through decision-making processes, regulation or not. The risks associated with the possibility of forming a "lobbyist-official coalition" should not be underestimated when drafting a lobbying regulation. The design should be resilient: it should provide a basic level of protection of decision-making from undue influence even under the scenario of such a coalition being in place.

In France and the United States, the appointment of certain public officials is also considered to be the kind of decision targeted by lobbying activities and thus covered by transparency requirements (Box 5.9).

Box 5.9. Individual appointment decisions are covered in France and the United States

France

The decisions targeted by lobbying activities were specified in Act No. 2016/1691 on transparency, the fight against corruption and the modernisation of the economy (Article 25). They include "individual appointment decisions".

United States

The decisions targeted by lobbying activities are specified in the Lobbying Disclosure Act (Section 3 "Definitions"). They include nominations or confirmations of a person for a position subject to confirmation by the Senate.

Source: (OECD, 2021[4]).

5.3.2. Establishing the Register for Lobbyists and the Transparency Register

A critical element for enhancing transparency and integrity in public decision making are mechanisms through which public officials, business and society can obtain sufficient information regarding who has access and on what issues (OECD, 2010[16]). Such mechanisms should ensure that sufficient, pertinent information on key aspects of lobbying activities is disclosed in a timely manner, with the ultimate aim of enabling public scrutiny (OECD, 2010[16]). In particular, disclosed information could include which policymakers, legislation, proposals, regulations or decisions were targeted by lobbyists. In establishing such mechanisms, countries should also ensure that legitimate exemptions, such as preserving confidential information in the public interest or protecting market-sensitive information, are carefully balanced with transparency needs (OECD, 2010[16]). Mechanisms can take the form of lobbying registers, open agendas, and/or legislative footprints.

> *The Regulation of Lobbying Act could include provisions that require regular, timely updates to the information contained in both the Register for Lobbyists and the Transparency Register*

In Malta, the Commissioner has proposed two registries: the Register for Lobbyists and the Transparency Register. With regards to the **Register for Lobbyists**, the Commissioner proposes establishing an online, open register that is maintained by the Commissioner. Professional lobbyists, pressure groups (e.g. NGOs) and representative bodies (e.g. chambers and associations) will be required to register their name, contact details, business or main activities, and company registration number (where applicable). Registration will be a prerequisite for engaging in lobbying activities. Lobbyists will also be required to submit quarterly returns with information on respective lobbying activities (e.g. the clients on behalf of whom such activities were carried out; the designated public officials who were contacted; the subject matter of these communications; and the intended results).

The Register for Lobbyists meets two aims: (i) to formalise interactions between public officials and lobbyists; and (ii) to enable public scrutiny on who is accessing public officials, when and on what issues. Indeed, the information required in the returns does enable scrutiny, as information concerning *what* was influenced and the intended results is not only required, but also made public. To strengthen the Register for Lobbyists, the Commissioner could consider requiring that in-house lobbyists register, as they are currently overlooked in the proposals.

The current proposal suggests that lobbyists submit their returns on a quarterly basis. This aligns with good practice in several jurisdictions, including Ireland and the United States. Good practice from other countries has found that requiring more regular communication reports, such as on a monthly basis, can strengthen transparency (see for example the case of Canada in (Box 5.10) To that end, the Commissioner could consider requiring lobbyists to disclose on a quarterly or semestrial basis, as in Ireland or the United States (Table 5.3).

Box 5.10. Frequency of disclosures on lobbying activities in Canada

In Canada, lobbyists' registration is mandatory to conduct lobbying activities. According to the Lobbying Act (R.S.C., 1985, c. 44 (4th Supp.)):

- Consultant lobbyists must register within 10 days of entering an agreement to lobby.
- In-house lobbyists must register when they meet a threshold ("significant part of duties") and have 60 days to register.

Information must be updated every six months. Additionally, when registered lobbyists meet with a designated public office holder (i.e. senior federal officials), they must file a "monthly communication report". The monthly communication report, filed no later than the 15th of the month after the communication took place, includes the names of those contacted, the date the communication took place, and the general subject matter of the communication (for example, "Health", "Tourism", etc.).

Source: (OECD, 2021[4]).

Table 5.3. Frequency of lobbying disclosures in the United States and Ireland

	Initial registration	Subsequent registrations
Ireland	Lobbyists' registration is mandatory to conduct lobbying activities. Lobbyists can register after commencing lobbying, provided that they register and submit a return of lobbying activity within 21 days of the end of the first "relevant period" in which they begin lobbying (The relevant period is the four months ending on the last day of April, August and December each year).	The 'returns' of lobbying activities are made at the end of each 'relevant period', every four months. They are published as soon as they are submitted.
United States	Lobbyists' registration is mandatory to conduct lobbying activities. Registration is required within 45 days: (i) of the date lobbyist is employed or retained to make a lobbying contact on behalf of a client; (ii) of the date an in-house lobbyist makes a second lobbying contact.	Lobbyists must file quarterly reports on lobbying activities and semi-annual reports on political contributions.

Source: (OECD, 2021[4]).

The second transparency tool – the **Transparency Register** – complements the Register for Lobbyists and obliges ministers, parliamentary secretaries and others heads and deputy heads of their secretariats to list all relevant communications with lobbyists. The Transparency Register would also be freely accessible to the public, and would include details concerning (a) the name of the persons (natural and legal) with whom each relevant communication was held; (b) the subject matter of the communication; (c) in the case of a meeting, the date and location, the names of those present, and who they were representing; and (d) any decisions taken or commitments made through the communication.

This type of register is often referred to as an open agenda, as it contains a comprehensive public record of influence targeting specific public officials. By providing an additional avenue for transparency, the Transparency Register also addresses the inherent weakness of the Register of Lobbyists. Indeed, regardless of the requirements set out to register and submit information in a timely manner, some actors will avoid identifying and reporting their actions as "lobbying". Thus, it is crucial that the lobbying regulation

contains a separate mechanism for reporting all influence efforts, regardless of the lobbyist/non-lobbyist status of the influencer. To ensure that the Transparency Register enables the necessary public scrutiny, the Commissioner could require that the Transparency Register be regularly updated, either in real-time or on a weekly basis. Furthermore, as noted below, the proposed obligation to record all relevant communications with lobbyists in the Transparency Register could be expanded to Members of the House of Representatives.

As complying with reporting requirements can prove challenging, some countries use communication tools to remind lobbyists and public officials about mandatory reporting obligations. For example, in the United States, the Office of the Clerk of the House of Representatives provides an electronic notification service for all registered lobbyists (OECD, 2021[4]). The service gives email notice of future filing deadlines or relevant information on disclosure filing procedures. The Lobbying Disclosure website of the House of Representatives also displays reminders on filing deadlines. In Ireland, registered lobbyists receive automatic email alerts at the end of each relevant period, as well as deadline reminder emails. Return deadlines are also displayed on the main webpage of the Register of Lobbying (OECD, 2021[4]). This practice could be considered in the future to facilitate reporting.

It is also recommended that an effective enforcement mechanism be put in place to ensure compliance with this requirement (see section on sanctions below).

The Regulation on Lobbying Act could include provisions requiring the Commissioner to prepare a regulatory and legislative footprint for specific decision-making processes

The OECD Lobbying Principles states that governments should also consider facilitating public scrutiny by indicating who has sought to influence legislative or policy-making processes, for example by disclosing a legislative footprint that indicates the lobbyists consulted in the development of legislative initiatives (OECD, 2010[16]). Indeed, in addition to lobbying registers and open agendas, several countries provide transparency on lobbying activities based on *ex post* disclosure of information on how decisions were made (see Box 5.11).

Box 5.11. Thematic analyses on lobbying published by the High Authority for transparency in public life in France

In 2020, the High Authority for the Transparency of Public Life implemented a new platform on lobbying. This platform contains practical factsheets, answers to frequently asked questions, statistics as well as thematic analyses based on data from the register.

For example, the High Authority has published two reports on declared lobbying activities on specific bills, which shed light on the practical reality of lobbying.

Source: HATVP, https://www.hatvp.fr/lobbying.

The Regulation on Lobbying Act could include a provision assigning responsibility to the Commissioner for compiling and disclosing a legislative and regulatory footprint on specific decision-making processes, including for example legislation, government policies or programmes, and high-risk or high-dollar value contracts or concessions. In determining what “relevant matters” should be accompanied by a legislative footprint, the Commissioner could consider a risk-based approach. The information disclosed can be in the form of a table or a document listing the identity of the stakeholders contacted, the public officials involved, the purpose and outcome of their meetings, and an assessment of how the inputs received from external stakeholders was taken into account in the final decision. Keeping the Transparency Register up-to-date before a decision-making process enters the next phase or is closed will be instrumental in helping

achieve this legislative footprint. Ideally, no decision-making process should be closed before the public have had a reasonable amount of time to review the relevant information in the Transparency Register. For example, before a ministerial bill is submitted for governmental approval or before an Environmental Impact Statement is released for public comment within an EIA procedure.

The Regulation of Lobbying Act could include provisions that further clarify the administration and accessibility of the Register for Lobbyists and the Transparency Register

A key challenge in implementing transparency registers is ensuring that the collected information can be published in an open, re-usable format. This facilitates the reusability and cross-checking of data (OECD, 2021[4]). While it is too early in the process to comment on the actual modalities of the proposed registries, the Commissioner could consider making recommendations that the eventual law on lobbying clarify that the Commissioner will manage the registries, that the data will be accessible and free of charge, and that information will be published in open data format. Box 5.12 contains excerpts from various lobbying laws regarding these parameters.

Box 5.12. Ensuring open, accessible lobbying registries

Canada

Article 9 of the Lobbying Act:

(1) The Commissioner shall establish and maintain a registry in which shall be kept a record of all returns and other documents submitted to the Commissioner under this Act (…).

(2) The registry shall be organized in such manner and kept in such form as the Commissioner may determine.

(4) The registry shall be open to public inspection at such place and at such reasonable hours as the Commissioner may determine.

France

Law on transparency in public life (Article 18-1):

« Un répertoire numérique assure l'information des citoyens sur les relations entre les représentants d'intérêts et les pouvoirs publics. Ce répertoire est rendu public par la Haute Autorité pour la transparence de la vie publique. Cette publication s'effectue dans un format ouvert librement utilisable et exploitable par un système de traitement automatisé, dans les conditions prévues au titre II du livre III du code des relations entre le public et l'administration »

"A digital directory provides information to citizens on the relations between interest representatives and public authorities. This directory shall be made public by the High Authority for the transparency of public life. This publication is made in an open format that can be freely used and processed by an automated processing system, under the conditions set out in Title II of Book III of the Code on relations between the public and the administration."

Ireland

Regulation of Lobbying Act of 2015:

9. The Commission shall establish and maintain a register to be known as the Register of Lobbying (referred to in this Act as the "Register").

10.

(1) The Register shall contain—

(a) the information contained in applications made to the Commission under section 11, and

(b) the information contained in returns made to the Commission under section 12.

(2) The Register shall be kept in such form as the Commission considers appropriate.

(3) The Register shall be made available for inspection free of charge on a website maintained or used by the Commission.

Source: Additional research by the OECD Secretariat.

Regarding the operation of the registries, the current proposal is for the Regulation of the Lobbying Act to oblige ministers, parliamentary secretaries, and the heads and deputy heads of their secretariats to establish a Transparency Register in which they should list relevant information (Commissioner for Standards in Public Life, 2020[12]). However, this "distributed" form of the Transparency Register – e.g. every institution having its own register – would undermine interoperability and reliability, on top of being more costly. Instead, the Commissioner could be assigned responsibility in the Act on Lobbying for administering both the Register of Lobbyists as well as the Transparency Register.

The Regulation of Lobbying Act could contain clear criteria for withholding data contained in the Register for Lobbyists and Transparency Register

The current proposals enable the Commissioner the power to withhold from the public any information contained in the Register of Lobbyists and Transparency Register, if the Commissioner considers that it is necessary to do so to prevent it from being misused, or to protect the safety of any individual or the security of the State.

The term "personal data", seems to be unnecessarily limiting, especially for protecting safety: non-personal data may also put someone in danger, e.g. by providing clues for revealing their identity. It is therefore recommended to omit "personal" and use "data related to a person's identity". Further, it is recommended that the State's interests, not only the security of the State as is currently proposed, be considered, as this concept is broader and gives the Commissioner higher level of flexibility to prevent any sensitive data from being disclosed.

Moreover, the power to withhold any information from the Register for Lobbyists and the Transparency Register must rest solely with the Commissioner for Standards in Public Life. While lobbyists should comply with the required criteria for submitting information, there may be situations in which it is prudent to keep certain information confidential. To ensure transparency, the Regulation of Lobbying Act could provide clear criteria to guide the Commissioner's determination for when to withhold certain information and on what grounds.

The Regulation of Lobbying Act could include: (i) binding rules for the selection process of advisory or expert groups, and (ii) transparency into what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision

Chairpersons and members of advisory or expert groups (including government boards and committees) play a critical role in government decision making as they can help strengthen evidence-based decision making. However, without sufficient transparency and safeguards against conflict of interest, these groups pose a possible avenue for exerting undue influence in the decision-making process by allowing individual representatives participating in these groups to favour private interests (e.g. by serving biased evidence to the decision makers on behalf of companies or industries or by allowing corporate executives or lobbyists to advise governments as members of an advisory group). Still, transparency over the composition and functioning of advisory and expert groups remains limited across OECD countries (OECD, 2021[4]).

In Malta, there are currently more than 170 government boards and 90 committees (Government of Malta, n.d.[18]), which provide advice and guidance on policies, plans and practices within and across sectors, having a key impact on laws, policies and government performance. Yet, there is no general rule on the establishment and functioning of government boards and committees, meaning that there is no general provision indicating the common purpose of such boards and committees, their functioning and optimal composition (e.g. who can be appointed as member of a government board and committee, appropriate qualification and conditions for appointment).

To that end, the Office of the Prime Minister could introduce general rules for the selection process of government boards and committees to ensure a balanced representation of interests in advisory groups (e.g. in terms of private sector and civil society representatives (when relevant) and/or in terms of backgrounds), guarantee that the selection process is inclusive, -so that every potential expert has a real chance to participate-, and transparent -so that the public can effectively scrutinise the selection of members of advisory groups-. Moreover, to allow for public scrutiny, information on the structure, mandate, composition and criteria for selection for all Maltese government boards and committees should be made public. In addition, and provided that confidential information is protected and without delaying the work of these groups, the agendas, records of decisions and evidence gathered could also be published in order to enhance transparency and encourage better public scrutiny.

Along with the composition of advisory or expert groups, the problem of the opacity of their outcomes could be addressed in the Regulation of Lobbying Act. To that end, it is recommended that these outcomes be made public via the Transparency Register (for more on the Transparency Register, see relevant section "Enhancing the transparency of influence on public decision-making").

Moreover, considering that members of advisory groups come from different backgrounds and may have different interests, it is fundamental to provide a common framework that allows all members to carry out their duties in the general interest. Indeed, in Malta, members of government boards and committees come from the public, private and voluntary sectors. Currently, the Code of Ethics for Public Employees and Board Members, as laid down in the first schedule of the Public Administration Act, provides some general integrity standards for chairpersons and members of standing boards and commissions within the public administration. However, such provisions could be strengthened with specific standards on how to handle conflicts of interest and interactions with third parties.

To that end, the Office of the Commissioner could consider strengthening the rules of procedures for government boards and committees, including terms of appointment, standards of conduct, and procedures for preventing and managing conflicts of interest, amongst others. The Transparency Code for working groups in Ireland may serve as an example for the Office of the Commissioner (Box 5.13).

Box 5.13. Transparency Code for working groups in Ireland

In Ireland, any working group set up by a minister or public service body that includes at least one designated public official and at least one person from outside the public service, and which reviews, assesses or analyses any issue of public policy with a view to reporting on it to the Minister of the Government or the public service body, must comply with a Transparency Code.

The Code prescribes various transparency measures: important information about the body's composition and functioning must be available online, including the body's meeting minutes.

Importantly, if the requirements of the Code are not adhered to, interactions within the group are considered to be a lobbying activity under the lobbying act.

Source: Department of Public Expenditure and Reform, Transparency Code prepared in accordance with Section 5 (7) of the Regulation of Lobbying Act 2015, https://www.lobbying.ie/media/5986/2015-08-06-transparency-code-eng.pdf.

5.4. Fostering integrity in lobbying

Apart from enhancing the transparency of the policy-making process, the strength and effectiveness of the process also rests on the integrity of both public officials and those who try to influence them (OECD, 2021[4]). Indeed, governments should foster a culture of integrity in public organisations and decision making by providing clear rules, principles and guidelines of conduct for public officials, while lobbyists should comply with standards of professionalism and transparency as they share responsibility for fostering a culture of transparency and integrity in lobbying (OECD, 2021[4]).

The 2021 OECD Report on Lobbying found that although all countries have established legislation, policies and guidelines on public integrity, they have usually not been tailored to the specific risks of lobbying and other influence practices. Additionally, considering that lobbyists and companies are under increasing scrutiny, they need a clearer integrity framework for engaging with the policy-making process in a way that does not raise concerns over integrity and inclusiveness (OECD, 2021[4]).

5.4.1. Strengthening integrity standards on lobbying

In Malta, there are different general guidelines on public integrity for public officials, which include some specific provisions aiming at strengthening the resilience of decision-making processes to undue influence. Such guidelines are i) the Code of Ethics for Public Employees and Board Members, ii) the Code of Ethics for Members of the House of Representatives and iii) the Code of Ethics for Ministers and Parliamentary Secretaries.

The Code of Ethics for Public Employees and Board Members is included in the first schedule of the Public Administration Act. The current version of the Code contains specific provisions on interactions with third parties including on the acceptance of gifts and benefits, managing conflicts of interest, and restrictions on employment after leaving office. Additionally, Article 4 of the Public Administration Act sets the values that public employees shall uphold and promote while carrying out functions or duties (i.e. integrity, respect, loyalty, trust, quality, accountability, impartiality and non-discrimination), and establishes post-employment regulations for public employees holding posts that involve regulatory and inspectorate functions. Directive No. 14 on the *Governing Framework for the Management of the Revolving Door Policy for Public Employees* was recently introduced to elaborate on post-public employment, and details the provisions for certain categories of at-risk public officials regarding post-public employment, and establishes a Board to oversee implementation.

The Code of Ethics for Members of the House of Representatives is included in the first schedule of the Standards in Public Life Act, while the Code of Ethics for Ministers and Parliamentary Secretaries is included in the second schedule of the same Act. The current version of the Code of Ethics for Members of the House of Representatives contains some specific provisions on declaration of interests, and acceptance of gifts and benefits. The current version of the Code of Ethics for Ministers and Parliamentary Secretaries sets the values that should guide the behaviour, actions and decisions of ministers and parliamentary secretaries (i.e. sense of service, integrity, diligence, objectivity, accountability, transparency, honesty, justice and respect, and leadership) and contains specific provisions on management of conflict of interest, acceptance of gifts and benefits, and second job restrictions.

However, neither the three codes of ethics or related directives included provisions to address more specific risks of lobbying and other influence practices, including on the proper use of confidential information, pre- and post-employment restrictions, and handling third party/lobbyists contacts. Moreover, the codes of ethics included in the Standards Act do not provide for MPs, Ministers and Parliamentary Secretaries to register and publish information on the gifts received by them or their families, nor to provide key information on liabilities, honoraria and outside sources and amounts of income that could be relevant for identifying potential conflicts of interest and/or sources of undue influence (see also Chapter 3). Additionally, the codes of ethics included in the Standards Act have been in place for several years and

no significant revision has been approved to ensure their cohesion with today's expectations and challenges, including those associated to the rise of digital technologies and social media and the new mechanisms and channels of influence (e.g. NGOs, think tanks, research centres) that have changed the lobbying landscape in recent years (OECD, 2021[4]).

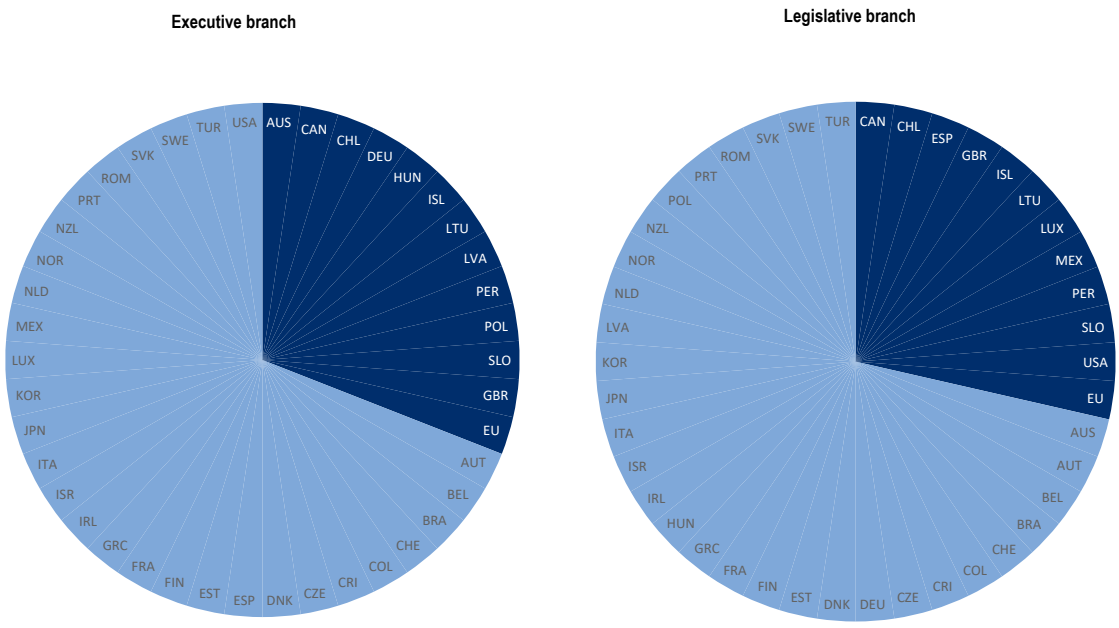
Aware of the existing weaknesses of the public integrity system, the Commissioner has proposed to address the integrity risks through the following measures: i) establishing a Code of Conduct for Lobbyists which should apply to all lobbyists, even those who are not obliged to register in the Register of Lobbyists, ii) imposing restrictions on involvement in lobbying for certain designated public officials for a specified period of time after they cease to hold office , and iii) including provisions on interactions with lobbyists in the codes of ethics of ministers and parliamentary secretaries and Members of Parliament. These proposals will be reviewed in the following subsections, together with specific recommendations to fostering integrity in lobbying in Malta.

To foster integrity when interacting with lobbyists, the Office of the Principal Permanent Secretary could develop specific principles, rules, standards and procedures for public officials

To foster a culture of integrity in public organisations and decision making, public officials need clear principles, rules, standards and procedures to engage with lobbyists. Such rules and standards need to guide public officials on their communication and interaction with lobbyists, in a way that bears the closest public scrutiny (OECD, 2021[4]). In particular, public officials should cast no doubt on their impartiality to promote the public interest, share only authorised information and not misuse 'confidential information', disclose relevant private interests and avoid conflict of interest (OECD, 2021[4]).

Indeed, governments can provide specific standards to give public officials clear directions on how they are permitted to engage with lobbyists. Integrity standards on lobbying may be included in a specific lobbying law, in a lobbying code of conduct, or in the general standards for public officials, such as laws, codes of ethics or codes of conduct. Specific duties and standards of conduct related to lobbying activities for public officials are being developed in several countries, although more efforts are still needed (Figure 5.4).

Figure 5.4. Specific duties and standards of conduct related to lobbying activities for public officials



Source: (OECD, 2021[4]).

Considering this, the Office of the Principal Permanent Secretary could update the Code of Ethics for Public Employees and Board Members laid down in the first schedule of the Public Administration Act by including provisions on the interactions between public officials/board members and lobbyists. These could be informed by the standards laid out in Directive No. 14. Standards for public officials/board members on their interactions with lobbyists could include the following:

- the duty to treat lobbyists equally by granting them fair and equitable access
- the obligation to refuse meetings with unregistered lobbyists, or at a minimum to check that the lobbyist is registered or intends to register within the specified deadlines
- the obligation to report violations to competent authorities
- the duty to register their meetings with lobbyists (through the *Transparency Register*)
- the obligation to refuse accepting gifts (fully or beyond a certain value)
- the duty to report gifts and benefits received, amongst others.

To develop these provisions, the following could serve as examples of the specific standards for public officials on their interactions with lobbyists developed by other countries (Table 5.4).

Table 5.4. Examples of specific standards for public officials on their interactions with lobbyists

	Document	Standards of conduct on lobbying
Australia	Australian Government Lobbying Code of Conduct	• A Government representative shall not knowingly and intentionally be a party to lobbying activities by a lobbyist or an employee of a lobbyist who is not on the Register of Lobbyists; or who has failed to inform them that they are lobbyists, whether they are registered, the name of their clients, and the nature of the matters they wish to raise. • A Government representative must report any breaches of the Code to the Secretary of the Attorney General's Department.
Canada	Prime Minister's Guide on Open and Accountable Government (for ministers and ministers of state)	• (IV.3) The Commissioner of Lobbying may ask designated public office holders, including Ministers and Parliamentary Secretaries, to verify information about lobbying communications that has been registered by lobbyists. Every effort should be made to meet this responsibility using routine records.
Chile	Law regulating lobbying and the representation of private interests before authorities and civil servants.	• Lobbied public officials and administrations have a duty to register hearings and meetings with lobbyists, as well as donations and trips made in the exercise of their duties. Public administrations have a duty to maintain a public register of lobbyists and interest representatives. They must guarantee equal access for persons and organisations to the decision-making process. Public administrations are notrequired to respond positively to every demand for meetings or hearings; however, if it does so in respect to a specific matter, it must accept demands of meetings of hearings to all who request them on the said matter.
Iceland	Code of Conduct for Staff in the Government Offices of Iceland	• When interacting with interest groups, staff in the Government Offices of Iceland shall bear in mind that the duties of public administration are primarily towards the public. Staff shall observe the principle of equality when responding to the requests of interest groups.
Latvia	Cabinet Regulations No. 1 Values of State Administration and Fundamental Principles of Ethics	• When communicating with lobbyists, public employees shall follow the principles of openness, equality, and integrity. They must ensure all interested lobbyists have equal opportunities to receive information and communicate with the public institution and its employees. • Public employees must inform their direct manager or the head of their institution on their meeting with lobbyists, and disclose information on their meetings, including information received from lobbyists.
Lithuania	Law on Lobbying Activities	• State and municipal bodies, as well as lobbied public officials must create the conditions for lobbyists to exercise their rights specified in the law when they are registered, to carry out lawful activities and pursue the interests of lobbying clients and beneficiaries, as well as the conditions for the Chief Official Ethics Commission to carry out its supervising functions. • Lobbied persons are prohibited from accepting gifts or any other remuneration from lobbyists. • The President of the Republic, the Seimas, members of the Government, Deputy Ministers, Governors, Chancellors of Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies must declare lobbying activities targeting them for each draft legal act, no later than seven days from the start of lobbying activities for the specific draft act (…). • Civil servants who participate in the preparation, consideration and adoption of draft legal acts must declare lobbying activities targeting them for each draft legal act to their managers or authorised representatives of the public institution that employ them, no later than seven days from the start of lobbying activities for the specific draft act (…). • The President of the Republic, members of the Seimas, the Government, Deputy Ministers, Chancellors of the Seimas, the Government, Ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies shall make their agendas public. Their agendas shall be published on the websites of the legal entities in which they hold office.
Slovenia	Integrity and Prevention of Corruption Act	• Public officials may agree to have contact with a lobbyist only after verifying that the lobbyist is entered into the Register. If, during a contact with a lobbyist a conflict of interest arises on the part of the person lobbied, they must refuse any contact with the lobbyist. • They must record, within three days, of each meeting with a lobbyist to their superior and to the Commission for the Prevention of Corruption. • They must report, within ten days, any attempts to lobby from unregistered lobbyists to the Commission for the Prevention of Corruption.

Source: (OECD, 2021[4]).

Additionally, general integrity standards for public officials can be adapted to sectors or functions in the executive and legislative branches, and to higher and more politically exposed positions (OECD, 2021[4]). For instance, elected or appointed political officials such as members of parliament, ministers, and political advisors are central in the public decision-making process. In this sense, setting higher expectations to serve the public interest for politically exposed positions may be necessary to effectively address risks of lobbying and other influence activities.

Aware of the weaknesses of the current codes of ethics of Members of the House of Representatives and ministers and parliamentary secretaries**,** the Commissioner carried out a revision of such codes of ethics and developed additional guidelines, as a separate exercise in terms of the Standards in Public Life Act. The revised versions of the codes of ethics introduce several provisions on the interactions with third parties including on the acceptance and registration of gifts, the misuse of public resources and confidential information, and management of conflicts of interest (see Box 5.14).

Box 5.14. Provisions on lobbying included in the revision of the codes of ethics of Malta and additional guidelines

Revision of the Code of Ethics of Members of the House of Representatives and additional guidelines

- To establish a Register for Gifts, Benefits and Hospitality in which MPs should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts are related to their parliamentary or political activities and have a value of over EUR 250.
- To establish a Register of Interests for the registration of financial and non-financial interests in compliance with the accompanying guidelines; spouses and/or partners as well as other members of MPs' families shall be subject to registration of certain interests.
- MPs who have any interest which is in conflict with the proper exercise of their duties in any proceedings of the House or its committees shall declare that interest in the House at the first opportunity before a vote is taken.

Revision of the Code of Ethics of Ministers and Parliamentary Secretaries and additional guidelines

- To establish a Transparency Register in which ministers are required to record all relevant communications with lobbyists within seven days.
- To establish a Register for Gifts, Benefits and Hospitality in which ministers should duly record not only those received but also those bestowed by them (or their family members) to third parties, if such gifts exceed the threshold of EUR 250.
- To establish a Register of Interests for the registration of financial and non-financial interests in compliance with the accompanying guidelines.
- Ministers are required to avoid associating with individuals who could place them under any obligation or inappropriate influence.
- Ministers are required to avoid putting themselves in situations in their private lives that may expose them to any undue pressure or influence, and if they find themselves in such a situation they are required to resolve it immediately in a truthful and open manner.
- If Ministers hold meetings with persons who have an interest in obtaining permits, authorisations, concessions and other benefits from the state, they should do so in an official setting in the presence of officials, unless this is impractical on account of justifiable circumstances.
- Ministers shall not conduct official business through unofficial email accounts.

Source: (Commissioner for Standards in Public Life, 2020[19]).

The new provisions of the codes of ethics for MPs, ministers and parliamentary secretaries and the additional guidelines developed by the Commissioner cover the main risk areas of the interactions between public officials and lobbyists, including on potential indirect influence through offering incentives such as gifts, benefits and hospitality. To that end, as detailed in Chapter 3, the government could consider updating the codes of ethics for Members of the House of Representatives and Ministers and Parliamentary Secretaries in line with the revised proposals of the codes by the Commissioner, including the additional provisions to address the risks of lobbying and other influence activities previously detailed.

Additionally, the proposed obligation to record all relevant communications with lobbyists in the Transparency Register could be expanded to MPs. Indeed, considering that MPs are also being targeted by lobbying activities, they could be covered by the obligation of registering all relevant communications with lobbyists. Such obligation could be included in the revised version of the Code of Ethics for Members of the House of Representatives, to guarantee coherence with other integrity standards. A similar obligation exists in Spain, where the Code of Conduct for members of the Congress and the Senate requires the publication of meetings with third parties (Box 5.15).

Box 5.15. Code of Conduct for members of the Congress and the Senate of Spain

In October 2020, the Boards of both Houses of the Spanish Parliament adopted a Code of Conduct for members of the Congress and the Senate. The Code requires the publication of the senators' and deputies' agendas, including their meetings with lobbyists:

The members of the Chambers (Congress and the Senate) "must publish their institutional agenda in the corresponding Transparency Portal, including in any case the meetings held with the representatives of any entity that has the status of interest group. (…) each parliamentarian will be responsible for the veracity, accuracy and timeliness of the published information".

Source: https://www.congreso.es/cem/01102020-codconductaCCGG.

The Office of the Prime Minister could adopt cooling-off periods for elected officials and appointed officials in at-risk positions, and the Commissioner could adopt a cooling-off period for lobbyists

Despite the existence of strict standards for managing conflicts of interest, one of the main integrity risks and concerns is the revolving-door phenomenon. Indeed, although the movement between the private and public sectors may result in many positive outcomes including the transfer of knowledge and experience, it can also provide an undue or unfair advantage to influence government policies or to benefit a prospective employer, if not properly regulated (OECD, 2021[4]). To that end, the 2010 OECD Recommendation on Lobbying states that "[c]ountries should consider establishing restrictions for public officials leaving office in the following situations: to prevent conflict of interest when seeking a new position, to inhibit the misuse of 'confidential information', and to avoid post-public service 'switching sides' in specific processes in which the former officials were substantially involved" (OECD, 2010[16]).

Several OECD countries have established provisions to regulate the revolving-door phenomenon. This includes setting rules of procedure for joining the public sector from the private sector and vice versa, including imposing cooling-off periods to temporarily restrict former public officials from lobbying their past organisations and imposing similar temporary cooling-off period restrictions on appointing or hiring a lobbyist to fill a regulatory or an advisory post. Still, the definition of these provisions comes with several challenges, including finding an adequate balance between codifying rules and restrictions to safeguard the integrity of public decisions, without unduly affecting individuals' careers or public service efficiency (OECD, 2021[4]).

In Malta, the Commissioner has recommended a ban on lobbying their former employer for certain public officials for a set term after they cease to hold office: three years in the case of ministers, parliamentary secretaries and the Principal Permanent Secretary, and one year for members of the House of Representatives, permanent secretaries, directors general, and the chairpersons and chief executive officers of government companies, foundations and other entities. These periods do align with international good practices that regulate movement between the public and private sectors (Box 5.16).

Box 5.16. Examples of provisions on cooling-off periods for elected officials and appointed officials in at-risk positions in OECD counties

In **Australia**, Ministers and Parliamentary Secretaries cannot, for a period of 18 months after they cease to hold office, engage in lobbying activities relating to any matter that they had official dealings within their last 18 months in office. Additionally, persons employed in the Offices of Ministers or Parliamentary Secretaries at Adviser level and above, members of the Australian Defence Force at Colonel level or above (or equivalent), and Agency Heads or persons employed in the Senior Executive Service (or equivalent), shall not, for a period of 12 months after they cease their employment, engage in lobbying activities relating to any matter that they had official dealings with in their last 12 months of employment.

In **Canada**, during the five-year period after they cease to hold office, former designated public office holders are prohibited from engaging in any consultant lobbying activities. Similarly, former designated public office holders who are employed by an organisation are also prohibited from engaging in any in-house lobbying activities for this same five-year period.

In the **Netherlands**, a circular adopted in October 2020 – "Lobbying ban on former ministries" – prohibits ministers and any officials employed in ministries to take up employment as lobbyists, mediators or intermediaries in business contacts with a ministry representing a policy area for which they previously had public responsibilities. The length of the lobbying ban is two years. The objective of the ban is to prevent retiring or resigning ministers from using their position, and the knowledge and network they acquired in public office, to benefit an organisation employing them after their resignation. The secretary general of the relevant ministry has the option of granting a reasoned request to former ministers who request an exception to the lobbying ban.

In the **United States**, Section 207 of the U.S. Code imposes a one-year "cooling-off period" on former Members of Congress, officers and covered employees. As a general matter, for one year after leaving office, those individuals may not seek official action on behalf of anyone else by either communicating with or appearing before specified current officials with the intent to influence them.

Source: (OECD, 2021[4]).

To that end, the Office of the Prime Minister could adopt cooling-off periods for elected officials and appointed officials in at-risk positions. Additionally, the Commissioner could strengthen the provisions to regulate the revolving-door phenomenon by setting out a cooling-off period on appointing or hiring a lobbyist to fill a regulatory or an advisory post, which could be included in the specific regulation on lobbying. Other OECD countries have established cooling-off periods for lobbyists, which could inspire Malta in strengthening restrictions to prevent conflict of interest derived from the revolving-door phenomenon (Box 5.17).

Box 5.17. Examples of provisions on cooling-off periods for lobbyists

In **France**, Article 432 of the Penal Code places restrictions on private-sector employees appointed to fill a post in the public administration. For a period of three years after the termination of their functions in their previous employment, they may not be entrusted with the supervision or control of a private undertaking, with concluding contracts of any kind with a private undertaking or with giving an opinion on such contracts. They are also not permitted to propose decisions on the operations of a private undertaking or to formulate opinions on such decisions. They must not receive advice from or acquire any capital in such an enterprise. Any breach of this provision is punished by two years' imprisonment and a fine of EUR 30 000.

Source: (OECD, 2021[4]).

The Office of the Principal Permanent Secretary could develop guidance to help public officials assess the reliability of information used in policy- and decision-making

In their interactions with public officials, lobbyists share their expertise, legitimate needs and evidence about policy problems and how to address them (OECD, 2021[4]). Although this exchange provides public officials with valuable information on which to base their decisions, lobbyists may sometimes abuse this legitimate process to provide unreliable or inaccurate information to advance their own private interest. Additionally, lobbyists may also indirectly influence policy- and decision-making by supporting and promoting studies that challenge scientific arguments unfavourable to their interests, or highlighting the results of studies financed by their own centres, institutes and other organisations that are favourable to their interests.

To that end, the Principal Permanent Secretary could consider providing guidelines for public officials to help them become aware of the possibility of being indirectly influenced through biased or false evidence, and the need to assess the credibility of sources provided by third parties and used in policy- and decision-making. Some governments have started to provide concrete standards for public officials in assessing evidence provided by third parties, including the Netherlands (Box 5.18).

Box 5.18. The Dutch Code of Conduct reminds public officials to consider indirect influence

The Dutch Code of Conduct on Integrity in Central Government reminds public officials to consider indirect ways they may be influenced by special interest groups, for example, by financing research.

"You may have to deal with lobbyists in your work. These are advocates who try to influence decision making to their advantage. That is allowed. But are you always aware of that? And how do you deal with it?

Make sure you can do your work transparently and independently. Be aware of the interests of lobbyists and of the different possibilities of influence. This can be done very directly (for example by a visit or invitation), but also more indirectly (for example by co-financing research that influences policy).

Consult with your colleagues or supervisor where these situations may be present in your work.

Sometimes it is in the public interest to avoid contacts with lobbyists."

Source: (OECD, 2021[4]).

The Commissioner could develop and provide additional guidance and increase capacity building and awareness raising activities on lobbying and other influence activities

Having clear principles, rules, standards and procedures for public officials on their interactions with lobbyists is key, but it is not sufficient to mitigate the integrity risks of lobbying and other influence activities. Raising awareness of the expected rules and standards as well as enhancing skills and understanding of how to apply them are also essential elements to foster integrity in lobbying. Likewise, well-designed guidance, advice and counselling serve to provide clarity and practical examples, facilitate compliance and help avoid the risk of misinterpreting rules and standards (OECD, 2021[4]).

Most countries with lobbying transparency frameworks do provide guidance, build capacity and raise awareness of integrity standards and values for public officials (OECD, 2021[4]). This may include induction or on-the-job training, disseminating the code of conduct, and issuing posters, computer screen-savers, employee boards, banners, bookmarks and printed calendars (OECD, 2021[4]). Training offered by public authorities commonly include guidelines on values and standards, expected behaviour, and concrete examples of good practices, ethical dilemmas and descriptions of potentially problematic situations. Countries where public authorities offer training on interactions with lobbyists include Canada, France, Hungary, Ireland, Lithuania, Slovenia and the United Kingdom.

The majority of countries that have developed specific integrity standards on lobbying also provide guidance on how to apply regulations and guidelines. Assistance may be available online on a dedicated website (e.g. in Canada, France, Lithuania, Slovenia, and the United Kingdom), or by calling a specific hotline or e-mailing a dedicated contact (e.g. in Australia, Austria, Germany, Luxembourg and Poland). Some countries, such as Ireland, provide public officials with both types of assistance through an independent specialised body called the Standards in Public Office Commission (Box 5.19).

Box 5.19. Guidance and awareness raising in Ireland by the Standards in Public Office Commission

Tailored guidance on lobbying for public officials in Ireland

In Ireland, Article 17 of the Lobbying Act specifies that “the Commission may issue guidance about the operation of this Act and may from time to time revise or re-issue it”, and “may make available specific information to promote awareness and understanding of this Act”.

The website www.lobbying.ie contains specific guidance for public officials covered by the provisions of the Law (“designated public officials”), including:

- general guidance for public officials to ensure that they understand how the system works, how they fit into it and how they can assist in supporting implementation of the legislation
- guidance for Members of the Dáil, Members of the Seanad and Members of the European Parliament representing the Irish government
- guidance for Local Authority Members
- guidance on the cooling-off period.

Specific hotline or dedicated contact to advise on lobbying issues

The website www.lobbying.ie/about-us/contact-us/ contains information details (address, phone number, email and Twitter account) of the dedicated contact within the Standards in Public Office Commission that advises on lobbying issues. People can contact the Commission by telephone, letter, e-mail or by submitting an online enquiry.

Source: https://www.lobbying.ie/help-resources/information-for-dpos

In the case of Malta, regulations on lobbying and provisions on the interactions between public officials and lobbyists are a new element of the integrity framework. In this sense, guidance, capacity building and awareness raising activities become fundamental to guarantee the adherence to integrity standards in lobbying and other influence activities. To that end, the Commissioner could develop additional guidance, capacity building and awareness raising activities on lobbying and other influence activities to help build the knowledge, skills and capacity to manage the integrity issues arising. Training activities could include examples of good practices, and ethical dilemmas, with the aim of allowing public officials, through interactive and situational methods, to reflect on key dilemmas and on the consequences of breaching integrity standards (see for example Box 5.20).

Box 5.20. Capacity building and awareness raising activities on lobbying in OECD countries

Training programme carried out by the New York State Joint Commission on Public Ethics

The New York State Joint Commission on Public Ethics (JCOPE) was established as part of the Public Integrity Reform Act of 2011. The JCOPE is responsible for, amongst others, providing information, education, and advice regarding ethics and lobbying laws for State employees, lobbyists and lobbyists clients.

In terms of education and training, the Education Unit of the JCOPE provides a comprehensive and dynamic educational programme for public officers and employees, lobbyists, and clients of lobbyists to ensure that they are fully informed about the State's ethics and lobbying laws, regulations, and guidelines. As part of their education and training programme, the JCOPE Education Unit develops instructor-led trainings on the State's ethics and lobbying laws, designs web-based programming on a variety of topics, and produces a library of written educational materials that are available on the Commission's website (https://jcope.ny.gov/).

For instance, aware of the difficulties to navigate the ethics laws, the JCOPE Education Team provides ethics trainings using plain language terms, real world examples and concepts that are easy to understand for State officers and employees on Financial Disclosure Statement (FDS) Filers. The courses consists of online and live instructor-led trainings:

- online ethics training for new FDS filers within three months of becoming subject to the FDS filing requirement;
- two-hour, instructor-led ethics training at regular intervals, or as needed, for FDS Filers to comply with the statutory ethics training deadlines;
- Ethics Seminar for FDS filers who have already successfully completed the instructor-led ethics training and are required to continue their mandatory ethics training requirements.

Training for public officials by Slovenia's Commission for the Prevention of Corruption

In its mission to prevent corruption, the Commission for the Prevention of Corruption offers free education and training opportunities for all public sector organisations in Slovenia.

Once a public institution has identified specific needs, such as conflict-of-interest rules, whistle-blower protection, lobbying regulation or any other area in the scope of the commission, the entity may issue a request to the Commission. The request should also highlight the specific ethical dilemmas or concerns of the institution, as well as issues that public officials have encountered in their work.

After careful examination of the needs, issues and concerns, the Commission presents training options and programmes to the requesting institution.

The Commission regularly invites all public officials to attend a seminar organised twice a year by the Administrative Academy. All areas of the Integrity and Prevention of Corruption Act are reviewed, as well as safeguards for integrity in interactions between public officials and lobbyists. The commission is also available at any point to provide ongoing guidance and answer questions.

Source: (OECD, 2021[4]; New York State Joint Commission on Public Ethics, 2021[20]).

The Commissioner could also consider strengthening its advisory role on lobbying by providing advice on implementation of the lobbying regulation and to help public officials understand the rules and ethical principles of the civil service in combating undue influence. For instance, in France, the High Authority for Transparency in Public Life provides individual confidential advice upon request to the highest-ranking elected and non-elected public officials falling within its scope, and provides guidance and support to their institution when one of these public officials requests it, within 30 days of receiving the request (OECD, 2021[4]).

The Commissioner could consider developing and adopting a Code of Conduct for Lobbyists

The strength and effectiveness of the policy-making process depends not only on the integrity of public officials but also on the integrity of those who try to influence them. Indeed, companies and lobbyists are critical actors in the policy-making process, providing government with insights, evidence and data to help them make informed decisions. However, they can also at times undermine the policy-making process by abusing legitimate means of influence, such as lobbying, political financing and other activities (OECD, 2021[4]). To ensure integrity in the policy-making process, lobbyists (whether in-house or as part of a lobbying association) require clear standards and guidelines that clarify the expected rules and behaviour for engaging with public officials.

The 2010 OECD Recommendation on Lobbying states that lobbyists and their clients should comply with standards of professionalism and transparency in their relations with public officials (OECD, 2010[16]). Although different tools can be used to define integrity standards for lobbyists, codes of conduct are the chief support of integrity in the lobbying process. For example, according to the OECD 2020 Survey on Lobbying, 80% of lobbyists surveyed followed a code of conduct (OECD, 2021[4]).

Codes of conduct for lobbyists can be issued by different stakeholders. In some OECD countries –like Spain–, lobbyists self-regulate through codes of conduct issued by lobbyists' employers or lobbying associations, while in other countries –like Australia, Canada and Ireland–, governments directly set standards on general codes of conducts. In some cases, lobbyists follow all three codes of conduct. Although lobbyists self-regulate in some OECD countries, the 2013 OECD surveys on lobbying indicate that governments and legislators consider that self-regulation is not sufficient for alleviating actual or perceived problems of influence peddling by lobbyists (OECD, 2014[5]). Moreover, 34% of lobbyists surveyed disagreed, some strongly, with the statement that self-regulation of lobbying is sufficient.

In Malta, the Commissioner has proposed to include a code of conduct for lobbyists in the schedules of the Lobbying Act, which should apply to all lobbyists, not only those who are obliged to register in the Register of Lobbyists. This proposed code of conduct can provide principles by which lobbyists should govern themselves in the course of carrying out lobbying activities, namely: (a) demonstrating respect for public bodies; (b) acting with honesty, integrity and good faith; (c) ensuring the accuracy of information communicated to designated public officials; (d) disclosing information about lobbying activities as required by law, while otherwise preserving confidentiality as appropriate; and (e) avoiding improper influence (such as giving gifts, benefits and hospitality to designated public officials).

Considering that self-regulation may not be sufficient to alleviate actual or perceived problems of inappropriate influence by lobbyists, the Commissioner could develop and adopt a Code of Conduct for

Lobbyists. The Code could include provisions regarding the obligation by certain lobbyists to register in a Register of Lobbyists and to submit regular returns about their lobbying activities, as well as appropriate and proportionate sanctions for breaches of the code (see section on sanctions). Box 5.21 provides examples of codes of conduct for lobbyists in other jurisdictions.

Box 5.21. Codes of conduct for lobbyists

City of Ottawa, Canada

The City of Ottawa introduced a 2012 Lobbyist Code of Conduct and a Lobbyist Registry. According to the Code of Conduct, lobbyists are expected to comply with standards of behaviour and conduct in the following matters: 1. Honesty, 2. Openness, 3. Disclosure and identity purpose, 4. Information and confidentiality, 5. Competing interests and 6. Improper influence. For instance, under the topic 3. Disclosure and identity purpose, lobbyists are expected to "register the subject matter of all communication with public office holders that constitutes lobbying under the Lobbyist Registry"

The Lobbyist Registrar is a bilingual online tool found at ottawa.ca/lobbyist that documents lobbying activity within the City of Ottawa. Lobbying must be registered with the Lobbyist Registry within 15 business days of the activity taking place.

Ireland

The Standards in Public Office Commission issued a Code of Conduct for persons carrying out lobbying activities, which came into effect on 1 January 2019. The Code sets out several principles by which persons carrying on lobbying activities should govern themselves in the course of carrying out lobbying activities, namely: 1. Demonstrating respect for public bodies, 2. Acting with honesty and integrity, 3. Ensuring accuracy of information, 4. Disclosure of identity and purpose of lobbying activities to public bodies and elected or appointed officials, 5. Preserving confidentiality, 6. Avoiding improper influence, 7. Observing the provisions of the Regulation of Lobbying Act, and 8. Having regard for the Code of Conduct).

Quebec, Canada

Complementary to the 2002 Quebec Lobbying Transparency and Ethics Act, the Quebec government issued a Code of Conduct for Lobbyists that establishes standards of conduct and values to which lobbyists must adhere in their communications with public decision makers (elected officials or civil servants): respect for institutions, honesty, integrity, professionalism. Failure to comply with the Code is subject to sanctions.

Source: (Standards in Public Office Commission, 2018[21]; OECD, 2022[22]).

5.4.2. Establishing sanctions for breaches of lobbying framework

Lobbying regulations cannot achieve their objectives unless regulated actors comply with them. To that end, they need to specify monitoring and verification activities by oversight bodies, as well as enforcement actions and sanctions for non-compliance. Yet while sanctions can have a deterrent effect, the key to effective regulation is active compliance promotion through a coherent spectrum of strategies and mechanisms. To ensure compliance, and to deter and detect breaches, the OECD Recommendation encourages countries to design and apply a coherent spectrum of strategies and mechanisms, including properly resourced monitoring and enforcement. To that end, countries use several measures through their oversight institutions to promote compliance with transparency requirements, and tend to favour communication and engagement with lobbyists and public officials. Tools include providing a convenient

online registration and report-filing system, raising awareness of the regulations, verifying disclosures on lobbying (including delays, accuracy and completeness of the information disclosed, unregistered activities), sending formal notices to lobbyists to advise of potential breaches, requesting modifications of the information declared and applying visible and proportional sanctions (OECD, 2021[4]).

The Regulation of Lobbying Act could clarify the compliance and enforcement responsibilities of the Commissioner in the area lobbying and ensure he has sufficient resources to carry out these responsibilities

It is therefore crucial that the proposed Act on Regulating Lobbying first clarifies responsibilities for compliance and enforcement activities. At the OECD level, all countries with a transparency register on lobbying activities have an institution or function responsible for monitoring compliance. Most of these bodies or functions monitor compliance with disclosure obligations and whether the information submitted is accurate, presented in a timely fashion and complete. These functions are usually specified in the relevant lobbying law or regulation. In Malta, the operation of key aspects of the Act and its enforcement would be entrusted to the Commissioner for Standards in Public Life. The Commissioner would host and maintain the register of lobbyists and also enforce the requirement for designated public officials to list communications with lobbyists on relevant matters. This is line with OECD best practices, in countries with similar regulations (Table 5.5).

Table 5.5. Institutions responsible for the oversight of lobbying regulations in selected OECD countries

	Oversight entity	Legal framework	Main missions
Canada	Office of the Commissioner of Lobbying	Lobbying Act	• Administer the Registry of Lobbyists; • Develop and maintain educational programmes to encourage public awareness of the requirements of the Act; • Verify the information contained in disclosures; • Issue interpretation bulletins with respect to the enforcement, interpretation or application of the Act; • Conduct reviews and investigations to ensure compliance with the Act and the Lobbyists' Code of Conduct
France	High Authority for transparency in public life	Law on the Transparency in Public Life	• Administer the public register of lobbyists • Detect and investigate possible breaches of lobbying rules
Ireland	Standards in Public Office Commission	Regulation of Lobbying Act	• Administer the Regulation of Lobbying Act • Investigate possible breaches of the Act • Prosecute offences • Administer fixed payment notices for late filing of lobbying returns
Lithuania	Chief Official Ethics Commission	Law on Lobbying Activities and the Transparent Legislative Processes Information System	• Administer the Law on Lobbying Activities and the Transparent Legislative Processes Information System • Investigate potential breaches to the Law • Provide lobbyists and public officials with methodological support and • recommendations
United Kingdom	Office of the Registrar of Consultant Lobbyists	Transparency of Lobbying, Non-Party Campaigning and Trade Union Administration Act	• Administer the statutory Register of Consultant Lobbyists • Monitor compliance with the provisions of the Act • Investigate information from third parties on alleged non-compliance • Initiate enquiries if the consistency or accuracy of information is in question • Issue formal Information Notices to registrants or non-registrants • Impose civil penalties of up to GPB 7 500, or refer the latter to the Director of • Public Prosecutions for potential criminal prosecution • Impose civil and criminal penalties for non-compliance

Source: (OECD, 2021[4]).

Second, the Act could clarify the types of verification activities conducted and the investigative powers entrusted to the Commission. Verification activities include for example verifying compliance with disclosure obligations (i.e. existence of declarations, delays, unregistered lobbyists), as well as verifying the accuracy and completeness of the information declared in the declarations. Investigative processes and tools include:

- Random review of registrations and information disclosed or review of all registrations and information disclosed;
- Verification of public complaints and reports of misconducts;
- Inspections (off-side and/or on-site controls may be performed);
- Inquiries (requests for further information);
- Hearings with other stakeholders.

In Canada for example, the Office of the Commissioner of Lobbying can verify the information contained in any return or other document submitted to the Commissioner under the Act, and conduct an investigation if he or she has reason to believe, including on the basis of information received from a member of the Senate or the House of Commons, that an investigation is necessary to ensure compliance with the Code or the Act. This allows the Commissioner to conduct targeted verifications in sectors considered to be at higher risk or during particular periods. The Commissioner can ask present and former designed public officials to confirm the accuracy and completeness of lobbying disclosures by lobbyists, summon and enforce the attendance of persons before the Commissioner, and compel them to give oral or written evidence on oath, as well as compel persons to produce any document or other things that the Commissioner consider relevant for the investigation.

The Irish Standards in Public Office Commission, on the other hand, reviews all registrations to make sure that all who are required to register have done so and that they have registered correctly. Depending on the approach chosen in Malta (review of all registrations or random reviews), the minister responsible for the administration of the Act will also need to ensure that the Commissioner has sufficient resources to conduct these activities.

Using data analytics and artificial intelligence can facilitate the verification and analysis of data. In France for example, the High Authority for Transparency in Public Life has now set up an automatic verification mechanism using an algorithm based on artificial intelligence, to detect potential flaws upon validation of annual lobbying activity reports (Box 5.22).

Box 5.22. France is using artificial intelligence to enhance the quality of annual lobbying reports

In France, registered lobbyists must submit an annual activity report to the High Authority for Transparency in Public Life (HATVP) within three months of the lobbyist's financial year. In analysing the activity reports for the period 1 July 2017 to 31 December 2017, the HATVP noted the poor quality of some of the activity reports, due to a lack of understanding of what should be disclosed. Over half of the 6 000 activity reports analysed did not meet any of the expected criteria. Often, the section describing the issues covered by lobbying activities – identified by their purpose and area of intervention – was used to report on general events, activities or dates of specific meetings.

In January 2019, the HATVP set up various mechanisms to enhance the quality of information declared in activity reports. Practical guidance was provided explaining how the section on lobbying activities should be completed, with a pop-up window presenting two good examples. An algorithm based on

artificial intelligence was established to detect potential defects on validation of the activity report, and detect incomplete or misleading declarations.

Source: (OECD, 2021[4]).

Cross-checking available information also makes it possible to assess the consistency between data provided from various sources. For example, information within lobbying registries can be cross-checked with political finance contributions or open agendas. Several OECD countries have set up such mechanisms. In the United Kingdom, the Office of the Registrar of Consultant Lobbyists cross-checks lobbyists registered with ministerial open agendas, to monitor and enforce compliance with the requirements set out by the Transparency of Lobbying Act. In the United States, the Supreme Audit Institution (SAI), the Government Accountability Office, relies on the accessibility of databases as well as on the informal exchange of information between entities to cross-check lobbying disclosure requirements and political contributions.

The Regulation of Lobbying Act could include a gradual system of financial and non-financial sanctions depending on the nature of the breach and applied at the entity level

Sanctions should be an inherent part of the enforcement and compliance setup and should first serve as a deterrent and second as a last resort solution in case of a breach of the lobbying regulation. As a first step, the Act will need to specify what are the type of breaches that can lead to sanctions. Sanctions usually cover the following types of breaches:

- not registering and/or conducting activities without registering;
- not disclosing the information required or disclosing inaccurate or misleading information;
- failing to update the information or file activity reports on time;
- failing to answer questions (or providing inaccurate information in response to these questions) or co-operating during an investigation by the oversight authority;
- breaching integrity standards / lobbying codes of conduct (OECD, 2021[4]).

The 2010 OECD Recommendation provides examples of sanctions and notes that visible and proportional sanctions should combine innovative approaches, such as: public reporting of confirmed breaches, with traditional financial or administrative sanctions, such as debarment, and criminal prosecution as appropriate.

The practice has also shown that a graduated system of administrative sanctions appears to be preferable as countries that have established lobbying rules and guidelines provide for a range of graduated disciplinary or administrative sanctions, such as warnings or reprimands, fines, debarment and temporary or permanent suspension from the Register and prohibition to exercise lobbying activities (OECD, 2021[4]). A few countries have criminal provisions leading to imprisonment, such as Canada, France, Ireland, Peru, the United Kingdom and the United States.

In line with 2010 OECD Recommendation and the best practice jurisdictions, the Commissioner has proposed two levels of sanctions – administrative fines and criminal penalties – be imposed by the Commissioner and by the courts, respectively. It is commendable that the proposed discretionary element, as exists within the judicial and administrative system in all jurisdictions, will be entrusted to the Commissioner to award variety of penalties within determined brackets, according to the nature and severity of the breach.

The sanctions should have a sufficient deterrent effect. In many OECD countries, a common challenge identified are sanctions that are likely to be perceived as light by the person concerned. In France for example, the High Authority for Transparency in Public Life concluded that the maximum amount for fines incurred for legal persons (EUR 75 000) is negligible for large companies.

The Regulation of Lobbying Act could include provisions that enable the Commissioner to send formal notices and apply administrative fines to incentivise compliance

The OECD Recommendation specifies that comprehensive implementation strategies and mechanisms should carefully balance risks with incentives for both public officials and lobbyists to create a culture of compliance. OECD practice shows that regular communication with lobbyists on potential breaches appears to encourage compliance without the need to resort to enforcement, and helps to create a common understanding of expected disclosure requirements. These notifications can include for example formal notices sent to potential un-registered lobbyists, requests for modifications of information declared in case of minor breaches, or formal notices sent to a lobbyist or a public official to advise of a potential breach (Box 5.23). The Consultation Paper already provides measures going in this direction when it proposes that the Commissioner for Standards in Public Life should be empowered to direct registrants to make corrections or supply missing information, either in their basic data or in their quarterly returns, where this is necessary (failure to comply should give rise to the possible application of sanctions). The proposal of the Consultation paper to notify the person or body of the possible offence and ensure that the person or body is given the opportunity to make representations before the penalty is imposed, is also in line with good practices in OECD countries.

Box 5.23. Formal notices to encourage compliance in France

When the High Authority for transparency in public life finds, on its own initiative or following a public complaint, a breach of reporting or ethical rules, it sends the interest representative concerned a formal notice, which it may make public, to comply with the obligations to which he or she is subject, after giving him or her the opportunity to present observations.

After a formal notice, and during the following three years, any further breach of reporting or ethical obligations is punishable by one year's imprisonment and a fine of EUR 15 000.

Source: HATVP, https://www.hatvp.fr/espacedeclarant/representant-dinterets/ressources/#post_4640.

Administrative fines also have the potential to incentivise compliance and resolve cases of late returns or registrations. For example, since the entry into force of the Lobbying Act in Ireland, the Standards in Public Office Commission has focused on encouraging compliance with the legislation by engaging with registrants to resolve any non-compliance, including by issuing fixed payment notices for late return filings, before initiating prosecution proceedings (Box 5.24). The Commission concluded that increased communication and outreach activities with registered lobbyists at an early stage of the process reduced the number of files referred for prosecution in 2018. Most lobbyists complied with their obligations, once contacted by the investigations unit.

Box 5.24. Ireland's Standards in Public Office Commission has the authority to pursue breaches

The Irish Regulation of Lobbying Act 2015 on enforcement provisions (Part 4) gives the Standards in Public Office Commission the authority to conduct investigations into possible contraventions of the Act, to prosecute offences and to issue fixed-payment notices of EUR 200 for late filing of lobbying returns.

The commission reviews all registrations to make sure that all who are required to register have done so and that they have registered correctly. It can also, by providing notice to a given registrant, request further or corrected information if it considers an application is incomplete, inaccurate or misleading.

The commission established a separate Complaints and Investigations Unit to manage investigations and prosecutions. The unit also sets up procedures to investigate non-compliance in relation to unreported lobbying by both registered and non-registered persons, as well as failure to comply with the requirement to post returns, or a failure to post lobbying activity in a timely fashion:

- **Unregistered lobbying activity** is monitored through open-source intelligence such as media articles, the Register itself, or complaints or other information received by the commission;
- **Late returns by registered persons** are monitored on the basis of the information available on the lobbying register relating to the number of late returns and non-returns after each return deadline. The online register is designed to issue fixed payment notices automatically to anyone submitting a late return on lobbying activities. If the payment is not paid by the specified date, the commission prosecutes the offence of submitting a late return.

As noted in the commission's annual reports, in most cases, receipt of the notice was enough to secure compliance. In 2017, the year the enforcement provisions went into force, no convictions nor investigations were concluded. In 2018, 26 investigations were launched to gather evidence on possible unreported or unregistered lobbying activity, of which 13 were discontinued (in part because the person subsequently came into compliance with the Act) and 13 were ongoing at year's end. The commission noted that the 270 notices issued for the three relevant periods in 2018 were significantly fewer than the 619 issued in 2017, a marked improvement in compliance with the deadlines.

Source: (OECD, 2021[4]).

The Regulation of Lobbying Act could include provisions mandating the transparency of sanctions in a publicly accessible register

To ensure accountability, all sanctions and beaches could be made public and included in a publicly accessible online register. The publication of certain decisions regarding violations does exist in other countries such as France and Canada. The implementation of such provisions in these jurisdictions has shown that these mechanisms can be particularly effective in promoting compliance.

In particular, the Regulation of Lobbying Act could include provisions that allow the Commissioner to create a list of sanctioned lobbyists and entities. The list would be publicly available and it would be mandatory for decision makers to consult the list to know if any person they communicate with is on that list. Moreover, any communication with a person from that list must be recorded in the Transparency Register, with no exceptions. Also, the Code of Ethics within the Public Administration Act may, for example, forbid public employees from receiving any inputs to their decision-making processes from those penalised under the lobbying regulation. As for promoting political responsibility of designated public officials, the lobbying regulation could prescribe publicising any breaches to make the electorate aware of the acts committed by public officials – and potentially politicians – so that they can make informed voting decisions.

The Regulation of Lobbying Act could include a provision for judicial review of a decision making or policy that was the outcome of a breach in the lobbying regulation

Some decision-making processes are so important and have so far-reaching consequences that no imaginable sanctions for either lobbyists or public officials can effectively deter attempts of undue influencing. The National Audit Office proposed in the public consultation on the Consultation Paper that *"[t]he Commissioner for Standards in Public Life may deem it appropriate to not only penalise the illicit influence but prohibit it outright and any actions found to be made as a result of the illicit influence deemed null and void"* (Office of the Commissioner for Standards in Public Life, n.d.[23]). While this is not a current practice in OECD countries, it could be considered as a powerful deterrent for those seeking to unduly influence the policy or decision-making process. If included, this mechanism should be considered a last resort, and involve judicial review.

5.5. Summary of recommendations

The following provides a detailed summary of the recommendations for establishing a framework for transparency and integrity in lobbying and influence in Malta. The recommendations contained herein mirror those contained in the analysis above.

Issue	Recommendations
Setting the legal and institutional framework for transparency and integrity in lobbying	• The Government of Malta could regulate lobbying through a dedicated law.
	• The Commissioner for Standards in Public Life could be entrusted with responsibilities for overseeing and enforcing the Regulation of Lobbying Act.
Ensuring transparency in lobbying	• The definitions on lobbying in the proposed Regulation of Lobbying Act could be revised in several key areas.
	• The Regulation of Lobbying Act could include provisions that require regular, timely updates to the information contained in both the Register for Lobbyists and the Transparency Register.
	• The Regulation of Lobbying Act could include provisions that further clarify the administration and accessibility of the Register for Lobbyists and the Transparency Register.
	• The Regulation of Lobbying Act could contain clear criteria for withholding data contained in the Register for Lobbyists and Transparency Register.
	• The Regulation on Lobbying Act could contain clear criteria for withholding particular information from the Register for Lobbyists and the Transparency Register.
	• The Regulation on Lobbying Act could include: (i) binding rules for the selection process of advisory or expert groups, and (ii) transparency into what the outcomes are, how they have been dealt with and how they are incorporated in the resulting decision.
Fostering integrity in lobbying	• To foster integrity when interacting with lobbyists, the Office of the Principal Permanent Secretary could develop specific principles, rules, standards and procedures for public officials.
	• To mitigate risks posed by the "revolving door", the Office of the Prime Minister could adopt cooling-off periods for elected officials, appointed officials in at-risk positions and the Commissioner for Standards in Public Life could establish a cooling-off period for lobbyists.
	• The Office of the Principal Permanent Secretary could develop guidance to help public officials assess the reliability of information used in policy- and decision-making.
	• The Commissioner for Standards in Public Life could develop and provide additional guidance and increase capacity building and awareness raising activities on lobbying and other influence activities.
	• The Commissioner for Standards in Public Life could consider developing and adopting a Code of Conduct for Lobbyists.
	• The Regulation of Lobbying Act could clarify the compliance and enforcement responsibilities of the Commissioner in the area of lobbying.
	• The Regulation of Lobbying Act could include a gradual system of financial and non-financial sanctions depending on the nature of the breach and applied at the entity level.
	• The Regulation of Lobbying Act could include provisions that enable the Commissioner for Standards in Public Life to send formal notices and apply administrative fines to incentivise compliance.
	• The Regulation of Lobbying Act could include provisions mandating the transparency of sanctions in a publicly accessible online register.
	• The Regulation of Lobbying Act could include a provision allowing for decision making or policy outcomes to be rectified if the lobbying regulation was violated.

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Annex 5.A. Definition of technical specifications and capacity requirements for the proposed instrument for transparency and integrity in lobbying

Introduction

In Malta, the Standards in Public Life Act empowers the Commissioner for Standards in Public Life to "identify activities that are to be considered as lobbying activities, to issue guidelines for those activities, and to make such recommendations as it deems appropriate in respect of the regulation of such activities".

The Commissioner for Standards in Public Life (hereafter "the Commissioner") has in the past indicated several specific concerns related to lobbying in Malta, which included the secrecy in which lobbying takes place and a lack of equity in different stakeholders' access to decision-makers (Office of the Commissioner for Standards in Public Life, 2020[24]). In light of these challenges, the Commissioner presented in February 2020 a document "**Towards the Regulation of Lobbying in Malta: A Consultation Paper**", which outlined a proposal for regulating lobbying activities in Malta, informed by international good practice and in particular the Irish Lobbying Act. The proposal recommended to regulate lobbying through a dedicated "Regulation of Lobbying Act", of which the implementation would be entrusted to the Commissioner, including hosting and maintaining a register of lobbyists, as well as enforcing the requirements for lobbyists and public officials to submit information to the Commissioner (Office of the Commissioner for Standards in Public Life, 2020[24]). This proposal has been welcomed at the international level, including most recently in the compliance report by the Group of States against Corruption (GRECO) (GRECO, 2021[25]).

This annex complements the recommendations outlined in Chapter 5 on lobbying and defines technical specifications and capacity requirements for the proposed instrument for improving transparency and integrity in lobbying. Lobbying technical specifications are largely dependent on the content of lobbying laws, and in particular the definitions of "lobbyist" and "lobbying", as well provisions on disclosure requirements for lobbyists and public officials. As such, in the absence of such law in Malta as of October 2023, this annex provides recommendations based on international best practices on lobbying technical specifications and includes proposals that clarify the information and fields that could be included in any upcoming Lobbying Registry (for lobbyists) and Transparency Registry (for public officials). In particular, this annex provides recommendations around four themes:

- The **disclosure regime for lobbyists** through a convenient electronic registration and report-filing system for the Register for Lobbyists.
- The **disclosure regime for public officials** through a convenient electronic registration system for the Transparency Register.
- The **transparency portal** to make publicly available online, in an open data format, that is reusable for public scrutiny and allows for cross-checking with other relevant databases, information on lobbying activities disclosed in the registers.
- The **capacity requirements** in terms of human and financial resources and sustainability prospects for administrating the registers.

Recommendations are based on identified best practices in France, Ireland, Quebec (Canada), Lithuania and Chile (Annex Table 5.A.1). Regulations in France, Quebec (Canada) and Ireland place the burden of compliance on those who influence (lobbyists). The regulation in Lithuania requires both those who influence (lobbyists) and those who are influenced (public officials) to disclose lobbying information while the regulation in Chile requires public officials to register their meetings with lobbyists in a register similar to the "Transparency Register" proposed by the Commissioner in 2020. All the above-mentioned regulations cover lobbying activities conducted at the regional and/or municipal level; their experience and lessons learned from regulating lobbying at the local level can thus be useful when implementing a lobbying regulation in the Maltese context.

International peers from the French High Authority for Transparency in Public Life (HATVP), the Lithuanian Chief Official Ethics Commission (COEC) and the Quebec Commissioner of Lobbying also visited Malta in May 2023 to participate in knowledge sharing workshops with members of the Commissioner's office and the Ministry of Justice. During the workshops, they presented their lobbying registration platforms and transparency portals, and also discussed human and technical resources needed to efficiently administer a lobbying register.

Annex Table 5.A.1. International best practices for the technical specifications and capacity requirements for transparency in lobbying in Malta

	Legal framework	Oversight entity	Lobbying register / platform	Number of registered lobbyists	Number of returns on lobbying filed
France	Law No. 2016-1691 of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life (2016)	High Authority for transparency in public life (HATVP)	https://www.hatvp.fr/lobbying/	2 902 (as of September 2023)	68 693 since 2017 and as of September 2023
Ireland	Regulation of Lobbying Act (2015)	Standards in Public Office Commission (Lobbying Unit)	www.lobbying.ie	2 273 at the end of 2021	11 600 returns of lobbying activities have been submitted in respect of the three reporting periods in 2021.
Quebec	Lobbying Transparency and Ethics Act (2002)	Lobbyisme Quebec, incl. Commissioner of Lobbying	https://www.carrefourlobby.quebec/	5 323 as of September 2023	5 435 as of September 2023
Lithuania	Law No. VIII-1749 on Lobbying Activities	Chief Official Ethics Commission (COEC)	https://skaidris.vtek.lt/	336 as of September 2023	3 189 records as of September 2023
	Legal framework	**Oversight entity**	**Lobbying registers / platform**	**Number of registered lobbyists**	**Number of lobbying meetings registered**
Chile	Act No. 20/730 regulating lobbying and representations of private interests to authorities and civil servants	Transparency Council, Comptroller General	https://www.infolobby.cl/	*Information not available*	631 039 as of October 2023

Note: author's contribution, based on the OECD 2020 Lobbying Survey and additional research by the OECD Secretariat

Facilitating lobbying disclosures for both lobbyists and public officials

In 2020, the Commissioner proposed to establish an online, open "**Register for Lobbyists**" maintained by the Commissioner. In this Register, professional lobbyists, pressure groups (e.g. NGOs) and representative bodies (e.g. chambers and associations) would be required to register their name, contact details, business or main activities, and company registration number (where applicable). Registration would be a prerequisite for engaging in lobbying activities, and lobbyists would also be required to submit quarterly returns with information on respective lobbying activities (e.g. the clients on behalf of whom such activities were carried out; the designated public officials (DPOs) who were contacted; the subject matter of these communications; and the intended results).

The second transparency tool proposed by the Commissioner – the **Transparency Register** – complements the Register for Lobbyists and obliges ministers, parliamentary secretaries and the heads and deputy heads of their secretariats to list all relevant communications with lobbyists. The Transparency Register would also be freely accessible to the public, and would include details concerning (a) the name of the persons (natural and legal) with whom each relevant communication was held; (b) the subject matter of the communication; (c) in the case of a meeting, the date and location, the names of those present, and who they were representing; and (d) any decisions taken or commitments made through the communication. As noted above in Chapter 5, the OECD also recommended to expand the obligation to Members of the House of Representatives (OECD, 2022[26]).

A critical element to ensure the effectiveness of both of these frameworks will first be to facilitate the disclosure of lobbying information through convenient electronic registration and report-filing systems. This includes designing tools and mechanisms for the collection and management of information on lobbying practices, building the technical capacities underlying the new registers and maximising the use of information technology to reduce the administrative burden of registration (OECD, 2010[16]).

Providing an efficient and convenient electronic registration and report-filing system for the Register of Lobbyists

The register could place the obligation to register on entities through a unique identifier and a collaborative space per organisation, while clarifying the responsibilities of designated individuals in the registration of information

To facilitate disclosures, and later to make it easier to find accurate information about entities in the Register, whether the activities are registered by an in-house lobbyist or by an external consultant lobbyist, the Lobbying Act could focus the framework on corporate and institutional accountability, and place the registration requirement on entities instead of individuals, as entities are the ultimate beneficiaries of lobbying activities. This means that entities who are lobbying should be able to designate a registrar to consolidate, harmonise and report on the lobbying activities of the entity, while requiring the disclosure in the registry of the names of all individuals who have engaged in lobbying activities.

In Quebec for example, each entity has its own "Collective space", which contains all the lobbying activities conducted by the entity by one or several lobbyists. Lobbyists who have been tasked by the entity to register information in that "Collective Space" can create their own individual professional account and connect this account to the Collective space of the entity. Similarly, in France, the online registration portal is designed as a workspace for legal entities, each of which has a "collaborative space", which enables them to communicate lobbying information to the High Authority for transparency in public life in the best possible conditions. Lobbyists lobbying on behalf of a legal entity can create their own individual accounts and ask to join the collaborative space of that entity. The collaborative space is managed by an "operational contact" designated by the entity; he or she manages the rights of every individual registered in the collaborative space (Annex Table 5.A.2).

Annex Table 5.A.2. Responsibilities to register lobbying information in Ireland, France and Quebec (Canada)

	Disclosure responsibilities
Ireland	Legal entities designate **"administrators"** with responsibilities to register and publish lobbying information
Quebec, Canada	The most **senior executive** of an entity and the "**Administrator"** designated by the entity have the responsibility to manage the members of their Collective Space and their roles, as well of the information relating to the entity registered in the Collective Space. Lobbyists who conduct lobbying activities on behalf of the entity must be registered and members of the Collective Space. All members of a Collective space hold the de facto role of "**Editor-Reader"** (ER). This allows them to contribute to the drafting of lobbying returns. However, only the most senior executive of the entity – or a designated representative - has the responsibility of validating the disclosure or modification of lobbying returns.
France	It is up to the legal representative of the organisation to create and manage the organisation's collective space on the registration portal or to designate a person, internal or external to the organisation, as the "**operational contact"** to carry out these procedures.

Source: Registering in Carrefour Lobby Québec, https://lobbyisme.quebec/en/lobbyists-registry/registering-in-the-registry/

A similar system could be implemented in Malta, in which every entity – whether lobbying on its own behalf or on behalf of clients – would be required to register as an entity with a "collaborative space" in the registration portal. One or several representatives of this entity would be designated as the registrar(s) and manager(s) of this collaborative space and assign responsibilities to individuals for the registration of lobbying activities. The registrar and any person designated by the registrar to register information would have their own individual accounts and contribute to the collaborative space.

Assigning clear disclosure responsibilities to certain individuals can help these entities to track and centralise internally their lobbying activities. It also ensures that the lobbying information is published in a harmonised and therefore more coherent and intelligible way, as designated individuals are already trained to use the disclosure platform. Moreover, placing the responsibility for registration on entities and not individuals can help avoid the stigmatisation of individual lobbyists while also allowing an entity to be held accountable for potential breaches of the Act.

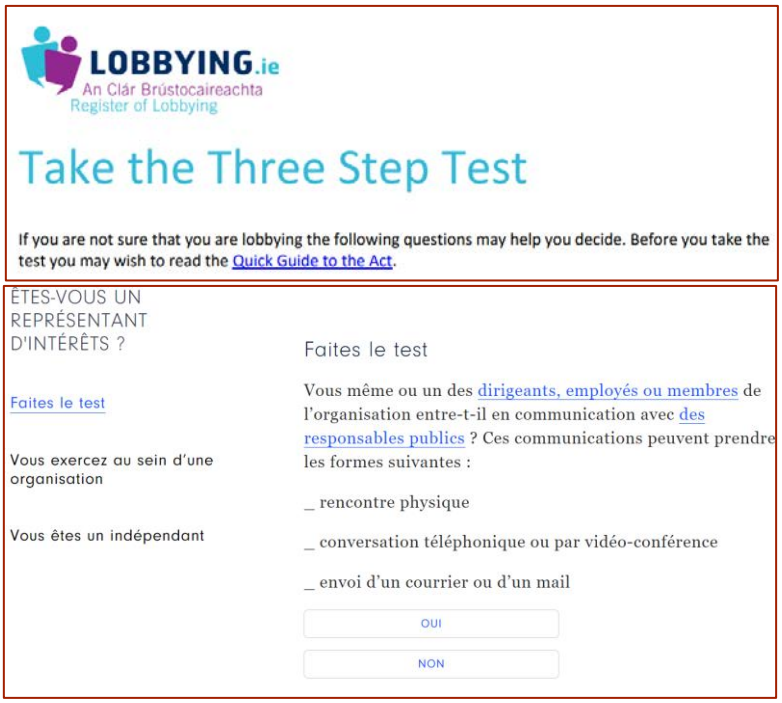
A dedicated one-stop-shop lobbying portal could include tailored guidance for lobbyists on how to register and disclose information

To ensure compliance with registration requirements, and to deter and detect breaches, the lobbying oversight function should raise awareness of expected rules and standards and enhance skills and understanding of how to apply them (OECD, 2010[16]). To that end, the Commissioner could ensure that registration and disclosure assistance is made available online on a dedicated "lobbying section" of its website, or a dedicated "lobbying platform". Based on international best practices, assistance may include, among others:

- **A step-by-step questionnaire on whether to register as a lobbyist**. While definitions in the Lobbying Act should be robust, comprehensive and sufficiently explicit to avoid misinterpretation and to prevent loopholes (OECD, 2010[16]), some individuals or interest groups may have doubts on whether their activities qualify as lobbying under the Act. A short online questionnaire can help remove any doubt. For example, the Irish lobbying portal www.lobbying.ie includes a simple Three-Step Test – "Are you one of the following?", "Are you communicating about a relevant matter?", "Are you communicating either directly or indirectly with a Designated Public Official?" – to allow potential registrants to determine whether they are or will be carrying out lobbying activities and are required to register. Once they decide to register, all new registrations are reviewed by the Commission for Standards in Public Life to ensure that the person is indeed required to register and that they have done so correctly. (Irish Register of Lobbying, 2016[27]). The French portal also

includes a similar online test (HATVP, n.d.[28]), with questions also available in English (HATVP, n.d.[29]) (Annex Figure 5.A.1).

Annex Figure 5.A.1. Step-by-step questionnaire on whether to register as a lobbyist in Ireland (top) and France (bottom)



Source: (Irish Register of Lobbying, 2016[27]; HATVP, n.d.[28])

- **Technical guidelines on managing accounts.** When registering, it is possible that lobbyists may at first struggle on how to set up an account, how to authenticate themselves and manage their passwords. It may therefore be useful to provide technical guidelines to support lobbyists in the first steps of their registration. For example, the Irish lobbying portal provides guidelines on "How to Manage your Account" (https://www.lobbying.ie/help-resources/information-for-lobbyists/new-user-how-to-section/how-to-manage-your-account/), which is part of "New User - How to section".
- **Regular email correspondence and automatic reminders sent to lobbyists to improve compliance with reporting requirements.** Sending reminders to lobbyists about mandatory reporting obligations can help mitigate the risk of non-compliance (Annex Box 5.A.1). Newly registered lobbyists can also be sent a letter or email highlighting their reporting obligations and deadlines, as well as best practices for account administration and details of enforcement provisions in the event of non-compliance, as is the case currently in Ireland (Standards in Public Office Commission, 2022[30]).

Annex Box 5.A.1. Automatic alerts to raise awareness of disclosure deadlines

Australia

Registered organisations and lobbyists receive reminders about mandatory reporting obligations in biannual e-mails. Registered lobbyists are reminded that they must advise of any changes to their registration details within 10 business days of the change, and confirm their details are up to date within 10 business days beginning 1 February and 1 July each year.

France

Lobbyists receive an e-mail 15 days before the deadline for submitting annual activity reports.

Germany

If no updates are received for more than a year, lobbyists receive an electronic notification requesting them to update the entry. If the information is not updated in three weeks, their file is marked "not updated".

Ireland

Registered lobbyists receive automatic alerts at the end of each of the three relevant periods, as well as deadline reminder e-mails. Return deadlines are also displayed on the main webpage of the Register of Lobbying.

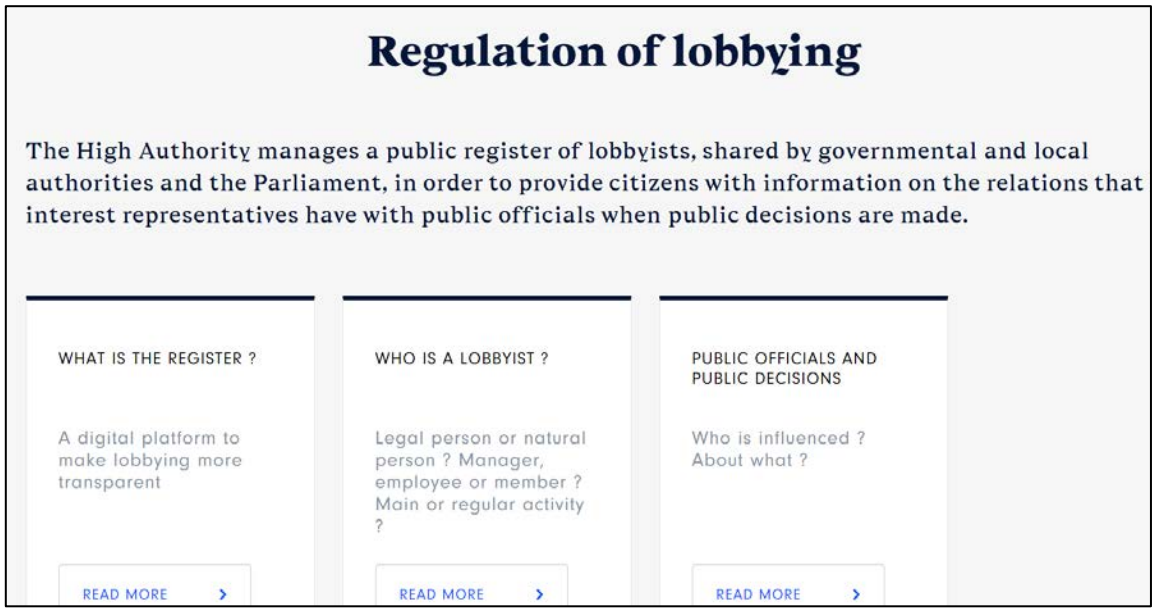
United States

The Office of the Clerk of the House of Representatives provides an electronic notification service for all registered lobbyists. The service gives e-mail notice of future filing deadlines or relevant information on disclosure filing procedures. Reminders on filing deadlines are also displayed on the Lobbying Disclosure website of the House of Representatives.

Source: (OECD, 2021[31])

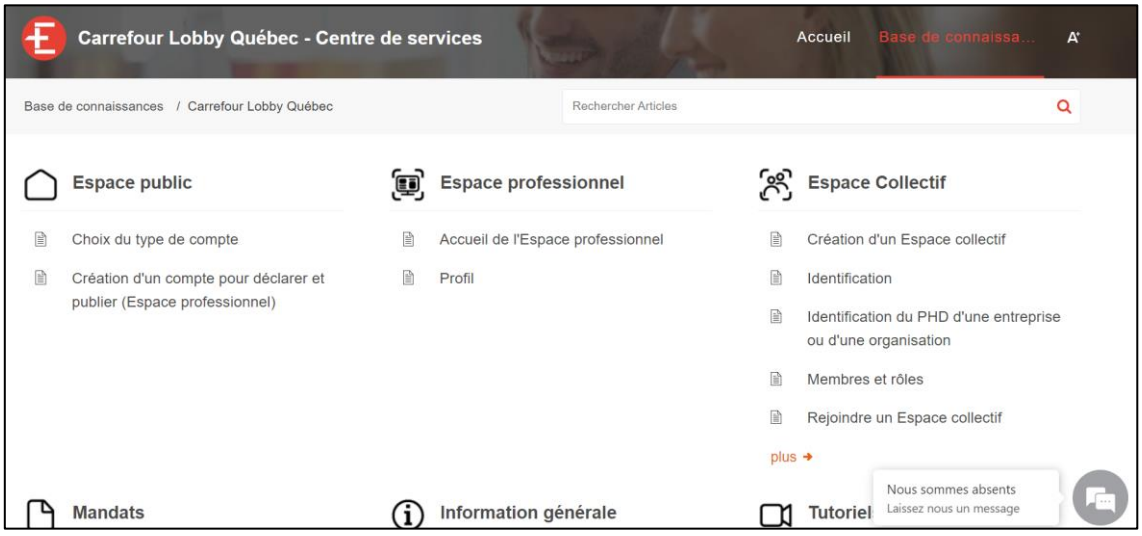
- **Online guidelines, videos and handbooks clarifying certain aspects of the law, including definitions and what to register.** For example, the HATVP published a detailed handbook entitled "Register of interest representatives: Guidelines", which clarifies the provisions of the law, available both in English and in French (HATVP, 2019[32]). The guidelines are updated on a regular basis. The HATVP lobbying web portal also includes a downloadable "Presentation kit", which includes explanatory videos, an awareness-raising brochure and posters, as well as the guidelines, practical sheets and a video tutorial on the use of the registration portal. All guidance is available on a one-stop-shop dashboard (https://www.hatvp.fr/espacedeclarant/representation-dinterets/) (Annex Figure 5.A.2). Similarly, the Irish lobbying portal www.lobbying.ie includes a series of webpages with guidelines for lobbyists, including targeted guidelines for specific interest groups (e.g. "Top ten things Charities need to know about Lobbying"), as well as a document "Regulation of Lobbying Act 2015: Guidance for people carrying on lobbying activities", updated on a regular basis (Standards Commission, 2019[33]). Lastly, the recently launched lobbying platform "Carrefour Lobby Quebec" also includes a dedicated "Knowledge base" dashboard, which serves as a one-stop-shop for lobbying information and "how-to" guidelines (Annex Figure 5.A.3).

Annex Figure 5.A.2. One-stop-shop Lobbying dashboard with online guidelines in France



Source: HATVP, https://www.hatvp.fr/espacedeclarant/representation-dinterets/

Annex Figure 5.A.3. Knowledge base dashboard on Quebec's lobbying portal "Carrefour Lobby Quebec"



Source: Lobbyisme Quebec, https://lobbyisme.quebec/en/frequently-asked-questions/

- **Guidelines for lobbyists on how to track and monitor internally their lobbying activities**. Such guidelines, in the form of monitoring guidance, can help promote compliance and registration. The example of France is provided in (Annex Box 5.A.2).

Annex Box 5.A.2. "How to track your lobbying activities" tool developed by the HATVP in France

In France, lobbyists are required to disclose to the HATVP details of the activities carried out over the year within three months of the close of their accounting period. This annual declaration takes the form of a consolidated report by subject and declared in the form of returns on the disclosure platform.

1. **Designate a "referent" / "administrator" responsible for consolidating, harmonising and declaring the lobbying activity returns in the portal**
2. **Identify all persons likely to be qualified as "persons responsible for interest representation activities" (i.e. lobbying)**

   Identify *a priori* the persons likely to fall within the scope, on the basis of job titles and the tasks generally carried out, ask all identified persons to trace their communications with public officials and register them in the registration portal.
3. **Implement an internal reporting tool to consolidate all the information that should be included in the annual disclosure of activities, in particular**

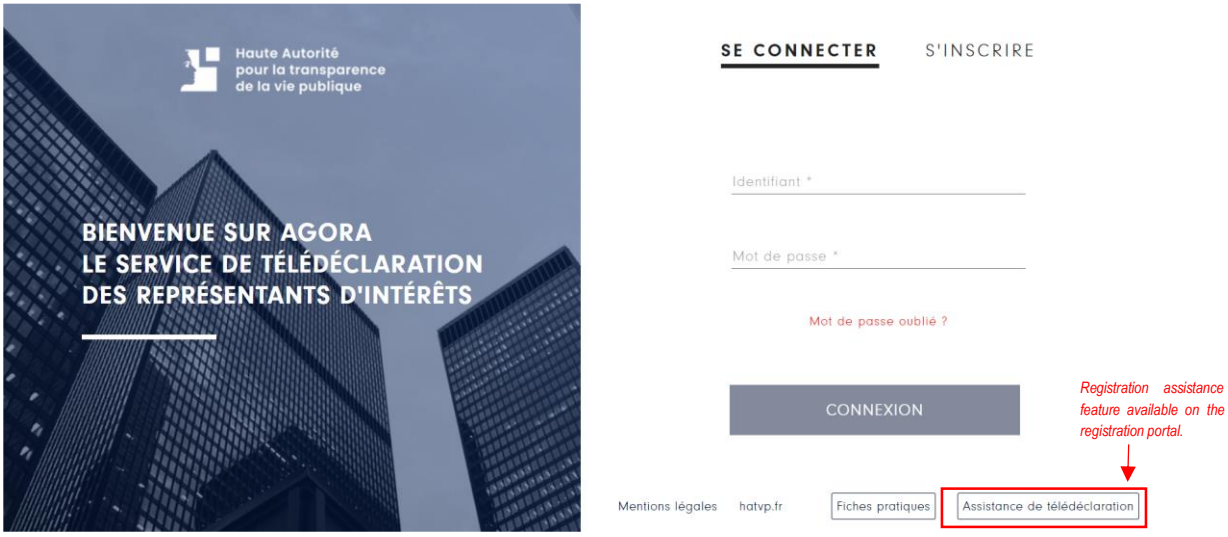
Date	Indicate the date or period in which the advocacy action was carried out
Action carried out by	Indicate the name of the person in charge of interest representation activities who initiated the action
Object	Indicate the objective of the interest representation action, preferably by indicating the title of the public decision concerned and using a verb (e.g. "PACTE law: increase the tax on ...")
Area(s) of intervention	Choose one or more areas of intervention from the 117 proposals (several choices possible, up to a maximum of 5 choices)
Name of public official(s) requested	Indicate the name of the public official(s) requested
Category of public official(s) requested	Choose the type of public official(s) you want from the list (several choices possible)
Category of public official(s) requested: Member of the Government or ministerial cabinet"	If you have selected "A member of the Government or Cabinet", choose the relevant ministry from the list
Category of public official(s) applied for: Head of independent administrative authority or independent administrative authority	If you have selected "A head of an independent administrative authority or an independent administrative authority (director or secretary general, or their deputy, or member of the college or of a sanctions committee)", choose the authority concerned from the list
Type of interest representation actions	Choose the type of interest representation action carried out from the list (several choices possible)
Time spent	Indicate the time spent in increments of 0.25 of a day worked; 0.5 corresponding to a half day and 1 corresponding to a full day
Costs incurred	Indicate all costs related to the representation work (commissioning a study, invitation to lunch, etc.).
Annexes	Attach all necessary supporting documents: cross-reference to diary, working documents, email, expense report, etc.
Comments (optional)	Observations

Source: HATVP, https://www.hatvp.fr/wordpress/wp-content/uploads/2018/09/fiche-pratique-reporting-sept-2018-vf.pdf ; https://www.hatvp.fr/wordpress/wp-content/uploads/2018/09/fiche-pratique-objet-sept-18.pdf.

- **Guidelines on how to register initial information and submit regular returns / activity reports.** In addition to guidelines on clarifying definitions and creating accounts, lobbyists also need detailed guidelines on how to register in the portal and submit the information requested. For example, the Irish lobbying portal includes a "New User – How to section" with step-by-step guidance on "How to register as a lobbyist" and "How to submit a return", including a "Sample Return Form".

- **Live help tools such as pop-ups, instructions on how to fill a section, calling a specific hotline or calling / e-mailing a dedicated contact**. For example, the HATVP has a dedicated hotline that lobbyists reach when registering, available Monday to Friday from 9:00 to 12:30 and from 14:00 to 17:00. A dedicated help function called "Registration assistance" is available on the registration portal (Annex Figure 5.A.4). Similarly, the Quebec platform includes an "intelligent" chatbot where citizens and lobbyists can ask questions or raise doubts (Annex Figure 5.A.5).

Annex Figure 5.A.4. Dedicated lobbying hotline to assist lobbying registration in France



Source: https://repertoire.hatvp.fr/#!/home

Annex Figure 5.A.5. Lobbying chatbot available on Quebec's "Carrefour Lobby Quebec" platform

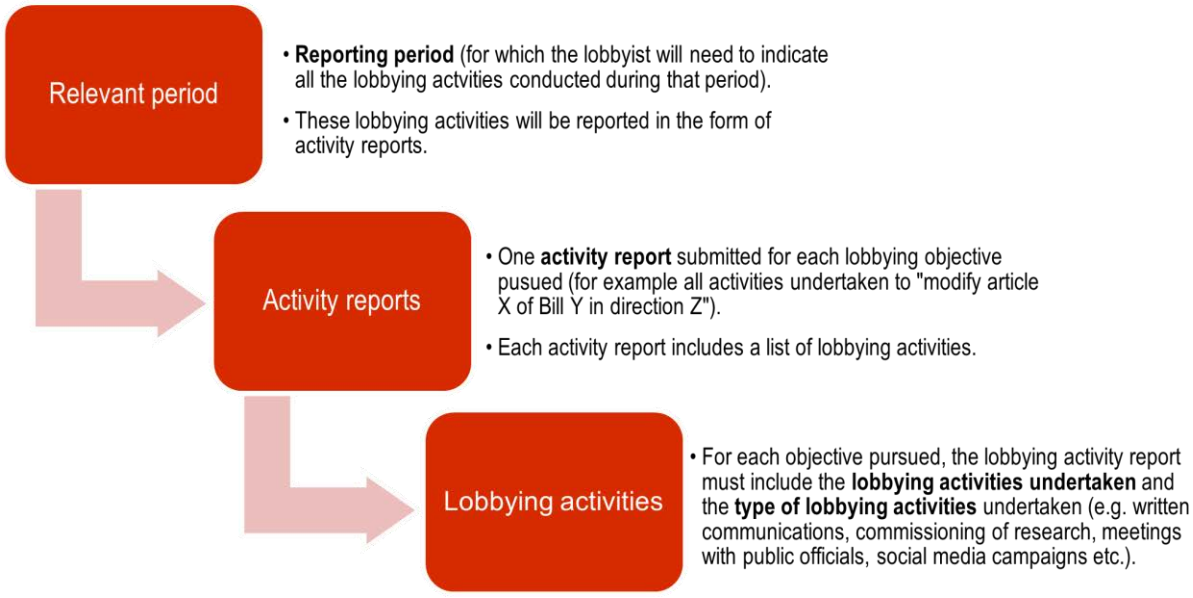
Source: https://centredeservices.lobbyisme.quebec/portal/fr/kb/carrefourlobby-aide

The registration portal could include clear and easy-to-fill sections, connected to relevant databases so as to facilitate registration and ease the burden of compliance for lobbyists

When designing the registration portal, the Commissioner could find innovative solutions to simplify registration and disclosure mechanisms and foster a culture of compliance. To that end, several options are possible. In Ireland, disclosures are made based on reporting periods of four months. Lobbyists are required to report every four months detailed information on the lobbying activities they conducted in the past four months (called a “relevant period”). In France, lobbyists must file “annual activity reports”, submitted within three months of the end of the lobbyist’s financial year. Each activity report corresponds to a single objective pursued.

In Malta, the Commissioner proposed that lobbyists be required to submit quarterly returns with information on respective lobbying activities. Based on the good practices described above, lobbyists could be required to disclose information on lobbying activities during this “relevant period”. For each relevant period, an “activity report” could be submitted for each lobbying objective pursued (for example all activities undertaken to "modify bill Y in direction Z"). For each objective pursued, the lobbying activity report would then include all lobbying activities undertaken and the type of lobbying activities undertaken (e.g. written communications, commissioning of research, meetings with public officials, social media campaigns etc.). The proposed reporting specifications are detailed in Annex Figure 5.A.6. Annex Table 5.A.3 and Annex Table 5.A.4 then provide a detailed summary of the sections that could be included in the initial registration and subsequent updates on lobbying activities.

Annex Figure 5.A.6. Proposed reporting specifications for the Maltese lobbying framework



Source: author’s contribution

Individuals who have been designated to disclose information in the register by their employer (administrators, operational contacts and editors) would be in charge of registering the information.

To further ease the burden of compliance, some sections could be connected to relevant databases and enable lobbyists to choose options from a drop-down menu or search bar, as outlined in Annex Table 5.A.3 and Annex Table 5.A.4. For example, if a lobbyist intends to lobby on a specific bill, he or she would be able to choose the name of the specific bill from a search bar connected to the database of legislative bills

of the Parliament. This system is for example in place in Quebec, and also avoids the caveat of having a same bill being referenced or formulated in different ways by lobbyists.

Similarly, designated public officials lobbied could be selected from a search bar connected to the lists of "designated public officials" that the OECD recommended to be publicly available and kept up to date (OECD, 2022[26]). In Ireland for example, Section 6(4) of the Lobbying Act of 2015 requires each public body to publish and keep up to date a list showing the name, grade and brief details of the role and responsibilities of each "designated public official" of the body. The list of designated public officials must be prominently displayed and easily found on the homepage of each organisation's website. The page should also contain a link to the Register of Lobbying http://www.lobbying.ie. The Standards in Public Office Commission also publishes a list of public bodies with designated public officials. These lists are key for lobbyists when filing a return to the Register as they need to source a designated public official's details (Annex Box 5.A.3).

Annex Box 5.A.3. Information about Designated Public Officials on public body websites in Ireland

In Ireland, the Lobbying Act requires that each body which has designated public officials who are prescribed in Ministerial regulations as public servants or other office holders or persons to publish an upto-date list of those designated public officials.

The website www.lobbying.ie provides relevant links to these pages. Prior to the end of each return period, public bodies are asked to check, and update as required, a list showing the name, grade and brief details of the role and responsibilities of each designated public official prescribed for the body. They are also asked to confirm and update information relating to working groups or task forces operating under their aegis. In January 2021, the Commission contacted all public bodies with designated public officials to verify that information was up-to-date, including the following:

- That each relevant body had a Regulation of Lobbying page;
- Whether the name and position held were published on the page; and
- That each body had relevant information on their website in relation to the Transparency Code for any group working under their aegis.

The Commission also ensured that links from its own website were accurate and operational.

Source: (Standards in Public Office Commission, 2022[30])

Annex Table 5.A.3. Proposals for sections to be included in the initial registration

Section	Type of disclosure	Interoperability with relevant databases
Name of the legal entity or name	Search bar based on company register or other directories of legal entities	• Company register • Beneficial ownership registries • Directory of non-governmental organisations
Parent or subsidiary company benefiting from the lobbying activities	Search bar based on company register or other directories of legal entities	• Company register • Beneficial ownership registries • directory of non-governmental organisations
Top executives and board members	Name and Title	/
Administrator(s) / operational contact(s) (designated to administer the collective space of the of the company/organisation)	Name and title	/

Section	Type of disclosure	Interoperability with relevant databases
Editors (with authorisations and responsibilities to draft returns)	Name and title	/
Whether they were former DPOs	Yes / No	/
Clients, if applicable	Search bar based on company register or other directories of legal entities	/
Sector of activity	List of sectors in drop down menu (with the possibility to select "other" and specify details)	/
Membership and/or contributions to professional organisations, lobbying associations, coalitions, chambers of commerce etc.		

Source: author's contribution, based on (OECD, 2022[26]) and (Office of the Commissioner for Standards in Public Life, 2020[24])

When filing lobbying returns, and if an activity report made in a relevant period concerns activities that are a continuation of a previous activity report (i.e. the same objective pursued), the registration portal should enable lobbyists to indicate this so that some sections – specified in Annex Table 5.A.4 – of the new lobbying return can be automatically pre-filled (for example, the relevant public policy area and relevant matter). This will also make the information published clearer and easier to understand on the transparency portal.

Annex Table 5.A.4. Proposals for sections to be included in the regular updates on lobbying activities

Categories of information	Section to be filled	Type of disclosure	Interoperability with relevant databases
1. Period covered by the return	Select the relevant period	Drop down menu	/
2. WHAT matter(s) did you lobby about? *(one activity report is filed per objective pursued)*	Select the relevant public policy area	Drop down menus	/
	Category of public decision(s) targeted (relevant matter)	Drop-down menu (e.g. "public policy, action or programme"" , "law or other instrument having the force of law", "grant, loan or other forms of financial support, contract or other agreement involving public funds, land or other resources", "permits and the zoning of land", "appointments of key government positions", "other policy or orientation")	/
	Name or description of the decision(s) targeted	Search bar or "Other" (with open box)	Databases of laws, regulations, draft bills listed in the website of the House of Representatives
	Objective pursued / intended results, including what specific issue/legislation/programme was it about and in what direction (e.g. adoption, modification, removal)?	Open box (500 characters)	/
	Documents submitted to public officials (if any), e.g. commissioned research or policy briefs	Attachments	/
3. WHO carries out the lobbying and ON BEHALF of WHOM?	Name of lobbyists who conducted lobbying activities	Select from list of pre-registered individuals or add names of lobbyists (i.e. those not registered in the initial registration)	
	Whether these lobbyists were previously designated public officials	Yes/No (pre-filled for those registered in the initial registration or to fill for new lobbyists)	

Categories of information	Section to be filled	Type of disclosure	Interoperability with relevant databases
	Name of client on behalf of whom the activities were conducted (if applicable)	Select from disclosed clients in initial registration	
4. HOW was the lobbying carried out?	Type of communication tools	Drop-down-menu (including for example written communication, telephone, meeting, grassroots lobbying / mass communications, other)	/
	Description of "relevant communication" tools	Open box (e.g. "5 written communications by email with MP X", "social media campaign advocating for a change in law Y"). For example, where social media is chosen as the activity type, lobbyists can indicate if it was via twitter/Facebook/ etc. as well as an estimate of the volume of posts. Lobbyists would also specify policy and position papers, amendments, opinion polls and surveys, open letters and other communication or information material that were sent to designated public officials in writing, or presented to them during a meeting.	One open box per type of communication tool specified
5. WHO were the Designated Public Officials you lobbied?	Institutions targeted	Search bar and drop-down menu	Linked to list of public institutions covered by the Act
	Type of public official targeted (general nature of duties)	Search bar and drop-down menu (based on previous choice)	
	Name of public official targeted	Search bar and drop-down menu (based on previous choice)	Linked to lists of DPOs

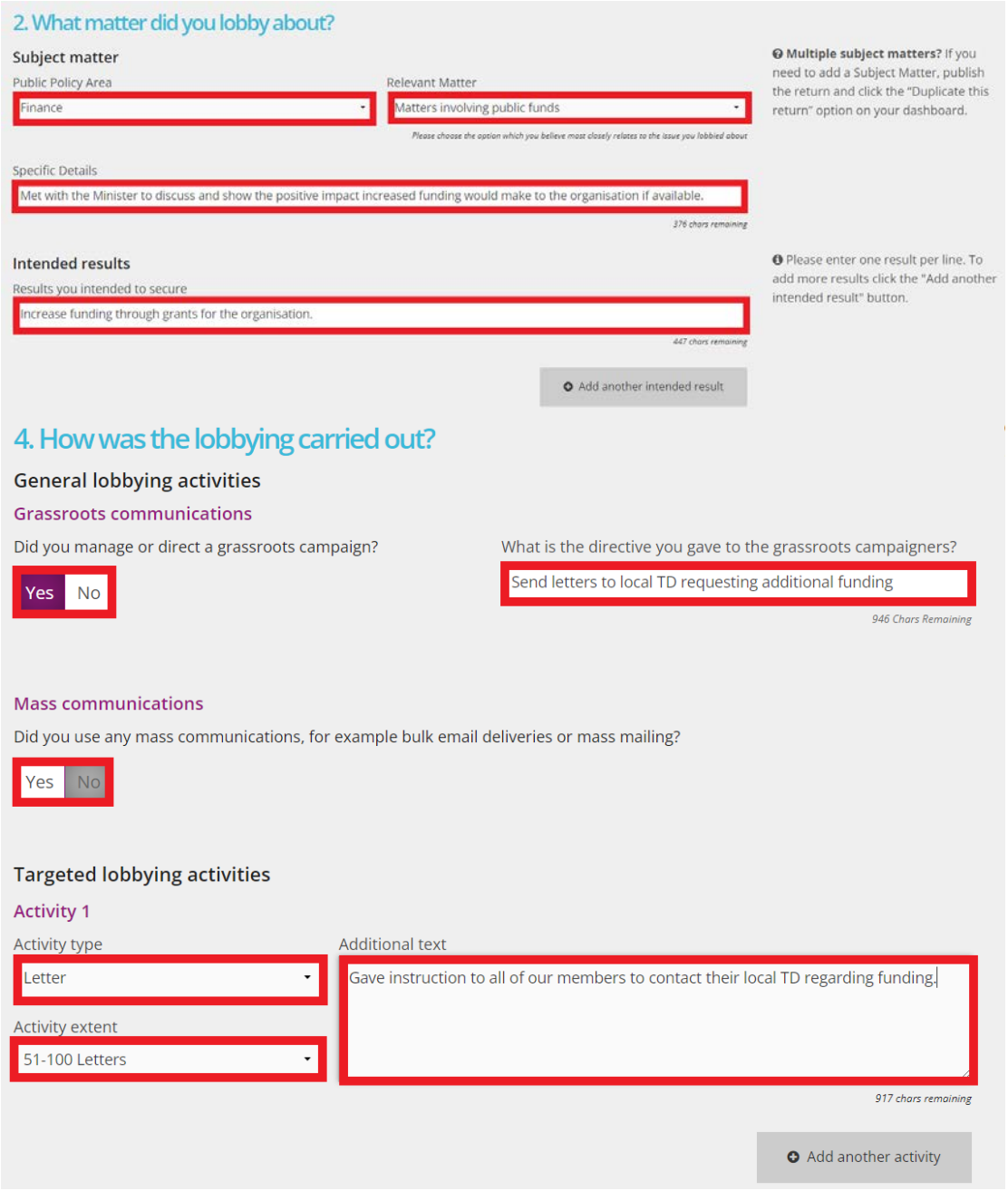
Source: Source: author's contribution, based on (OECD, 2022[26]) and (Office of the Commissioner for Standards in Public Life, 2020[24]). Good practice example in Ireland: https://www.lobbying.ie/help-resources/information-for-lobbyists/new-user-how-to-section/how-to-submit-a-return

As illustrated in the tables above, the sections should be clear and enable lobbyists to file information on the specific purpose of lobbying activities ("WHAT"), how lobbying activities were carried ("HOW"), who carried the lobbying activities and who were the targets of the lobbying activities ("WHO"). The Registration portal should also include a possibility to save a draft and return later. Good practice examples of clear categorisation and visual identity in Quebec and Ireland are provided in Annex Figure 5.A.7 and Annex Figure 5.A.8.

Annex Figure 5.A.7. Sections in Quebec's registration portal for a legal entity's "Collective space"

Note: sections include "Identification", "Lobbyists", "Purpose of the activities", "Institutions and DPOs", "Communications by lobbyists", "Topics and regions covered", "Summary and publication"
Source: Information provided to the OECD by Lobbyisme Quebec

Annex Figure 5.A.8. Selected sections to be filled in the Irish registration portal



Source: Standards in Public Office Commission, Guidance on how to submit a return, https://www.lobbying.ie/help-resources/information-for-lobbyists/new-user-how-to-section/how-to-submit-a-return#:~:text=Submitting%20a%20Return,return%20of%20lobbying%20activities%E2%80%9D%20screen.

The Registration portal could provide guidance on filling sections with open text and use data analytics tools to enhance the quality of information disclosed in these fields

The quality of information disclosed in boxes with open text may vary and lobbyists may not always understand what is expected of them when disclosing information in these fields. For example, open boxes where lobbyists must explain the objective pursued and the intended results should in theory include words such as “modify” “propose” “prevent the adoption of” “influence the preparation of”, “push for the enactment

of", "obtain the grant of" / "obtain financial aid", "prohibit the practice of", "promote the use of", but this might not always be the case in practice. Experience from other countries have found that the section describing the objective pursued by lobbying activities was often used to report on general events, activities or dates of specific meetings (e.g. "meeting with a senator to discuss 5G technology", "defending my company's interests", "discussion on the Covid crisis").

To enhance the quality of information declared in activity reports, the Commissioner could provide practical guidance explaining how the section on lobbying activities should be completed. Good practice from France (Annex Table 5.A.5) and Ireland (Annex Box 5.A.4) can serve as examples.

Annex Table 5.A.5. Guidance provided by the HATVP on filling the open box "objective pursued" in France

1. The purpose should be understood as the "objective sought" and not as the "topic addressed" or "subject matter". The description of the purpose should as far as possible answer the following question: *what was the purpose of the interest representation / lobbying actions carried out?*	
Do's	**Don'ts**
• **Describe the object by starting with an action verb** *"Lowering the contribution rate by..."* *"Extend the application of such provision to.."* *"Postpone the entry into force of..."* • **Good examples** *"Reform of vocational training: increasing the ceiling of the personal training account for training account for people without qualifications".* *"Social Security Financing Bill 2018: ask for the tabling of an amendment in favour of extending the length of paternity leave and better remuneration"* *"Modify the procedures for obtaining AOCs, PDO and PGI in the wine sector to take into account the specificities of the terroir".* *"Obtaining the classification of a lake as a protected site protected site".*	• **Declare a topic or area of activity:** *"Promotion and Défense of the interests of the sectors ..."* *"Protection of the environment"* *"Consumer protection"* *"Reflection on new digital uses"* • **Use industry-specific technical vocabulary or acronyms specific to a sector of activity and unintelligible to the general public** • **List the tasks performed or the means of communication** *"Monitoring, legislative follow-up, organisation of meetings"* *"Sending a letter"*
2. Each object, understood as an "objective", should be the subject of an activity sheet activity sheet The object is the entry point for declaring an interest representation action. Each object should therefore give rise to a separate activity sheet. For example, if an interest representative enters into communication with a public official in order to influence a broad text or to discuss a wide range of subjects, this meeting should be split up according to the different objectives pursued.	
Do's	**Don'ts**
"Financing Bill: lowering the reimbursement threshold... " *"Finance Bill: get recognition for ..."* *"Finance Bill: raise awareness of the need for ... "*	*"PLF: three amendments tabled"*
3. Indicate in the subject line the public decision targeted By providing information on the public decision targeted by interest representation activities, it enables to contextualise the interest representation action and make it more intelligible, particularly when it is a text/bill known to the general public. The exact title of the decision, text or bill is not expected, but it may be relevant to indicate its common name or its general theme (for example, "the bill for the freedom to choose one's professional future" can be reworded as "reform of vocational training" or "professional future law". training reform" or "professional future law".	
Do's	**Don'ts**
"Protection of business secrecy: review the obligations ... " *"New rail pact: simplify the criteria for obtaining ..."* *"Immigration law: make a case for ..."*	**Declare only the public decision targeted without specifying the objective pursued:** *"Transposition of the MiFID II Directive"* *"Law for a Digital Republic"* *"Constitutional reform".*

4. When it seems difficult to formulate a purpose that clearly describes the objective, use the "observations" box to describe this action

Sometimes it can be complicated to clearly describe the objective of an interest representation action. In this case, the optional field "observations" can be used to provide more information.

Source: High Authority for Transparency in public life, Guidance note ""How to fill the "object" section of an activity sheet?", https://www.hatvp.fr/wordpress/wp-content/uploads/2018/09/fiche-pratique-objet-sept-18.pdf

Annex Box 5.A.4. Guidance provided by the Standards in Public Office Commission in Ireland on how to fill a return

Intended Results:

In this text box, insert sufficient detail on the results you were seeking to secure through your lobbying activity. The intended result should be meaningful, should relate directly to the relevant matter you have cited above, and should identify what it is you are actually seeking. Is it more funding? A regulatory change? It is not sufficient to say that you are seeking "to raise matters of interest to our organisation". To be a "relevant matter" that must be reported, you must be communicating about:

- The development, initiation or modification of any public policy, programme or legislation,
- The award of any public funding (grants, bursaries, contracts etc.), or
- Zoning or development.

Examples:

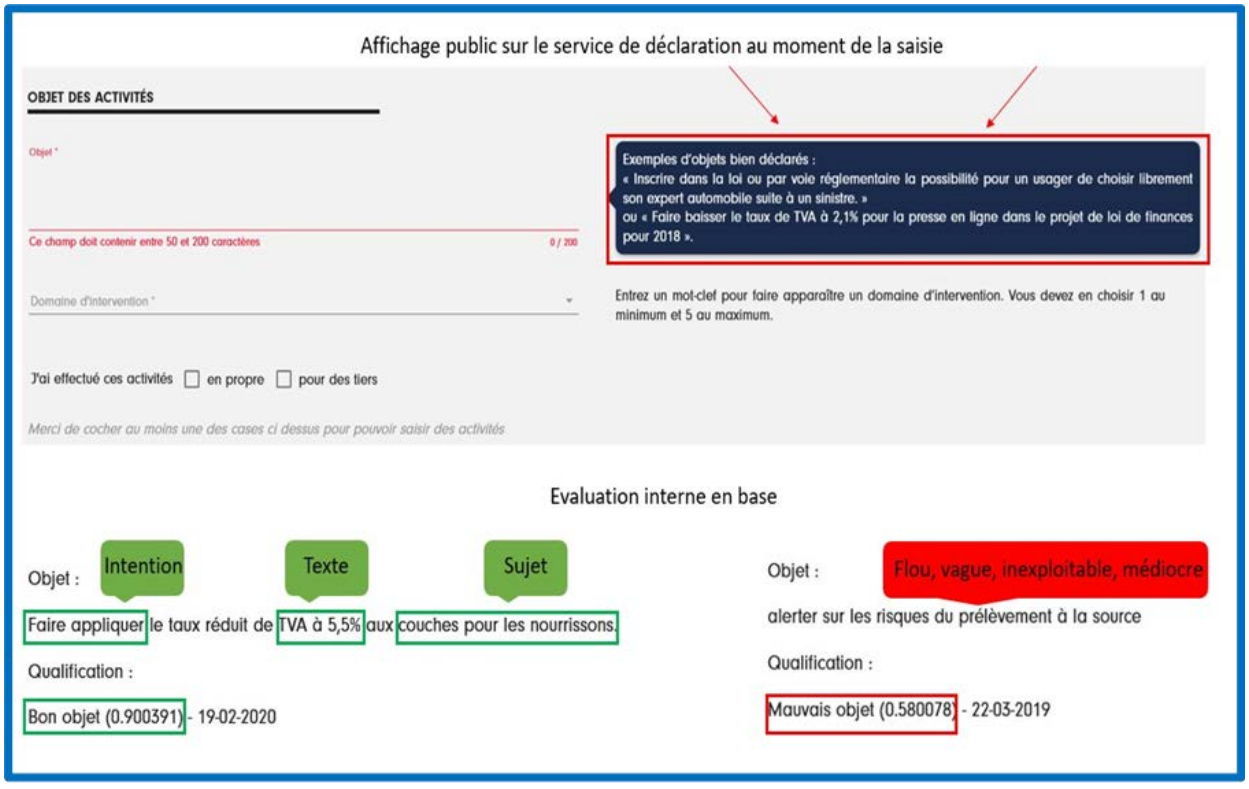
- To ensure greater fines/penalties for persons convicted of illegal dumping.
- To increase the maximum allowable speed at which passenger vehicles may operate on Irish motorway.
- To improve efficiency of border security processes when travelling between European countries.
- To demonstrate the benefits of our community programme in order to seek continued/additional funding.
- To rezone a tract of land adjacent to my business from residential to commercial.

Source: Standards in Public Office Commission, https://www.lobbying.ie/media/6044/sample-return-form-march-2016.pdf

Second, the Commissioner could also consider using data analytics to strengthen the quality of the input. For example, the HATVP established an algorithm based on artificial intelligence to detect potential defects on validation of the activity report, including incomplete or misleading declarations. Concretely, when completing the "objective pursued" section of an activity report, lobbyists are nudged to provide specific details, including the subject on which the lobbying action bore, the expected results – using at least on positioned verb ("request", "promote", "oppose", "reduce") – and the public decision(s) targeted by the activities concerned (Annex Figure 5.A.9). If the return they submit does not meet the established criteria of the algorithm, lobbyists are notified through a pop-up window indicating that that the information entered does not meet the established criteria. It also provides guidance and good practice examples. Lobbyists then have the possibility to modify the information disclosed in the section.

Annex Figure 5.A.9. Using IA to improve the quality of lobbying declarations in France

Public display on the dedicated declaration service at the time of entry



Note: The screen shot shows examples of good responses that would be accepted by the system (for example: "include in the law or by regulation the possibility for a user to freely choose his or her car expert following an accident", "lowering the VAT rate to 2.1% for the online press in the 2018 Finance Bill", "apply the reduced VAT rate of 5.5% to nappies for infants") and vague responses that would not be accepted by the system" (e.g. "alerting to the risks of the withholding tax").
Source: Information provided by the High Authority for Transparency in Public Life

Facilitating registration through an efficient and convenient electronic registration and report-filing system for the Transparency Register

The Commissioner could make available a central registration and disclosure portal for the Transparency Register, hosted on the same registration and disclosure platform as the Register of Lobbyists

To establish the Transparency Register, the OECD previously recommended avoiding a "distributed" form of the Transparency Register – e.g. every institution having its own register – which could undermine interoperability and reliability. Instead, it is recommended assigning in the Act on Lobbying responsibility to the Commissioner for administering both the Register of Lobbyists as well as the Transparency Register (OECD, 2022[26]).

To that end, the registration and disclosure platform of the Transparency Register could be hosted on the same platform as the registration and disclosure platform of the Lobbyists Register. This will enable greater interoperability between both registers. For example, when lobbyists conduct lobbying activities targeting designated public officials who are subject to the Transparency Register, they would be able to select designated public officials from a list based on the list of designated public officials published and kept up to date in the Transparency Register by each designated body. Similarly, public officials disclosing their relevant communications in the Transparency Register with lobbyists who are registered in the Lobbyists

Register could be able to select the names of lobbyists from a search bar connected to the list of lobbyists registered in the Lobbyists Register.

To facilitate disclosures, each designated body could be given the responsibility to manage its lobbying disclosures on an institutional webpage of the centralised registration portal

To facilitate disclosures in the Transparency Portal, each designated public body (for example ministries and their related public bodies) could be given the possibility to register information on an institutional webpage of the centralised registration and disclosure platform that would include its list of designated public officials, as well as a portal for designated public officials to publish their relevant communications with lobbyists. The information registered in these institutional registers would then automatically be centralised into the Transparency Register managed by the Commissioner. These institutional webpages would be the equivalent of a collective space or the entry of a legal entity in the Lobbyists Register, enabling interested stakeholders to quickly access the list of designated public officials of the institutional body, as well as relevant communications made by these public officials with lobbyists.

This is the approach chosen in Chile, where each public institution of the central state, regional and communal administrations with designated public officials have a dedicated lobbying institutional webpage. The technical specifications are the same for each institutional webpage as they are all hosted on the platform "Plataforma Ley del Lobby" www.leylobby.gob.cl (Annex Figure 5.A.10). Each institutional body must nominate an "institutional administrator" in charge of creating accounts for designated public officials, publishing and updating the list of the body's designated public officials, assigning disclosure permissions, correcting and validating disclosures made by designated public officials, and co-ordinating trainings on the lobbying regulation for public officials.

Annex Figure 5.A.10. Standardised lobbying institutional webpages in Chile

Notes: the screen shot displays the standardised lobbying webpage and registration portals used in Chile. It includes the following sections: (i) designated public officials ("passive subjects" / "*sujetos pasivos*"), which links to a list of designated public officials and an online form for newly elected or nominated designated public officials to request their inclusion in the list; (ii) lobbyists ("*lobbistas y gestores de intereses particulares*"), which includes a form for lobbyists to register, which is a pre-requisite in order to solicit a meeting with a designated public official, and a list of lobbyists; (ii) audiences and meetings ("*audiencias y reuniones*"), which links to the register of audiences and meetings, and form for lobbyists to solicit an audience/meetings; (iii) registers of travels and gifts ("*viajes*", "*donativos*"); (iv) information on the law.
Source: Lobbying institutional webpage of the Health Ministry in Chili.

Experience has shown that this two-level approach can facilitate the disclosure of meetings, as institutional bodies are better placed to manage and update their list of designated public officials, track and centralise their communications and meetings with lobbyists, and ensure that these communications are registered properly and on time. The administrator can also ensure that specific meetings or communications are not

published twice in the Transparency Register. For example, if a specific meeting attended by more than one designated public official is disclosed several times, the administrator can ensure that the information is centralised and published in a coherent way, avoiding duplications.

The registration portal could allow designated public officials to nominate one or several representatives who would be in charge of disclosing relevant information on their behalf

Similar to the proposal for lobbyists, designated public officials could be allowed to nominate representatives in their staff to register relevant information on their behalf. In Chile for example, designated public officials can nominate "technical assistants"; these technical assistants are usually civil servants who serve as staff of designated public officials and manage their agenda. They are in charge of registering the designated public official's meetings with lobbyists on the registration portal.

A similar system could be implemented in Malta. The nominated representatives would be validated by the institutional body's administrator, and would have the right to manage the designated public official's account, as well as draft and submit disclosures. He or she would also be the main contact point of the administrator in case the latter has questions on the disclosed information. However, these representatives would not be ultimately responsible for the accuracy and completeness of the information disclosed, as this responsibility would lie with the designated public official.

The Commissioner could require disclosures in the Transparency Register to be made on a weekly or monthly basis through clear and easy-to-fill sections, connected to relevant databases so as to facilitate registration and ease the burden of compliance for public officials

To adequately serve the public interest, disclosures on lobbying activities by public officials should be updated in a timely manner (e.g. weekly or monthly) in order to provide accurate information that allows effective analysis by public officials, citizens and businesses. Annex Box 5.A.5 provides examples on both weekly reporting (Lithuania) and monthly reporting (Chile). Annex Table 5.A.6 provides a proposal on the relevant sections to be included in the registration portal.

Annex Box 5.A.5. Disclosure of lobbying meetings by public officials in Lithuania and Chile

Law on Lobbying activities of Lithuania

Under the Law on Lobbying Activities of Lithuania, the following public officials must report on lobbying activities targeting them on an online platform called "Transparent Legislative Process Information System": the President of the Republic, members of Parliament, government ministers, vice-ministers, chancellors of ministries, heads of parliamentary political parties, mayors, members of municipal councils, directors of municipal administrations and their deputies. Disclosures must be made within seven days from the commencement of lobbying activities for a specific draft legal act.

Law on Lobbying activities of Chile

In Chile for example, public officials register information on the first working day of each month. The register contains the following information: persons met and the entities they represented, matter that was dealt with, with specific reference to the decision that was intended to be obtained, place, date, time and duration of the meeting, whether the meeting was done in person or by videoconference.

Source: (OECD, 2021[31])

Annex Table 5.A.6. Proposals for sections to be included registration portal for public officials

Category	Section	Type of disclosure	Interoperability with relevant databases
WHO is disclosing	Name of the designated public official	Pre-filled based on personal account	
	Institutional body	Pre-filled based on personal account	
WHO carried out the relevant communication and ON BEHALF of WHOM?	Name of the business / organisation with whom relevant communication was held	Search bar based on the Register of Lobbyists *If the search does not yield any results, the name can be registered manually*	Register of Lobbyists
	Name of natural person with whom relevant communication was held	Search bar based on Register of Lobbyists *If the search does not yield any results, the name can be registered manually*	Register of Lobbyists
	Clients, if applicable	Search bar based on Register of Lobbyists *If the search does not yield any results, the name can be registered manually*	Register of Lobbyists
	Other designated public officials present, if applicable	Search bar based on list of designated public officials	List of designated public officials published in the Transparency Register
WHAT matter(s) were you lobbied about?	Relevant public policy area	Pre-filled based on institutional webpage	
	Category of public decision(s) targeted (relevant matter)	Drop-down menu (e.g. "public policy, action or programme"" , "law or other instrument having the force of law", "grant, loan or other forms of financial support, contract or other agreement involving public funds, land or other resources", "permits and the zoning of land", "appointments of key government positions", "other policy or orientation")	
	Name or description of the decision(s) targeted	Drop down menu or "Other" (with open box)	Databases of laws, draft bills, regulations
	Subject matter (brief summary of topics discussed and the objective pursued)	Open box (500 characters)	
	Any decisions taken or commitments made through the communication.	Open box (500 characters)	
HOW was the lobbying carried out?	Type of communication	Drop down menu (e.g. meeting, email correspondence)	
	Date	Date picker *(a date range could be selected if for example the communication is an email correspondence spanning over several days)*	
	Location (for meetings)	Open box	

Source: author's contribution, based on (OECD, 2022[26]) and Chile Act No. 20/730 regulating lobbying and representations of private interests to authorities and civil servants

Providing an adequate degree of transparency through a unique and intuitive online Lobbying Transparency Portal

Once registration platforms are in place, the information disclosed must be centralised and disclosed in a unique database enabling stakeholders – including civil society organisations, businesses, the media and the general public – to fully grasp the scope and depth of these activities (OECD, 2010[16]).

As such, for lobbying transparency portals to be useful and provide relevant information, they should be viewed as an information ecosystem shared between citizens, lobbyists and designated public office holders on matters related to lobbying, with the objective to maximise the data disclosed in the registration portals.

Centralising lobbying information

Information from the Register of Lobbyists and the Transparency Register could be combined in a unique Lobbying Transparency Portal, with information available in an open data format

Information from both the Register for Lobbyists and the Transparency Register could be combined and made available in a unique Lobbying Transparency portal driven by the information contained in the applications to register and returns submitted by registrants – lobbyists through the Register of Lobbyists and public officials through the Transparency Register. Aggregating data on a single website allows cross-checking of data sources and also optimises the potential for transparency.

The data should be accessible free of charge, and information published in open data format. Stakeholders should be able to find easily a link to download the relevant data. In France for example, the register includes an "open data" section in which the HATVP provides, for each lobbyist registered in the register, a file in .JSON format containing all the information declared (including the history of updates). The HATVP also provides a single file in .JSON format consolidating all the updated data in the register, as well as various tables in .CSV format in order to give greater latitude to re-users. These files are updated every night. The HATVP has also published the source code of the register of interest representatives, which is available at https://gitlab.com/hatvp-open/agora.

The Lobbying Transparency Portal could also serve as the one-stop-shop for key information and guidance on lobbying and the Lobbying Act

Going beyond the availability of lobbying data, transparency portals can also be used to publish guidelines for lobbyists, information for citizens, factsheets and analysis of the information contained in the registers. In Ireland for example, in addition to housing the online register, the website www.lobbying.ie includes information and guidance tools explaining the registration and return processes.

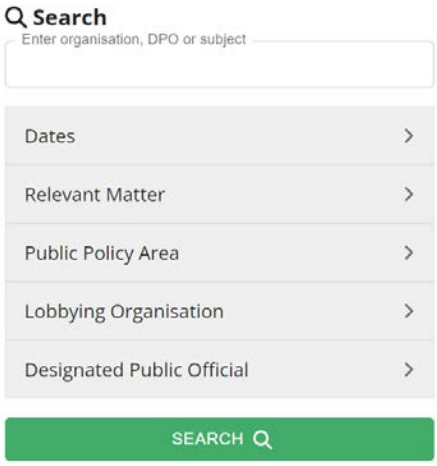
A similar approach could be taken in Malta. The Lobbying Transparency Portal could be developed to host both registers as well as tailored guidance for lobbyists on how to register and disclose information (recommended in section "A dedicated one-stop-shop lobbying portal could include tailored guidance for lobbyists on how to register and disclose information") and information on the Lobbying Act for users of the platform.

Using registry data to optimise information for users

The online Transparency Platform could include data visualisation tools and enable filtering information by category

While they may take various forms, online lobbying platforms should ease access to and understanding of large volumes of data collected through registries. As a general rule, lobbying transparency portals should avoid monolithic statements or lists of lobbyists that do not give any relevant information for citizens to understand the state of play of lobbying activities and their concrete impacts on decision-making processes. The French, Irish and Quebec registers all enable an easy user experience which includes an easy-access search function, filters (Annex Figure 5.A.11), dashboards and graphics.

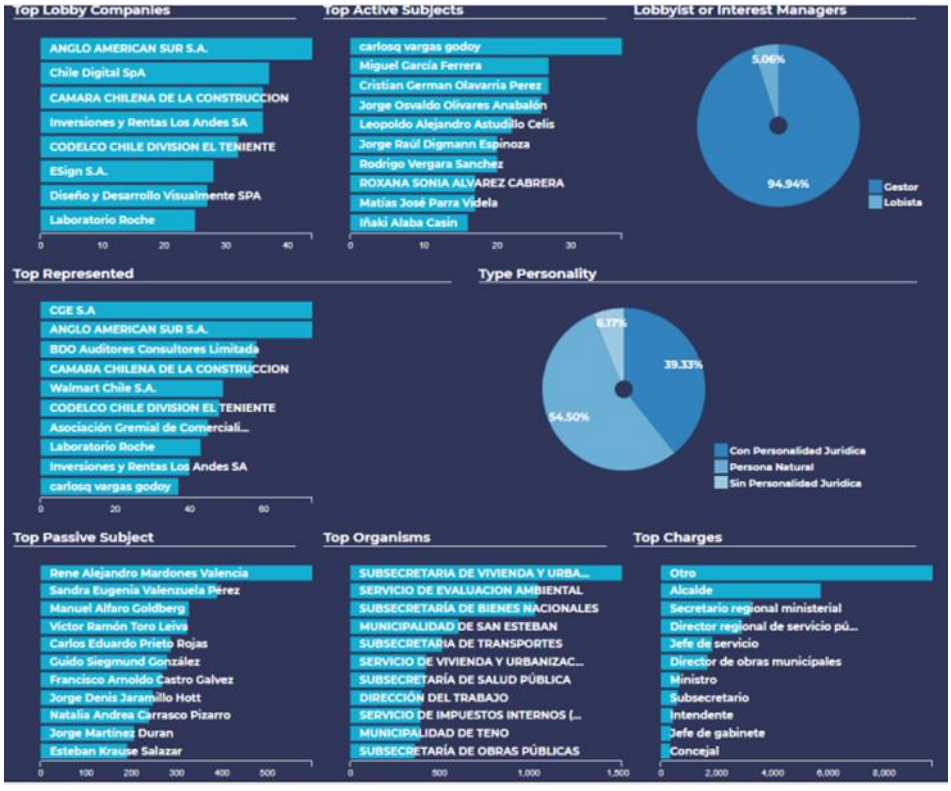
Annex Figure 5.A.11. Filter options in the Irish transparency portal



Source: https://www.lobbying.ie/app/home/search

Similarly, a platform developed by Chile's Council for Transparency presents data in a comprehensible format. The Council for Transparency has developed a platform to present data on public officials' hearings and meetings, travels and gifts. The example below shows data visualisation in the section on hearings and meetings, which allows individuals and organisations to filter information and view infographics and trends on companies, including meetings between different types of interests (Annex Figure 5.A.12).

Annex Figure 5.A.12. Lobbying transparency portal in Chile



Source: https://www.infolobby.cl/

The Transparency Portal could also feature thematic analyses of data contained in the registers based on the regulatory and legislative footprint prepared by the Commissioner for specific decision-making processes

As recommended above, the Regulation on Lobbying Act could include a provision assigning responsibility to the Commissioner for compiling and disclosing a legislative and regulatory footprint on specific decision-making processes, including for example legislation, government policies or programmes, and high-risk or high-dollar value contracts or concessions, based on the information contained in the register (OECD, 2022[26]). By enabling stakeholders to get an overview of the lobbyists involved in a specific public decision, for example a legislative initiative, as well as an assessment of how the input received was factored into the final decision, the legislative and regulatory footprint is a useful tool to shed light on the practical reality of lobbying. In France for example, the obligation to declare the objective of lobbying activities makes it possible for the HATVP to trace the influence communications disclosed on a specific bill or decision and compile the information into thematic reports published on the centralised platform https://www.hatvp.fr/lobbying/.

Allocating adequate human and financial resources for administrating the lobbying registers and the Lobbying Transparency Portal

In order for the Commissioner to effectively carry out an oversight and enforcement role of the lobbying regulation, it will require sufficient financial and human resources (OECD, 2022[26]). Currently, the Office of the Commissioner is small in number, with six people assisting the Commissioner: five officers/employees and one person on a contract-for-service basis. Adding new functions on lobbying would substantially increase the workload of the Office, threatening further its capacity to deliver on its different responsibilities if additional financial and human resources are not added.

To that end, the OECD recommended the Commissioner to undertake a workforce planning exercise and request the House Business Committee of the House of Representatives for additional financial resources for the coming years (OECD, 2022[26]).

Allocating resources to develop the registers and the transparency platform

The Office of the Commissioner for Standards in Public Life could hire temporary IT programmers to build the registration portals and the transparency platform

Designing and developing the registration platforms and transparency portal will require additional resources, including temporary IT skills to build the platforms. As with the development of the electronic asset declaration system, a preliminary assessment of the needs in terms of human resources and expertise to develop the system becomes of the outmost importance. This also includes assurances on how to maintain security and stability of the system.

As such, upon adoption of a Lobbying Act in Malta, the Commissioner could assess human resources and expertise needed to develop the system, including the externalisation of certain resources (IT and computer security) or the hiring of temporary resources. In Quebec for example, two employees from “Lobbyisme Quebec” oversaw the creation of the new platform “Carrefour Lobby Quebec”, and 5 programmers were employed full time to build the platform.

A larger envelope of budgetary and financial resources will undoubtedly be required in the very early stages of development, before costs stabilise once the platform is operational.

Allocating resources for the day-to-day administration of the registers and the transparency platform

The Office of the Commissioner for Standards in Public Life could create a dedicated lobbying unit

The size of the team required to implement the Lobbying Act and administer the day-to-day business operations will highly depend on the definitions of “lobbying” and “lobbyist” in the Act, the types of verification activities conducted and the investigative powers entrusted to the Commission, the size of the registers, as well as on the disclosure and transparency platforms developed. For example, the Irish Standards in Public Office Commission reviews all registrations to make sure that all who are quired to register have done so and that they have registered correctly, which requires additional human resources. Depending on the approach chosen in Malta (review of all registrations or random reviews), the minister responsible for the administration of the Act will also need to ensure that the Commissioner has sufficient resources to conduct these activities.

The Commissioner could consider creating a dedicated lobbying review team, that would be in charge of administering the register and conducting monitoring activities, following the example of France or Ireland. In Ireland, the Standards in Public Office Commission has a dedicated lobbying regulation unit. In France, the HATVP has a dedicated “Interest representative monitoring division” to ensure that interest representatives comply with their obligations. In particular, it ensures that interest representatives are registered in the digital directory, that the information they declare is accurate and complete, and that they comply with their ethical obligations. The provision of guidance to lobbyists and public officials on lobbying is however ensured by the “Relations with declarants, Information and Communication” Division. This with broader missions than lobbying, provides all declarants (including, for example, public officials who have to file interest and asset declarations) with advice and assistance, particularly with regard to their declaratory obligations.

A similar approach could be taken in Malta, as this organisation ensures that the monitoring function is clearly separated from the prevention function. Indeed, the experience of OECD countries shows that units with both functions devote most of their efforts and resources to investigations, without devoting sufficient time to preventing and promoting a culture of integrity. This will be especially true in the first years of implementation of the lobbying framework: experience from other OECD countries has shown that the first years of implementation are dedicated mostly to supporting those with new obligations to disclose information (lobbyists, public officials) and raising awareness on the provisions of the Act.

The Office of the Commissioner for Standards in Public Life could monitor the demands for guidance / technical assistance from lobbyists and public officials to further assess its needs

Once the register is up and running, it will be important for the Commissioner to monitor and track demands for guidance / technical assistance from lobbyists and public officials. This will enable the Commissioner’s team to fine-tune his needs in terms of human and financial resources. For example, Chile has published an internal – "Register of technical assistance” in order to monitor needs of technical assistance by lobbyists and public officials. Information is published in a report on "Monitoring, reporting and support reports", made available online.

Summary of recommendations

Facilitating lobbying disclosures by lobbyists

- Place the obligation to register on entities through a unique identifier and a collaborative space per organisation, while clarifying the responsibilities of designated individuals in the registration of information.
- Create a dedicated one-stop-shop lobbying webpage or portal with tailored guidance for lobbyists on how to register and disclose information.
- Include in the registration portal clear and easy-to-fill sections, connected to relevant databases so as to facilitate disclosures and ease the burden of compliance for lobbyists.
- Make use of data analytics tools to enhance the quality of information disclosed in open boxes and sections of the registration form.

Facilitating lobbying disclosures by public officials

- Make available a central registration and disclosure portal for the Transparency Register, hosted on the same registration and disclosure platform as the Register of Lobbyists.
- To facilitate disclosures, give each designated public body the responsibility to manage its lobbying disclosures on an institutional webpage of the centralised registration portal.
- Allow designated public officials to nominate one or several representatives who would be in charge of disclosing relevant information on their behalf.
- Require disclosures in the Transparency Register to be made on a weekly or monthly basis through clear and easy-to-fill sections, connected to relevant databases so as to facilitate registration and ease the burden of compliance for public officials.

Providing an adequate degree of transparency through a unique and intuitive online Lobbying Transparency Portal

- Combine information from the Register of Lobbyists and the Transparency could in a unique Lobbying Transparency Portal, with information available in an open data format.
- Use the Transparency Portal as the one-stop-shop for key information and guidance on lobbying and the Lobbying Act.
- Optimise information for users by including data visualisation tools and enable filtering of information by category.
- Include in the Transparency Portal thematic analyses of data contained in the registers based on the regulatory and legislative footprint prepared by the Commissioner for specific decision-making processes.

Allocating adequate human and financial resources for administrating the lobbying registers and the Lobbying Transparency Portal

- Hire temporary IT programmers to build the registration portals and the transparency platform.
- Create a dedicated lobbying unit for the day-to-day administration of the registers and monitoring of information disclosed.
- Once the registers are operational, track and monitor demands for guidance and technical assistance received from lobbyists and public officials to further assess and fine-tune needs in terms of human and financial resources.

OECD Public Governance Reviews

Public Integrity in Malta

IMPROVING THE INTEGRITY AND TRANSPARENCY FRAMEWORK FOR ELECTED AND APPOINTED OFFICIALS

This report provides concrete recommendations for strengthening the legislative and institutional framework for elected and appointed officials in Malta. It reviews the institutional and procedural set-up of the Commissioner for Standards in Public Life and analyses the omissions, inconsistencies and overlaps in the Standards in Public Life Act. It also provides recommendations to the Government of Malta on developing the most feasible lobbying regulation, and identifies concrete measures to strengthen the existing codes of ethics for elected and appointed officials, as well as the system of asset and interest declarations.

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