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**Opinion No. 993 / 2020**

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**EUROPEAN COMMISSION FOR DEMOCRACY THROUGH LAW**  
**(VENICE COMMISSION)**

**MALTA**

**ACT NO. XLII OF 2020  
TO AMEND LAWS WHICH REGULATE  
THE OFFICE OF THE OMBUDSMAN**

I assent.

(L.S.)

**GEORGE VELLA**  
**President**

7th August, 2020

**ACT No. XLII of 2020**

*AN ACT to amend laws which regulate the Office of the Ombudsman.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:-

**1.** The short title of this Act is the Various Laws relating to the Office of the Ombudsman Act, 2020. Short title.

**PART I**  
**Amendments to the Constitution of Malta**

**2.** This Part amends the Constitution of Malta and it shall be read and construed as one with the Constitution of Malta, hereinafter in this Part referred to as "the Constitution". Amendments to the Constitution of Malta.

**3.** Article 64A of the Constitution shall be amended as follows: Amendment of article 64A of the Constitution.

(a) sub-article (2) thereof shall be substituted by the following new sub-article:

"(2) The Ombudsman shall be appointed by the President acting in accordance with a resolution of the House supported by the votes of not less than two-thirds of all the members of the House:

Provided that notwithstanding the provisions of any other law, if the Resolution is not supported by the votes of not less than two-thirds of all the members of the House, the person occupying the office of the Ombudsman shall, in any circumstance, remain in office until the Resolution is supported by the votes of not less than two-thirds of all the members of the House:

Provided further that when a person who is not a member of the House is elected to be Speaker of the House, he shall not be treated as a member of the House for the purpose of establishing the majority required by this article."; and

(b) immediately after sub-article (2) thereof there shall be added the following new sub-articles:

"(3) The Ombudsman may at any time be removed or suspended from his office by the President, upon an address from the House supported by the votes of not less than two-thirds of all members of the House, requesting such removal on the ground 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, and the provisions of the proviso to sub-article (2) shall also apply for the purpose of establishing the majority required under this sub-article:

Provided that at any time when Parliament is not in session, an Ombudsman may be suspended from his office by the President acting in accordance with his own discretion for inability to perform the functions of his office or misbehaviour proved to the satisfaction of the President; but any such suspension shall not continue in force beyond two months after the beginning of the next ensuing session of Parliament.

(4) Subject to the provisions of this sub-article and without prejudice to sub-article (1), the Ombudsman may conduct any such investigation on his initiative or on the written complaint of any person having an interest who claims to have been aggrieved by any action as aforesaid, or where the person aggrieved has died or is for any reason unable to act for himself, of his heir or representative:

Provided that any Committee of the House may at any time refer to the Ombudsman any petition that is

before that Committee for consideration, or any matter to which the petition relates. In any such case the Ombudsman shall, subject to any special directions of the Committee, investigate the matters so referred, so far as they are within his jurisdiction and make such report to the Committee if he thinks fit:

Provided further that the Prime Minister may at any time refer to the Ombudsman for investigation and report any matter, other than a matter which is subject to judicial proceeding, which the Prime Minister considers should be investigated by the Ombudsman. Where, pursuant to this proviso, a matter is investigated by the Ombudsman, he shall report thereon to the Prime Minister, and may thereafter make such report to Parliament on the matter as he thinks fit:

Provided further that in the exercise of his functions, the Ombudsman shall not be subject to the direction or control of any other person or authority:

Provided further that if during or after any investigation the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General. Cap. 326.

(5) Any matter ancillary or incidental thereto or considered necessary or expedient for the carrying out of the function referred to in sub-article (1) shall be provided for by an Act of Parliament."

## PART II Amendments to the Ombudsman Act

4. This Part amends the Ombudsman Act and it shall be read and construed as one with the Ombudsman Act, hereinafter in this Part referred to as "the principal Act". Amendments to the Ombudsman Act.  
Cap. 385.

5. In article 18 of the principal Act, sub-article (6) shall be renumbered as sub-article (7) and immediately after sub-article (5) there shall be added the following new sub-article: Amendment of article 18 of the principal Act.

Cap. 326. "(6) If during or after any investigation the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General."

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Amendment of  
article 29 of the  
principal Act.

6. In sub-article (1) of article 29 of the principal Act, immediately after the words "at the first available opportunity." there shall be added the words "The said report shall, as soon as possible, be discussed during a dedicated parliamentary sitting."

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Passed by the House of Representatives at Sitting No. 366 of the 29th July, 2020.

CLAUDETTE BUTTIGIEG  
*Deputy Speaker*

RAYMOND SCICLUNA  
*Clerk of the House of Representatives*