



Organization for Security and Co-operation in Europe  
Office of the Representative on Freedom of the Media

101/17

Vienna, 23 March 2017

**Brief comments on the latest amendments to the Media and Defamation Bill of Malta**

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commissioned by the Office of the OSCE Representative on Freedom of the Media*

**These comments are without prejudice to the earlier comments contained in the legal review commissioned by the Office dated 2 March 2017. They also only concern the amendments which have been referred to the Office and not the Bill as a whole.**

*Clause 2:*

Amendments are acceptable from the perspective of international standards on freedom of expression, particularly on freedom of the media, inasmuch as the phrase “includes any person who owns or control facilities for the production or reproduction of any printed matter” is now omitted as part of the definition of publisher. The reference to editorial control which is proposed is sufficient for the purposes of the definition and therefore this last sentence is not needed.

*Clause 11:*

New sub-clause 4 is acceptable from the perspective of international standards on freedom of expression, particularly on freedom of the media. It is suggested to also keep the legal cap regarding civil compensations.

*Clause 12:*

Changes in requirements of Minister’s regulations vis-a-vis posts on websites constitutes an improvement on the earlier draft. However, it is advised to introduce a reference to the need for a court decision in cases of removal or other restrictive measures imposed on website editors.

*Clause 19:*

The criterion of “over 18 years”, which was contained in the previous version of the Bill, was incompatible with various international standards, including those on freedom of expression. “Legal capacity” may be acceptable as a criterion for holding the position of an editor.

However, the Office reiterates that residency is not an acceptable criterion for holding the position of an editor, as indicated in the legal review of 2 March 2017.

Deletion of references to websites is also a positive proposal. The proposal to make registration optional is also welcomed inasmuch as the legal text clearly states that no punishment or difference in legal treatment will derive from non-registration.

New wording of sub-clause 3 needs to clarify that press cards will only be required when justified by reasons of public interest (in order to avoid any interpretation in the sense that this is a requirement for the exercise of the rights to freedom of expression and freedom of information). In addition, it is difficult to understand why the public authority issuing a press card would be the one in charge of communicating information on journalists and media outlets to third parties. This information would better be available by imposing transparency requirements on media outlets. If such a provision is maintained, the Bill should better specify the cases and reasons that would justify such communication.

*Clause 20:*

The introduction of a public consultation as part the process of appointment of the Media Registrar does not solve the issue of direct appointment by the Government. Furthermore, references to the need to guarantee that the Media Registrar is and performs its functions as an independent entity have not been included. New provisions included in proposed sub-clause 4 do not seem sufficient for that purpose.

New functions for the Media Registrar as proposed in sub-clause 4.b) are acceptable from the perspective of international standards on freedom of expression, including freedom of media.

*Clause 21:*

The changes are acceptable from the perspective of international standards on freedom of expression, including on freedom of the media.

*Clause 22:*

It is welcomed.

*Clause 25:*

Proposals look acceptable from the perspective of international standards on freedom of expression, particularly on freedom of the media. This being said, it is advised to repeal all criminal provisions regarding defamation, libel and slander, even in cases that do not fall under the scope of the Defamation Act.

*Clause 27:*

Same concerns as in previous clause.