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

Introductory memorandum

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1. Introduction

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

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

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

4. On 23 January 2018 I tabled a motion for a resolution, signed by well over one hundred Assembly members from across Europe. The motion noted that three Maltese men had been charged with the murder but the instigators remained at large. Furthermore, the Maltese authorities appeared unwilling to hold a public inquiry into whether the assassination could have been avoided. There was accordingly a need to monitor the on-going investigation, in co-operation with the Maltese authorities, so as to ensure that it examined all aspects of the case, including the wider context, without political interference, with a view to the Assembly shedding light on the background to the crime. Following its reference to the Committee by the Bureau, I take the motion as defining the scope of my report.¹

* Document declassified by the Committee on 25 June 2018.

¹ [Doc. 14479](#); Bureau reference to the Committee no. 4366, 15 March 2018.

2. Ms Caruana Galizia's work and fears for her safety

5. An overview of Ms Caruana Galizia's blog, 'Running Commentary', gives an indication of the wide range of topics on which she had reported, the common theme being corruption and other forms of criminal, unethical and disreputable behaviour by Maltese political and public figures. In early 2016, Ms Caruana Galizia led the investigation of Maltese aspects of the 'Panama Papers', including the establishment of Panama-based companies for Keith Schembri, Prime Ministers Joseph Muscat's Chief of Staff, government minister Konrad Mizzi and, allegedly, Michelle Muscat, the Prime Ministers' wife, by accountant Brian Tonna and his company Nexia BT. Malta's 'Golden Passport' scheme attracted particular attention, with articles criticising the role of Prime Minister Muscat, alleging Mr Schembri's receipt of corrupt kickback payments, and mentioning also Mr Mizzi, Adrian Delia, the opposition Nationalist Party leader, and Henley & Partners, which plays a key role in administering this scheme.² She had also been extremely critical of Mr Delia both prior to his 2017 appointment as leader of the opposition and afterwards, including on his collusion with the governing Labour Party. Other examples of Ms Caruana Galizia's reporting include peculiarities in the retrospective authorisation of construction of an illegal zoo involving Jose Herrera, the environment minister, and an alleged visit by Chris Cardona, the economy minister, to a German brothel.

6. The 'Daphne Project', involving an international coalition of newspapers, was established to continue work on the issues Ms Caruana Galizia had been investigating at the time of her death, under the slogan "They killed the journalist. Not the stories."³ The Daphne Project has revealed further information on Malta's 'Golden Passport' programme and an alleged kick-back scheme involving Mr Schembri and Mr Tonna. It has reported on relations between Mr Muscat, Mr Schembri and Ali Sadr Hasheminejad, head of Pilatus Bank, which was involved in concealed transfers of money from Azerbaijan's political elite.⁴ It has reported on a new liquid natural gas (LNG) power station in Malta, the involvement of persons connected with the government, including Mr Tonna, in the decision-making process and the apparently excessive prices being paid for LNG supplies to the Azerbaijani state-owned company SOCAR by the Electrogas consortium (of which SOCAR is a part) that won the power station contract. Recent follow-up investigations have focused on the role of a Dubai-based company, 17 Black, which received transfers of €1.1 million from Mayor Trans, a Seychelles-based company owned by an unnamed Azerbaijani national, and €161,000 from the Maltese local agent for the tanker supplying LNG to the power station. 17 Black had been named as a 'target client' in the documents establishing Mr Schembri and Mr Mizzi's Panamanian companies; subsequent emails stated the expectation that Mr Schembri and Mr Mizzi would receive \$150,000 per month in their Panamanian companies' Bahamian bank accounts from 17 Black and another company, Macbridge.

7. Until recently, Malta's libel laws were widely seen as unfavourable to independent journalism, with a criminal defamation offence, and low court fees and no penalties for frivolous suits in civil cases. At the time of her death, Ms Caruana Galizia faced 47 libel cases, some 34 of which are still pending against her family as heirs.⁵ Mr Muscat, for example, sued her over the report that his wife was the ultimate beneficial owner of a Panama-based company, Egrant. Mr Mizzi and Mr Schembri both have multiple cases pending, following Ms Caruana Galizia's reporting on the Panama Papers. Mr Cardona sued her over the German brothel report.⁶ Silvio Debono, a property developer, has 19 cases all relating to a series of reports focussing on a

² The Labour government introduced the golden passport scheme soon after coming to power in 2013, despite its not having been part of the election manifesto. The new government also very quickly signed an agreement giving Henley and Partners exclusive rights to implement, administer and promote the scheme, in return for a commission of 4% on application fees (minimum €650,000 per application) and 4% on applicants' compulsory purchases of €150,000 government bonds; Henley and Partners also charges applicants €70,000 for assisting with their applications: "Maltese Golden Visas: Thumbs Up? Thumbs Down? Who knows?", Organised Crime and Corruption Reporting Project (OCCRP), 5 March 2018; "Stockbrokers stunned by commissions being paid to Henley & Partners", Times of Malta, 18 November 2016. By July 2017, the scheme had raised over €350 million for the Maltese government and over €19 million for Henley and Partners: "Annual Report 2017", Office of the Regulator, Individual Investor Programme, November 2017.

³ See <https://www.forbiddenstories.org/case/the-daphne-project/>

⁴ Mr Sadr was arrested in the US on 20 March 2018 and charged with violating sanctions against Iran; he has since been released on bail of \$34 million. The MFSA then placed Pilatus Bank under public administration and froze its assets. US prosecutors have claimed that Pilatus Bank was set up with proceeds of crime. The bank's directors are taking legal action to regain control, which may compromise on-going FIAU and MFSA inquiries: "Pilatus moves to take back control", Times of Malta, 6 May 2018.

⁵ The OSCE Representative on the Freedom of the Media, Harlem Désir, has stated that these lawsuits "continue to exert extreme financial and psychological pressure on the family" and called on the plaintiffs to drop them.

⁶ As part of these proceedings, in February 2017 a court ordered the freezing of Ms Caruana Galizia's bank account; in response, a group of NGOs filed an alert on the Council of Europe's Platform for the Protection of Journalism and Safety of Journalists. The case was dismissed in May 2018 following Mr Cardona's repeated failures to appear in court:

particular building project. In addition, Henley and Partners had threatened to sue her in London, allegedly with the encouragement of Mr Muscat, Mr Schembri and Mr Mizzi.⁷ Pilatus Bank sued Ms Caruana Galizia for defamation in the US.

8. In addition to the multiplicity of lawsuits, Ms Caruana Galizia was also the subject of vituperative public statements and campaigns by the subjects of her investigations or people close to them. The government's press office had issued statements containing personal attacks on Ms Caruana Galizia's character and professionalism.⁸ Glenn Bedingfield, an adviser in the office of Prime Minister Muscat, encouraged people to take photographs of Ms Caruana Galizia going about her private daily business, and then published hundreds of these pictures on his blog. In 2013, she was pursued through the streets of a Maltese town by a crowd led by the local mayor, forcing her to seek refuge in a convent. Even more chillingly, she was the subject of violent reprisals on at least two occasions: in 1995, her front door was set alight and her dog's throat was cut; and in 2006, tyres were piled by the back door of her house and set alight.⁹

9. In the immediate aftermath of Ms Caruana Galizia's death, it was reported that 15 days before her assassination, she had filed a police report stating that she had been receiving threats.¹⁰ The police responded that no reports of threats against her had been lodged at Mosta police station in the previous two weeks.¹¹ Shortly thereafter, the authorities confirmed that there was no fixed-point security at her home prior to her death,¹² although an anonymous police officer was reported as saying that the police did provide either fixed-point security or mobile patrols.¹³ Police Commissioner Lawrence Cutajar told the members of the European Parliament's ad hoc Delegation to Malta that "it would have been regarded as intrusive to enact ... protection against her will",¹⁴ which suggests that protective measures were not in place.

3. The investigation into her assassination and arrest of suspects

10. As a Council of Europe member State, Malta is party to the European Convention on Human Rights (ECHR). Article 2 ECHR protects the right to life. Under Article 2, States are subject to a 'negative' obligation not to deprive individuals of their right to life in violation of the provisions of the article, as well as positive and procedural obligations.

11. The positive obligation under Article 2 has two aspects. The first requires the state to "put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right to life".¹⁵ The second aspect arises when the authorities "knew or ought to have known at the time of the existence of a real and immediate risk to the life of an identified individual or individuals from the criminal acts of a third party". In such circumstances, the authorities are required to "take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk".¹⁶ A legal opinion prepared by two UK barristers at the request of the Caruana Galizia family concluded that "It is beyond doubt that there has been an arguable breach of the [Maltese authorities' positive obligations] to protect Ms Caruana Galizia".¹⁷

12. The procedural obligation requires an investigation into any suspicious death that may arguably have occurred in breach of the substantive (positive and negative) obligations. The basic requirements of the procedural obligation are that the investigation be independent, prompt and expeditious, with the capacity to

"Cardona brothel case is cancelled, ministry says texts were sent from Malta not Germany", Times of Malta, 31 May 2018.

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

⁸ See e.g. "Straight from the mouth of fascism: the Economy Minister's statement yesterday evening", Running Commentary, 9 February 2017.

⁹ "Daphne Caruana Galizia: 'Malta has made me a scapegoat'", The Guardian, 17 April 2018. This article was based on an interview that Ms Caruana Galizia gave to the Council of Europe shortly before her death.

¹⁰ "Daphne Caruana Galizia killed in Bidnija car blast", Times of Malta, 16 October 2017.

¹¹ "Police deny receiving reports of threats against Caruana Galizia", Times of Malta, 17 October 2017.

¹² "No fixed point police security at Caruana Galizia home since 2010", Malta Today, 18 October 2017.

¹³ "Caruana Galizia security 'relaxed' after 2013 election", Times of Malta, 21 October 2017.

¹⁴ "Mission Report following the ad hoc Delegation to Malta (30 November – 1 December 2017)", CR1143312EN, European Parliament, 11 January 2018 ("EP Mission Report").

¹⁵ *Kolyadenko & otrs v. Russia*, 17423/05 et al, judgment of 28 February 2012.

¹⁶ *Osman v. United Kingdom*, 23452/94, judgment of 28 October 1998.

¹⁷ "Urgent advice concerning the investigative obligation under Article 2 ECHR", Caoilfhionn Gallagher QC and Jonathan Price, Doughty Street Chambers, London, 8 December 2017.

establish the facts and accessible to the public and relatives of the victim.¹⁸ Concerns relating to the investigation of the murder of Ms Caruana Galizia will be addressed below.

13. Following the recusal of the magistrate initially responsible for investigating Ms Caruana Galizia's murder (see below), magistrate Anthony Vella took over. Within days, experts from Europol, the Netherlands, the UK and the US arrived in Malta to assist the local police. The investigation produced the following evidence. Minutes before the explosion, a call was made from a location close to Ms Caruana Galizia's home by a mobile phone associated with Alfred Degiorgio to his brother George's phone. Also before the explosion, George Degiorgio used his personal phone to add credit to the account of another phone. The bomb was triggered by an SMS sent from a location out at sea by this other phone to the SIM card that formed part of the bomb's detonator. This SMS was sent from the same location as the call from George Degiorgio's phone to add credit to the other phone. George Degiorgio owned a boat that was seen leaving Valetta harbour on the morning of the murder and returning later in the afternoon. Alfred Degiorgio's DNA was found on a cigarette butt discovered on a ridge with a view overlooking Ms Caruana Galizia's home.¹⁹

14. Ten suspects were arrested on 4 December 2017. The following day, three of them were charged: Alfred and George Degiorgio, and Vince Muscat – all with long criminal records. (The other seven were released on bail without charge.) The three were arraigned that day and pleaded not guilty. Maltese law states that if a magistrate does not find justification for the AG to issue a bill of indictment within 30 days of the suspects being charged, they must be discharged unconditionally. The relevant procedure, or 'compilation of evidence', was supposed to begin on 14 December. The first magistrate appointed to the case, Donatella Frendo Dimech, recused herself following a request by the defence based on her having been to school with one of Ms Caruana Galizia's sisters. On 18 December, a second magistrate, Charmaine Galea, also recused herself on the basis that Ms Caruana Galizia had mentioned her in blog posts. A third magistrate, Claire Stafrace Zammit, rejected a further recusal request. On 21 December, Ms Zammit concluded that there was enough evidence for the AG to issue a bill of indictment. The last hearing in the compilation of evidence proceedings was on 22 May 2018, when the case was adjourned until 14 June, more than six months after the suspects were charged. The AG has still not issued an indictment. If the suspects are not convicted within 20 months of being charged, they must be released on bail.²⁰

4. The rule of law in Malta

15. Before examining the specific investigation into the murder of Ms Caruana Galizia, it is useful to examine the state of the rule of law in Malta generally, notably how high officials are appointed, which suggests a remarkable concentration of power and influence in the hands of the Prime Minister.

15.1. The President of Malta is appointed and can be removed from office by a simple resolution of the unicameral parliament (the House of Representatives). The Prime Minister is the leader of the party with a parliamentary majority. According to an expert report on the rule of law in Malta prepared for the Caruana Galizia family in November 2017 ("the Caruana Galizia Rule of Law Report"), "in practice [this] means that the Prime Minister ... is the person who appoints or removes a President. As a result, the President's loyalty to a political party tends to take precedence over their oath to preserve, protect and defend the Constitution."

15.2. The House of Representatives is composed of 67 seats, of which the Labour Party currently holds 37 and the Nationalist Party, 28. According to the Caruana Galizia Rule of Law Report, 31 Labour Party MPs hold one or more government appointments or major contracts; seven Nationalist Party MPs are employed by the government, one as a minister. The Caruana Galizia Rule of Law Report interprets this to mean that "the current government has co-opted all other Labour Party members of the House of Representatives into the government by providing them with lucrative public contracts or posts in state agencies, removing an important check on the executive branch of government."

15.3. Judges (superior courts) and magistrates (inferior courts) are appointed by the President on the advice of the Prime Minister, following evaluations of candidates made by a Judicial Appointments

¹⁸ *Edwards v. United Kingdom*, 46477/99, judgment of 14 March 2002.

¹⁹ "The silencing of Daphne," Reuters, 17 April 2018.

²⁰ "Time could run out on AG in Caruana Galizia murder trial", Times of Malta, 14 January 2018.

Committee composed of the Chief Justice, the Attorney General, the Auditor General,²¹ the Ombudsman²² and the President of the Chamber of Advocates. These evaluations are not binding on the Prime Minister. The current President is said never to have deviated from Prime Minister Muscat's advice. 15 of the 44 current judges and magistrates were appointed by the present Labour government. The Caruana Galizia Rule of Law Report claims that 11 of these 15 "are connected directly to the Labour Party".

15.4. The Attorney General (AG) is appointed by the President on the advice of the Prime Minister, who is not obliged to consult. The AG is both legal adviser to the government and public prosecutor.

15.5. The Police Commissioner is appointed directly by the Prime Minister after consultation with the Minister for Home Affairs. The Prime Minister can unilaterally remove the Police Commissioner. There have been five Police Commissioners in the five years since the Labour Party came to power. The first of these had served for 12 years and was removed from office by Prime Minister Muscat shortly after the latter took office in 2013 (see further below).

15.6. The Chairman and Deputy Chairman of the Financial Intelligence Analysis Unit (FIAU), responsible for combating money laundering and terrorist financing, are appointed by the Prime Minister after consulting the Finance Minister, whose advice s/he is not obliged to follow. FIAU members are drawn from the AG's office (see above), the Central Bank of Malta,²³ the Malta Financial Services Authority (MFSA) and the Police Force (see above).

16. A number of serious, high-profile cases in recent years seem not to have been properly investigated. At the same time, the authorities have taken rapid, firm action against whistleblowers who reveal essential information or failed to provide them with protection. For example:

16.1. In 2016, it was widely reported that companies had been set up in Panama for Mr Schembri, Mr Mizzi and, allegedly, Ms Muscat, and that these companies were intended for use in money laundering. Within weeks, the Maltese Police Force announced that it would not be carrying out further individual investigations, declining to state whether the two politicians had been interviewed. In July 2017, then-leader of the opposition Nationalist Party Simon Busuttil successfully petitioned a magistrate to order the police to investigate the allegations against Mr Schembri and Mr Mizzi, who then appealed against the magistrate's decision. The appeal was allocated to a judge who is married to a Labour Party MEP; Mr Busuttil requested that the judge recuse himself. The appeal (and Mr Busuttil's recusal request) remains pending. As a result, there has still been no investigation into these allegations, more than two years after they were made.²⁴ A magistrate is, however, inquiring into the allegations concerning Mrs Muscat, at Mr Muscat's own request.

16.2. Three FIAU reports, from April, July and November 2016, were leaked to the media in May 2017. No action has been taken on any of these reports by either the Police Commissioner or the Attorney General. The former told the European Parliament ad hoc delegation that the reports were not formally submitted to the police. The latter claimed that he had no authority to initiate investigations, although other sources (including the Chief Justice) disputed this claim insofar as it related to money laundering allegations.

16.2.1. The first FIAU report concerned two bank transfers of €50,000 each from a British Virgin Islands (BVI) registered company owned by Mr Tonna, to Mr Schembri's bank account. These payments followed receipt by Mr Tonna's company of payments from three Russian individuals for services rendered by BT International Limited (owned by Mr Tonna's primary company, Nexia BT) in connection with their Maltese 'golden passport' applications. The FIAU report concluded that there was sufficient evidence to establish a reasonable suspicion of money laundering and/ or the existence of proceeds of crime. It was presented to then Police

²¹ Appointed by the President from amongst the officers of the House of Representatives in accordance with a resolution supported by at least two-thirds of its members.

²² Appointed by the President in accordance with a resolution supported by at least two-thirds of the members the House of Representatives.

²³ The governor and chairman of the Central Bank are appointed by the President, on the advice of the Prime Minister, who is not obliged to consult.

²⁴ Following the 'Panama Papers' reports, Mr Muscat transferred Mr Mizzi from his post as Minister for Energy and Health, although he retained responsibility for the LNG power station project: "Panama Papers: Police see 'no reasonable suspicion' to carry out individual investigation", Malta Independent, 8 June 2016.

Commissioner Michael Cassar in April 2016; days later, and before taking any action on the report, Mr Cassar resigned, citing ill health. Within months, FIAU director Manfred Galdes had also resigned.²⁵

16.2.2. The second report resulted from a March 2016 ‘compliance visit’ to Pilatus Bank. It concluded that “the Bank has a number of serious shortcomings. This not only places the Bank in breach of several provisions of the [anti-money laundering regulations], but also exposes the Bank and the jurisdiction as a whole to a high level of risk, which is not being mitigated by any other process. Furthermore, the serious deficiencies are compounded by the fact that the Bank’s profitability depends to a large extent on a few select clients who are PEPs²⁶.” The report noted that most of the PEP clients were from Azerbaijan, a “jurisdiction posing higher [money-laundering/ anti-terrorist financing] risks”, and that insufficient information was obtained on the source of their funds. Improperly administered suspicious transactions included transfers of €1 million and €500,000 to “an account classified as high-risk”. In September 2016, the FIAU, following the resignation of Mr Galdes and the dismissals of two key officials (see below), sent a second letter to Pilatus Bank. Relying on documents and information that had not been available at the time of the March visit, it concluded that the shortcomings previously identified “no longer subsist”.²⁷ Two magistrates were, however, appointed to investigate the leak of FIAU reports on Pilatus Bank.²⁸

16.2.3. The third report concerned a series of payments between 2010 and 2015 totalling some €650,000 from Mr Schembri personally and companies owned by him to Adrian Hillman, then Managing Director of Allied Newspapers (owner of the Times of Malta and the Sunday Times of Malta), and companies owned by him. Pilatus Bank and Mr Tonna were also involved in these transactions. Again, the FIAU concluded that there was sufficient evidence to establish a reasonable suspicion of money-laundering and/ or the existence of proceeds of crime.

16.3. Following the leaks, finance minister Edward Scicluna attacked the credibility of the leaked FIAU reports and the integrity of their authors. A few days later, Jonathan Ferris, head of the FIAU financial analysis section, and Charles Cronin, head of its compliance section, were summarily dismissed.²⁹ Mr Ferris has an on-going case for unfair dismissal before the Industrial Tribunal; the Attorney General applied for the proceedings to be held in secret. Mr Ferris claims to have information on recent and continuing incidents of corruption, abuse of power and money-laundering reaching to the highest levels. His repeated requests for protection under Malta’s Protection of the Whistleblower Act have been rejected; without such protection, he risks a five-year prison sentence and a €100,000 fine.³⁰

16.4. Ms Caruana Galizia received extensive information on the inner workings of Pilatus Bank from Mr Sadr’s executive secretary, Maria Efimova – including on the existence of documents establishing Ms Muscat’s ownership of Egrant.³¹ She also filed suspicious transaction reports concerning Pilatus Bank with the FIAU after Mr Ferris began working there. Ms Efimova was dismissed by the bank, which also filed a criminal complaint against her for misappropriating funds.³² She also faces criminal charges brought by the police themselves in relation to her claims concerning her police interview on the misappropriation charges. After Ms Efimova fled to Greece, Malta issued a European Arrest warrant, following which she surrendered herself to the police and was arrested and detained. The Greek courts have since rejected the Maltese extradition request and released Ms Efimova; the Greek

²⁵ It can also be noted that in July 2017, shortly after the FIAU reports became public, the Maltese government appointed Nexia BT as the official concessionaire for the promotion of the ‘golden passport’ scheme in the Middle East. Concessionaires receive a commission on each successful passport application.

²⁶ ‘Politically exposed persons’, a term used in the anti-money laundering context to refer to persons at particular risk of being exposed to bribery or corruption.

²⁷ “FIAU says Pilatus shortcomings ‘no longer subsist’”, Times of Malta, 12 September 2017.

²⁸ “Joseph Muscat in wait-and-see game on Keith Schembri and Konrad Mizzi”, Malta Today, 19 April 2018.

²⁹ “FIAU officials dismissed after minister’s ‘written to be leaked’ claim”, Times of Malta, 1 July 2017.

³⁰ “Ferris to take legal action after being denied whistleblower status”, Times of Malta, 25 March 2018.

³¹ The night after Ms Caruana Galizia reported this information, Mr Sadr and Pilatus Bank’s risk manager, Antoniella Gauci, were seen leaving the bank carrying two large suitcases and then reportedly flying by private jet to Baku; whilst this was happening, the Police Commissioner was seen going for dinner in a restaurant.

³² “One year after Egrant story: whistleblower gives lucid account of chaos at Pilatus Bank and bizarre police investigation”, Lovin Malta, 20 April 2018.

prosecutor's appeal against this decision was rejected by the Greek Supreme Court.³³ Following Mr Sadr's release on bail in the US, Ms Efimova filed a report with the Greek police claiming that she had received threats.³⁴

16.5. No action has been taken against Mr Dalli, a former Nationalist party government minister, who was forced to resign as a European Commissioner over corruption allegations in 2012 before being appointed as a health sector adviser to Prime Minister Muscat in 2013-14. The Caruana Galizia Rule of Law Report contains a list of allegations of misconduct in public office against Mr Dalli, only one of which, it claims, was even investigated by the Maltese authorities. John Rizzo, the Police Commissioner who was dismissed by Mr Muscat shortly after he became prime minister, is said to have been ready to charge Mr Dalli but could not do so due to Mr Dalli being outside the country. Within weeks of Mr Rizzo's dismissal, Mr Dalli returned to Malta and was appointed healthcare consultant to Prime Minister Muscat. None of the four Police Commissioners subsequently appointed by Mr Muscat has acted on the evidence that Mr Rizzo, working with OLAF, the EU anti-fraud office, had gathered.³⁵

17. Two important Council of Europe monitoring mechanisms, GRECO (the Group of States Against Corruption) and MONEYVAL (the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism), are in the process of examining the situation in Malta. The most recent GRECO report on Malta dates from March 2017 and concerns implementation of a 2014 Fourth Round evaluation report on corruption in respect of parliament, judges and prosecutors. GRECO will be visiting Malta this autumn with a view to preparing a new evaluation report focusing on the executive and law enforcement bodies, for adoption next year. MONEYVAL's most recent report on Malta dates from December 2015, as follow-up to a 2012 evaluation report. MONEYVAL will also be visiting Malta this autumn with a view to preparing a further follow-up report.

18. On 5 June 2018, the Civil Liberties Committee of the European Parliament created a new 'rule of law monitoring group'. The monitoring group will *inter alia* build on the European Parliament ad hoc committee's 2017 visit to Malta, following the murder of Ms Caruana Galizia.

5. Concerns relating to the investigation and the possibility of political influence

19. Immediately after Ms Caruana Galizia's death, responsibility for the crucial first stages of the investigation was given to Duty Magistrate Consuelo Scerri Herrera. Ms Caruana Galizia had published highly critical articles about Ms Scerri Herrera since at least 2010, most recently a January 2017 article entitled "Scerri Herrera has been ruled unfit to be a judge. It follows that she is unfit to be a magistrate". On learning of her involvement, the Caruana Galizia family filed a court request that Ms Scerri Herrera recuse herself; the following day, she was replaced by Magistrate Anthony Vella, who has remained in charge of the investigation ever since (although see further below). Mr Vella is also responsible for many other cases. It has recently been reported that Mr Vella has been recommended for promotion to judge. Should he be promoted, this could inhibit further investigation into who was ultimately responsible for the murder of Ms Caruana Galizia, as the person with knowledge of the investigation from the very early stages would be replaced by someone unfamiliar with the file.

20. Concerns have been expressed about the police. The EP Mission Report mentions a "possible conflict of interests between the Deputy Chief of the Police, Mr Silvio Valletta, conducting the investigation..., and the fact that his wife is a minister in the current government" (Mr Valletta is also an FIAU board member). In response, "The Deputy Police Chief denied such conflict and stressed the independence of his professional activities from those of his wife." Nevertheless, on 12 June 2018, a Maltese judge ruled that Mr Valletta should not be involved in the investigation due to this potential conflict of interest, and also that his involvement should itself be investigated by his replacement; Mr Valletta then suspended himself from the investigation.³⁶ Other concerns relate to whether the authorities could have had prior knowledge of the plot. When interviewing George Degiorgio, one of the suspects, the police played a recording of the call he had

³³ "Greek prosecutor appeals Maria Efimova extradition ruling", Malta Today, 13 April 2018; "Greece's Top Court Rules Out Whistleblower's Extradition To Malta", Greek Reporter, 14 June 2018.

³⁴ "Pilatus Bank whistleblower says she's being threatened, files police report", Times of Malta, 28 May 2018.

³⁵ In March 2017, Jonathan Ferris, at the time a police inspector, prepared fraud charges against Mr Dalli's daughters. Before the charges could be brought, however, his superior office took over the case and took no further action was taken. As a result, Mr Ferris resigned and joined the FIAU (see above).

³⁶ "Silvio Valletta pulls out of Caruana Galizia murder case after court ruling", Malta Today, 13 June 2018.

made to add credit to the phone used to trigger the bomb.³⁷ The security service also revealed that it had been monitoring George Degiorgio's boat prior to the murder.³⁸ This has raised questions as to what the Maltese police and security services might have known prior to the murder. The security service "categorically denies" any prior knowledge of the murder plot. By mid-June 2018, the records of surveillance of George Degiorgio's phone had still not been provided to the investigating magistrate.³⁹ It has also been alleged that police sergeant Alda Cassar of the Criminal Intelligence Unit tipped off the three suspects prior to their arrest. Shortly after their arrest, Mr Cassar was transferred to a different police unit. The police have denied that Mr Cassar had knowledge of the impending arrests or that his transfer was related to any leak of information.⁴⁰ On 26 April 2018, Rob Wainwright, Executive Director of Europol, wrote to Ana Gomes MEP, chair of the ad hoc delegation, about Europol's role in the Caruana Galizia investigation in Malta. The letter included the following comment, which has raised widespread concern: "While we will continue to work closely with the Maltese authorities, there is some room for improvement in this cooperation and we are actively seeking to address this."

21. The authorities have failed to make the investigation accessible to the Caruana Galizia family. Developments were announced, often by the Prime Minister or home affairs minister rather than the Police Commissioner, without the police having first informed the family. On 27 November 2017, home affairs minister Michael Farrugia made an announcement to parliament that the investigating magistrate had access to certain personal items belonging to Ms Caruana Galizia; her widower, Peter, complained to Mr Farrugia that his statement risked compromising the investigation and was in breach of his public duties. The police also failed to respond to repeated requests by the family for information and protection.⁴¹

22. There are concerns about the proximity, going beyond the contacts that would be expected as part of their official duties, between leading government officials and actors with major commercial or financial interests in Malta who were subjects of Ms Caruana Galizia's investigations. For example, Mr Muscat and Mr Schembri, along with Juanita Bencini of KPMG, Pilatus Bank's auditors, attended Mr Sadr's wedding in Italy in 2015.⁴² Mr Muscat regularly appears at events organised by Henley and Partners to promote the latter's golden passport activities.⁴³ As noted above, Mr Schembri, Mr Mizzi and, allegedly, Mr Muscat's wife own Panamanian companies that were expected to receive large sums of money, apparently from persons connected to Azerbaijan or the LNG power station project.

23. Statements by persons close to the Prime Minister have raised concerns in relation to the investigation. Prime Minister Muscat's communications aide, Josef Caruana, posted a statement on Facebook insinuating that Ms Caruana Galizia's own family were implicated in her murder,⁴⁴ although he later apologised "to anyone I might have hurt" (without, however, withdrawing his earlier statement).⁴⁵ A few days later, another of the Prime Minister's communications aides, Labour MP Glenn Bedingfield,⁴⁶ posted on his blog a call on the Civil Society Network that had campaigned for justice in the Caruana Galizia case to make her family hand over her laptop, which the family had declined to do out of mistrust of the authorities and fear of exposing her journalistic sources.⁴⁷ Within hours, professionally-prepared banners appeared around Malta, reading "Why is someone hiding Daphne's laptop?"⁴⁸

24. Witnesses have reported seeing Chris Cardona, economy minister, drinking at the same bar as Alfred Degiorgio, one of the three arrested suspects – and in one account, speaking to him for some time and

³⁷ "Phones of man accused of Daphne Caruana Galizia murder tapped for weeks before assassination", The Shift, 18 April 2018.

³⁸ "The silencing of Daphne," Reuters, 17 April 2018.

³⁹ "Caruana Galizia murder suspect's surveillance records have yet to reach inquiring magistrate, MEPs say", Times of Malta, 12 June 2018.

⁴⁰ "Security service 'categorically denies' prior knowledge of Caruana Galizia murder plot", Times of Malta, 30 April 2018.

⁴¹ See the Caruana Galizia family's barristers' "Urgent advice", footnote 17 above.

⁴² "Prime Minister, His Chief Of Staff And Financial Services Lobby Chief Travelled To Venice For Pilatus Bank Owner's Wedding", Lovin Malta, 25 March 2018.

⁴³ "Murdered Maltese journalist was investigating island's Golden Visas", Investigative Reporting Project Italy, 19 April 2018.

⁴⁴ "Prime Minister's Communications Aide Stirs Rumour Of Caruana Galizia Family's Involvement In Assassination", Lovin Malta, 13 April 2018.

⁴⁵ "Prime Minister's Communications Aide Apologises For Linking Caruana Galizia Family To Murder", Lovin Malta, 13 April 2018.

⁴⁶ Mr Bedingfield had earlier encouraged people to photograph Ms Caruana Galizia in public: see paragraph 8.

⁴⁷ Instead, the family handed the laptop to the German police for controlled preservation as evidence.

⁴⁸ "Banners Demanding Daphne's Laptop Pop Up Around Malta Moments After Call From Prime Minister's Office", Lovin Malta, 17 April 2018.

walking outside the bar with him – in November 2017, shortly after the murder of Ms Caruana Galizia.⁴⁹ Another witness claimed to have seen Mr Cardona speaking to the suspects before the murder.⁵⁰ Mr Cardona responded by stating that “I do not... recall having any discussions with any of these individuals, and have definitely never had any meetings with them. Anything else is baseless rumour and speculation.”⁵¹

6. Interim conclusions and next steps

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

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

26. I intend to proceed with my report on the basis of the following working assumptions. First, that the means employed to commit Daphne Caruana Galizia’s murder indicate that it was planned and premeditated long in advance. Second, that the person or persons ultimately responsible for her assassination were motivated by her investigative work, either already published or on which she was engaged at the time of her death. Third, that the three arrested suspects were most likely acting under instructions, since there is little to suggest that they had any personal motive to kill her – they had not been the subject of her investigations. This implies that ultimate responsibility for her assassination lies with another person or persons. There is no information publicly available on whether the police investigation has made any progress in identifying those ultimately responsible. Following a recent visit to Malta, three members of the European Parliament’s ad hoc delegation concluded that “The investigation into the assassination of Daphne Caruana Galizia is stalling. People we spoke to suspect that the plan may be ensure the blame rests with the three suspected bombers and to eventually let them go free, after 20 months of detention.”⁵²

27. The preliminary overview of the situation set out above raises many issues concerning the rule of law in Malta, the progress made in investigating Ms Caruana Galizia’s murder and the attitude and behaviour of certain senior public officials. These will have to be explored in more detail before my report can be finalised. To do this, it will be necessary for the Committee to hear first-hand from experts in different fields and for me to visit Malta in order to speak to the authorities and other relevant interlocutors. I therefore ask the Committee’s authorisation for both of these steps. I also ask for the Committee’s agreement that I receive information from sources who provide it on condition of anonymity and that I continue to protect their identity thereafter.⁵³

⁴⁹ “Chris Cardona’s presence at bar ‘frequented by murder suspect’ flagged to magistrate”, Times of Malta, 17 April 2018.

⁵⁰ “Witness saw Chris Cardona chatting with Caruana Galizia murder suspect in Siggiewi bar”, Malta Today, 17 April 2018.

⁵¹ “Chris Cardona: ‘Highly Defamatory’ Allegations Of The Daphne Project ‘Have No Foundation Of Truth’”, Lovin Malta, 17 April 2018.

⁵² “Visit to Malta of MEPs Ana Gomes, Sven Giegold and David Casa – Conclusions”, 12 June 2018.

⁵³ The Committee agreed to a similar request from Dick Marty (Switzerland/ALDE) at the start of his investigation into allegations of secret detentions and illegal transfers of prisoners by the CIA, in 2004.