

Coronavirus pandemic in the EU – Fundamental Rights Implications

Country: Malta

Contractor's name: The People for Change Foundation

Date: 4 May 2020

DISCLAIMER: This document was commissioned under contract as background material for a comparative report being prepared by the European Union Agency for Fundamental Rights (FRA) for the project “Coronavirus COVID-19 outbreak in the EU – fundamental rights implications”. The information and views contained in the document do not necessarily reflect the views or the official position of the FRA. The document is made available for transparency and information purposes only and does not constitute legal advice or legal opinion.

1 Measures taken by government/public authorities

1.1 Emergency laws/states of emergency, including enforcement actions

On 1st April 2020, the Maltese Government issued Legal Notice 115 of 2020, Declaration of a Public Health Emergency Order.¹ This Order, issued as delegated legislation under the strength of Article 14 of the Public Health Act which empowers The Superintendent to declare a public health emergency. The declaration gives Superintendent of Public Health wide-ranging powers to take any measures necessary to eliminate the threat of COVID-19. The media reported that the legal notice was issued with no prior public announcement.² The Act gives the Superintendent of Public Health, the power to take such measures she considers necessary to “reduce, remove or eliminate” the threat to public health. These measures could include segregating or isolating people, evacuating people from any area, preventing access to places, controlling the movement of any vehicle and ordering people to undergo medical examinations. The Superintendent is empowered under the terms of the Public Health Act, to order that any substance or object be destroyed, among any other actions she may deem appropriate. Any person who does not comply with any direction issued by the superintendent shall be guilty of an offence. She also has the power to regulate the occupancy of premises to prevent overcrowding. The measures of this Legal Notice are retroactive to 7th March.³ The media reported that it is not known why Malta had waited so long to implement the Public Health Emergency measure, and that questions to the Health Ministry had been left unanswered.⁴

With regard to enforcement of particular measures, orders are also accompanied by Legal Notices which enforce the various measures. Legal Notice 96 of 2020, the Enforcement of the order relating to Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Regulations which came into force on 23rd March 2020, provides that any person who fails to abide by the provisions of the Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Order shall be guilty of an offence and will be liable to the payment of a penalty of €3, 000⁵. Legal Notice 98 of 2020, the Enforcement of the Order relating to Self-Isolation of Diagnosed Persons Regulations, of 23rd March provides that any person who fails to abide by the provisions of the Self-Isolation of Diagnosed Persons Order shall be guilty of an offence and shall, on conviction, be liable to the payment of a penalty of €10, 000⁶. Legal Notice 100 of 2020, the Enforcement of the order relating to Suspension of Organised Events Regulations⁷ also provides for a penalty of €3, 000 for any person that breaches the Suspension of Organised Events Order. Finally, on 30th March, Legal Notice 113 of 2020 was issued, the Enforcement of the Order relating to the Number of Persons in Public Spaces

¹ Legal Notice 115 of 2020, [Declaration of a Public Health Emergency Order](#), 1 April 2020.

² Times of Malta, [Public health emergency declared over COVID-19](#), 4 April 2020.

³ Legal Notice 115 of 2020, [Declaration of a Public Health Emergency Order](#), 4 April 2020.

⁴ Times of Malta, [Public health emergency declared over COVID-19](#), 4 April 2020.

⁵ Legal Notice 96 of 2020, [Enforcement of the Order relating to Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Regulations](#), 23 March 2020.

⁶ Legal Notice 98 of 2020, [Enforcement of the Order relating to Self-Isolation of Diagnosed Persons Regulations](#), 23 March 2020.

⁷ Legal Notice 100 of 2020, [Enforcement of the Order relating to Suspension of Organised Events Regulations](#), 23 March 2020.

Regulations. They provide for a fine of €100 for any person who breaches the Number of Persons in Public Spaces Order.⁹

1.2 Measures affecting the general population

1.2.1 Social distancing

Focus on:

- *Stay at home orders and physical distancing when outside the house*

In **Malta**, the government passed a Legal Notice on the 28th March 2020, stating that the Superintendent of Public Health orders that categories of persons specifically listed in the notice, referred to as ‘vulnerable persons’, are to remain “segregated” inside their residence. Persons of 65 years of age or over; pregnant women; persons suffering from chronic illnesses and, or medical conditions, shall limit the period outdoors to the least time possible and shall always exercise social distancing. The provisions state that this measure shall not apply if the persons need to leave their residence to attend to any essential or urgent personal matter. However, the Legal Notice does not provide a penalty if a vulnerable person breaches this Order.¹⁰

Moreover, the government passed a Legal Notice on the 30th March 2020 to regulate the number of persons in public spaces. The Superintendent of Public Health orders that groups of more than three persons are prohibited including in queues and bus stops. The provisions specify that the prohibition shall not apply if the persons live in the same residence and if the persons waiting in queues or on bus stops keep a distance of two metres between them.¹¹

- *Enforcement and penalties*

Since the outbreak began, Maltese authorities have implemented a number of legal measures to help prevent the spread of the virus. For this reason, law enforcement officers have stepped out of their daily routine to help out wherever it was needed. In fact, the Police have been carrying out regular spot-checks to enforce measures related to combatting Covid-19.

Police officers together with environmental health officers from the health authorities have carried out over 27,000 inspections on mandatory quarantine and have issued 81 fines to people who were found in breach of these regulations. Violating mandatory quarantine rules carries with a €3000 fine. A penalty of €10,000 may be imposed if an individual who tested positive for the virus is found in breach of mandatory quarantine. To date, 10 contraventions were issued after ‘positive’ individuals were found not adhering to their quarantine obligations. Moreover, the Police have also been busy enforcing the order regulating the number of people in public spaces. As of 14th May 2020, 1408 people have been fined €100 for being found in groups of more than 4 people. Law enforcement is also carrying out regular inspections on establishments to ensure that those shops which were ordered to close remained so. So far, 34 establishments have been found open and were fine €3000 each.

⁹ Legal Notice 113 of 2020, [Enforcement of the Order relating to the Number of Persons in Public Spaces Regulations](#), 30 March 2020.

¹⁰ Legal Notice 111 of 2020, [Protection of Vulnerable Persons Order](#), 28 March 2020.

¹¹ Legal Notices 112 of 2020, [Number of Persons in Public Spaces Order](#), 30 March 2020.

1.2.2 Education

Focus on:

- *Ensuring continuity of education for children from socioeconomically disadvantaged backgrounds, including measures to ensure distance learning for this group*

In **Malta**, around 500 students in need were being given their lunch for free by their respective schools under the Scheme 9 Programme.¹² According to a press release from the Ministry for Education and Employment on the 7th April 2020, Minister for Education and Employment Owen Bonnici announced that necessary arrangements have been made for the children on Scheme 9 in light of school closures. Lunches are delivered to the doorsteps of the homes of the children.¹³ On 14th April, the Minister announced during an online press conference that 250 students on Scheme 9 will also be receiving the provision of free internet access with an investment of €40,000, stating that: “Internet access is crucial during the current time, where most educational services are being offered online”. According to the press release, the Ministry will also provide a free computer or tablet to students in need, for the duration of this period in which schools are closed.¹⁴ The goal is to enable students to continue their studies. However, according to the Covid-19 Info Page of the Government of Malta, this scheme is tied to those who are on Scheme 9.¹⁵

Moreover, since the closure of the schools, classes are conducted remotely. In a press release on the 3rd April 2020, Minister Owen Bonnici encouraged educators to continue with this process, stating that they request support through the dedicated website and helplines.¹⁶ On 17th April, the Ministry announced that free online lessons will also be offered to parents and educators, “in order to turn the present situation into an opportunity and further their educational pathway”.¹⁷ According to the press release, these lessons will be delivered by the Institute for Education and divided into two groups, (online lessons for educators and lessons for parents), with the aim of covering a variety of subjects, such as how to help children become more independent and responsible for their work, as well as an additional focus on children with autism. Those who are interested must apply online, and the courses begin in April and will continue until June 2020.¹⁸ On 28th April 2020, the media reported that the Ministry has launched a new online resource site for both educators and parents who are helping children with e-learning. *Teleskola.mt* is a portal which includes 1,000 lessons and activities for students from early ages up until the end of secondary school. The media reported that the Minister has also announced that parents whose children suffer from dyslexia can make use of this portal in order to communicate with experts to help them. He highlighted that this site is “an open source meaning that everyone has the ability to access these lessons and also make suggestions for adjustment”.¹⁹

¹² “Scheme 9 is a government scheme to help students facing socio-economic problems, such as being at risk of poverty or social exclusion and providing them aid to improve their education and quality of life”, cf. The Malta Independent, [Government to provide internet connection, laptops to students who lack technological resources](#), 1 April 2020.

¹³ Government of Malta, [Press release by the Ministry for Education and Employment](#), 7 April 2020.

¹⁴ Government of Malta, [Press release by the Ministry for Education and Employment](#), 14 April 2020.

¹⁵ Government of Malta, [Covid-19 Info Page](#), 14 April 2020.

¹⁶ Ministry for Education and Employment, [Digital Literacy Malta](#); Government of Malta, [Press release by the Ministry for Education and Employment](#), 3 April 2020.

¹⁷ Government of Malta, [Press release by the Ministry for Education and Employment](#), 17 April 2020.

¹⁸ Government of Malta, [Press release by the Ministry for Education and Employment](#), 17 April 2020

¹⁹ The Malta Independent, [Teleskola.mt – Education Ministry launches new online recourse site](#), 28 April 2020.

Finally, on Tuesday 21st April 2020, the media reported that €15,000 from the Individuals Investment Programme²⁰ will be used to help students who are facing financial difficulties with online learning. The Parliamentary Secretary for Citizenship and Communities, Alex Muscat, stated during a press conference that “what we believe in is that no children coming from a disadvantaged financial background should find themselves in a position where they cannot keep learning”. This donation is one of multiple financial aid that have been given to the Education Ministry after a call for funding made the previous week. Minister Owen Bonnici had also affirmed that he is giving up a month of this salary and that five companies have already reached out following the call to make donations in order to support this measure. The media also reported that the Minister explained that these donations will be used for students in need, not only students under Scheme 9, but also other families who have reached out for help in this regard.²¹

1.2.3 Work

Focus on:

- *People in precarious work*
- *Measures related to ‘essential workers’ and those already returning to work, e.g. what is identified as an ‘essential’ function, physical distancing measures in the workplace, relaxing restrictions on working hours, additional financial support*

In **Malta**, the government passed a Legal Notice to order the closure of non-essential retail outlets and outlets providing non-essential services, which came into force on the 23rd March 2020.²² The enforcement of the Order relating to Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Regulations, 2020 states that “any persons who fails to abide by the provisions of these regulations shall be guilty of an offence and shall, on conviction, be liable to the payment of a penalty of 3,000 euro for each and every occasion in which that person breaches the Order”.²³

According to the statement by the Office of the Deputy Prime Minister and Ministry for Health on the 22nd March 2020, the closure of non-essential outlets relates to the selling of clothing, jewellery, perfumeries, hobby shops, furniture, florists, etc. These shops however may still sell and provide delivery services of their products. The closure of outlets providing non-essential services for its part concerns hairdressers, beauticians, and tattooists. A specific list of ‘non-essential outlets’ is provided on the Covid-19 Info Page by the Government of Malta.²⁴

On the 1st April 2020, the Government affirmed that the Department for Industrial and Employment Relations is the regulator ensuring that wages and work conditions are being safeguarded. First, the Department needs to identify all those companies which cannot retain the usual wages and normal

²⁰ The Programme is made to grant the citizenship by a certificate of naturalization for individuals and their families in return for their contribution to the economic development of Malta. The applicants must, among other things, make a contribution of 650,000 euro to the Maltese Government. See: [The Individual Investor Program](#)

²¹ The Malta Independent, [Coronavirus: 15,000 euro IIP scheme donation to students with no access to online learning – Alex Muscat](#), 21 April 2020.

²² Legal Notice 95 of 2020, [Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Order](#), 23 March 2020.

²³ Legal Notice 96 of 2020, [Enforcement of the order relating to Closure of Non-Essential Retail Outlets and Outlets Providing Non-Essential Services Regulations](#), 23 March 2020.

²⁴ Government of Malta, <https://covid19malta.info/>, 22 March 2020.

conditions for their employees. Following such identification, a financial aid package of €800 as a wage supplement is provided to affected employees. However, employers have also committed to contribute, depending on the salary amount for each employee. A helpline managed by the Department has been launched to assist all those employees and employers with queries about work conditions, quarantine leave, payment rates, reduced hours, unpaid leave, forced leave and collective redundancies.²⁵

On the 17th April 2020, according to the press release by the Ministry for the Economy, Investment and Small Businesses, 17,000 businesses applied for the Covid-19 Wage Supplement through which 77,000 jobs are to be saved. During the virtual press conference, Malta Enterprise CEO, Kurt Farrugia, explained that via email, applicants are receiving a list of individual amounts for each employee that is eligible for the supplement. Applicants then decide whether they agree with that amount. In case of a partial acceptance or an unfavourable reply by Malta Enterprise, the applicant can contest the decision by providing more information, supported with evidence. Kurt Farrugia added that fair and just feedback is provided to the applicants.²⁶

Moreover, persons who have lost their employment, or temporarily suspended from work and self-employed persons whose income has stopped or decreased, as well as individuals who are experiencing domestic violence, can access a rent benefit that covers up to 80% of the rent by an application to the Housing Authority. According to the Covid-19 Info Page of the Government of Malta, this measure aims at safeguarding the right of families to have a roof over their heads.²⁷

On 30th April 2020, it was announced that the wage supplement had been extended and would continue until the end of June. Economy Minister Silvio Schembri said in a press statement, that more than €25 million has been disbursed so far as part of the COVID-19 wage supplement, which has contributed to 87,808 jobs being saved.²⁸

In an interview conducted by the media, Opposition Leader Adrian Delia criticised the economic measures taken by the government. He said that the government has been selective and that choosing which parts of the population to aid financially would amount to social injustice. He mentioned, for instance, the real estate sector. "These are people who do not live from pay cheque to pay cheque but from commission cheque to commission cheque (...) There are 172,000 employees (including self-employed) and only 50,000 to 60,000 were given assistance or aid. So that is 110,000 employees who to date, have been left alone".²⁹

There are not measures specific aid provided to people in precarious work. The measures taken by the government do not focus on people in precarious work but more on precarious field of business; there is no mention of specific aid provided to certain categories of workers. The wage supplement may concern all individuals who suffer from the closure of outlets and the shutdown of professional activities. However, in **Malta**, according to the European Commission, with regard to third country nationals, it is only provided that:

²⁵ Government of Malta, <https://covid19malta.info/>, 1 April 2020.

²⁶ Government of Malta, [Press release by the Ministry for the Economy, Investment and Small Businesses](#), 17 April 2020.

²⁷ Government of Malta, [Covid-19 Info Page](#), 16 April 2020.

²⁸ Malta Today, [Coronavirus wage supplement extended to May and June](#), 30 April 2020.

²⁹ The Malta Independent, [Indepth: Being selective in who to support financially amounts to social injustice – Delia](#), 19 April 2020.

“All enterprise that terminate the employment contract of one of their employees shall be prohibited from offering an employment contract to third country nationals; only applications for highly-skilled third country nationals shall be considered; and Third country nationals whose employment has been terminated shall be provided assistance in order to find alternative employment”.³⁰

1.2.4 Access to justice

Focus on:

- *Restrictions to court proceedings (e.g. adjournment of proceedings, written procedures, extension of deadlines, determination of what constitutes ‘urgent cases’)*
- *Use of alternatives to detention*

In Malta, courts of justice were previously ordered closed and had suspended proceedings from 16th March, until further notice under Legal Notice 65 of 2020, Closure of Courts of Justice Order.³¹ This Order was amended through Legal Notice 97 of 2020, Closure of Courts of Justice (Amendment) Order. The Amendment in Article 3 changes Article of 2 the original legal notice to specify the affected “courts of justice” as “any of the courts of justice, that is the superior courts and the inferior courts including appellate courts irrespective of their competence or jurisdiction” and further established that this closure will affect the proceedings of the Industrial Tribunal, Employment Commission, Committee of Inquiry (Deprivation of Citizenship), Partition of Inheritances Tribunal, and the Information and Data Protection Appeals Tribunal. This Amendment further created the addition of suspension of time-limits for legal, judicial, and administrative filings under Article 4. Specifically, they have allowed that time-limits will be suspended for “any legal, judicial or administrative time-limit for the filing of any acts before the court following the conclusion of any proceedings before any Tribunal, board, commission, committee or other entity which does not operate from the building of the Courts of Justice, shall be suspended for a period of twenty (20) days from the lifting of the repeal of this order”.³² Courts of Justice in Malta do retain the power to hear cases deemed “urgent” under Legal Notice 61 of 2020, Epidemics and Infectious Disease (Suspension of Legal and Judicial Times) Order, 2020, which states in Article 3(2) that any order issued by the Superintendent of Health “shall not prejudice the power of any court to order the opening of its registry, the hearing of any case and anything consequential and incidental thereto in urgent cases or in cases where it deems that the public interest in having the case heard should prevail”.³³

Malta made further restrictions to court proceedings through the closures of local tribunals and suspension of their proceedings on 30th March under Legal Notice 119 of 2020, Closure of Local Tribunals Order, 2020. Article 3 of this Order provides for “the closure of the local tribunals and the registry with effect from the 30th March 2020, which order shall remain in force until it is revoked”. Article 4 provides for similar suspensions of time limits as Legal Notice 97 of 2020 with “Any legal, judicial or administrative time-limit for the filing of any acts before the local tribunals shall be suspended for a period of twenty (20) days from the lifting of the repeal of this order”. Article 5 provides for a suspension of any service of summons until “a period of ten (10) days from the lifting of the repeal of this order”.³⁴ On 3rd April, Malta additionally suspended the normal regulation

³⁰ The European Commission (Director General - Economic and Financial Affairs), Policy measures taken against the spread and [impact of the coronavirus](#), April 2020.

³¹ Legal Notice 65 of 2020, [Closure of Courts of Justice Order](#), 13 March 2020.

³² Legal Notice 97 of 2020, [Closure of Courts of Justice \(Amendment\) Order](#), 23 March 2020.

³³ Legal Notice 61 of 2020, [Epidemics and Infectious Disease \(Suspension of Legal and Judicial Times\) Order](#), 13 March 2020.

³⁴ Legal Notice 119 of 2020, [Closure of Local Tribunals Order](#), 1 April 2020.

regarding the delivery of summons through Legal Notice 138 of 2020, Local Tribunals (Suspension of Delivery of Summons) Regulations. Article 3(a) of this legal notice details that the procedure for the delivery of summons by an officer shall now be “Deliver and leave the summons at the last registered address of the person indicated on the summons, and this without the need to knock at the last registered address or to hand it over to the person summoned or to any other person.” In addition, Article 3(c) had added the procedure that “abstracts of the summons shall be published once in one daily newspaper, which abstracts shall contain the name and surname of the offender, a legally valid identification document number of the offender, the respective Local Tribunal where the sitting is going to be held, sitting date and time, and the regulation breached”. This change of procedure will continue until its suspension is lifted.³⁵

On 9th April 2020, Legal Notice 141 of 2020 was issued, the General Provisions applying to the Suspension of Legal and Judicial Times Regulations, which provide for the suspension of certain legally binding timeframes. The affected legal timeframes are stated in Article 3 (1) as legal timeframes “under any substantive or procedural law”, “decreed or otherwise ordered by any court, government department, government agency or public authority”, and “established in any agreement (whether a private writing or a public deed). Article 3(2) continues to state the first and second categories of affected legal timeframes will remain suspended “until seven (7) days following the lifting of the said order”. Article 3(3) adds that the third category of affected legal timeframes will remain suspended “until the twentieth (20th) day following the lifting of the said order”. Alternatives for non-urgent court proceedings to continue during the pandemic have not yet been established by Malta, but the Chamber of Advocates, a Maltese non-governmental organisation, composed of licensed lawyers in Malta, has made a comprehensive report listing proposals for addressing the continuance of court proceedings. This report has discussed the viability and use of “virtual court rooms” for allowing proceedings to continue, their function in different types of courts (appellate, criminal, etc.), and for the electronic adaption of other tertiary processes of the court system.³⁶

Finally, Malta has not put in place any alternatives to detention for detainees in Malta. The only measure put in place thus far is that the Health Minister, and Deputy Prime Minister, Chris Fearne, announced on 10th April that “plans are underway to transfer vulnerable prisoners to a more segregated area” to help prevent infection of said prisoners.³⁷ The Shadow Minister for Home Affairs of Malta, Beppe Fenech Adami remarked that options for alternate detention should be considered with the Minister suggesting “house arrest for prisoners approaching the end of their terms, with security provisions including electronic tagging”.³⁸

1.2.5 Freedom of movement

Focus on:

- *Closure of borders/restrictions on movement within the EU and categories of people allowed to enter the Member State (including EU citizens, legally-residing third country nationals and their families, asylum applicants)*

³⁵ Legal Notice 138 of 2020, [Local Tribunals \(Suspension of Delivery of Summons\) Regulations](#), 3 April 2020.

³⁶ Legal Notice 141 of 2020, [General Provisions applying to the Suspension of Legal and Judicial Times Regulations](#), 9 April 2020.

³⁷ The Malta Independent, [Coronavirus: Prisoners to be transferred, guards living at the prison](#), 11 April 2020.

³⁸ Times of Malta, [PN suggests temporary prisons to ease overcrowding and virus risk at Corradino](#), 26 March 2020.

- *Special provisions for cross-border commuters (especially health and care workers) or other workers from neighbouring non-EU countries*

Malta closed their borders for travel purposes from the 21st of March through Legal Notice 92 of 2020, Travel Ban (Extension to all Countries) Order, 2020. This travel ban is an extension of a previous travel ban (Legal Notice 42 of 2020, Travel Ban Order). The previous ban, which was issued on 12th March, prohibited travel from France, Germany, Italy, Switzerland, Japan, Spain, South Korea, China, Singapore, and Iran.³⁹ The second travel ban, Legal Notice 92, extended that ban under Article 2 to “persons to Malta and from Malta to and from all countries”. This Order provides exemptions for flights to or from Malta under Article 2(a) under the categories of “cargo flights, ferry flights, humanitarian flights, and repatriation flights”. Article 2(b) provides further exemptions for travel to Malta by “cargo ships including container ships and ro-ro vessels carrying goods and essential commodities and tankers loaded with essential fuels are exempted from this order”. Lastly, Article 2(c) provides that the Superintendent of Health of Malta can provide for an exemption from this Order if “in the opinion of the said Superintendent of Public Health, the travel of certain persons or goods is deemed to be essential.”⁴⁰ On 30th April, this ban was further extended by the Superintendent of Public Health, until 30th May.⁴¹

Malta does not have regular cross-border commuters within its workforce, but does have a significant foreign workforce. Foreign workers who found themselves unable to leave Malta have been offered participation in a voluntary repatriation scheme from the Ministry for Foreign Affairs. Malta announced this scheme on 9th April, and had previously already repatriated, at a subsidized cost, 4206 individuals. This scheme allows for anyone who had been living in Malta for “employment, education and family reasons, among others” to apply by April 19th for a heavily subsidised flight that will only see the individual pay a “nominal fee”.⁴²

Malta has also internally restricted travel between the two main islands of Malta, Malta and Gozo. Malta has limited use of the ferry between the two islands through Legal Notice 118 of 2020, Mandatory Non-essential Travel between Malta and Gozo Order, 2020. Article 2 of this order, which came into force on 3rd of April, restricts the use of the ferry to travel between the islands only for individuals who “persons who need to travel between Malta and Gozo for work”, “persons who need to travel to visit members of the family”, and for “persons who need to travel between Malta and Gozo for medical reasons or to visit a member of the family who is hospitalized”. This Order provides for further exemption for use of the ferry under the same article for “commercial vehicles and merchandise” and for “provided further that a person may travel between Malta and Gozo to return to his ordinary residence”.⁴³

One group who has faced significant challenges to entering **Malta** are refugees and asylum seekers attempting to enter the territory irregularly by boat from North Africa. This situation has been further augmented by the restrictions imposed due to the COVID-19 virus. The first of such challenges in this period was reported on 9th April, after the Armed Forces of Malta (AFM) rescued one large group of migrants on a boat within the Maltese Search and Rescue Zone (SAR) which was then followed by an announcement from the Government, that **Malta** is not in a position to guarantee the rescue of

³⁹ Legal Notice 42 of 2020, [Travel Ban Order](#), 12 March 2020.

⁴⁰ Legal Notice 92 of 2020, [Travel Ban \(Extension to all Countries\) Order](#), 20 March 2020.

⁴¹ Times of Malta, [Flight ban extended to end of May](#). 30 April 2020.

⁴² Ministry for Foreign and European Affairs, [Government announces voluntary repatriation assistance scheme for all foreign nationals](#), 9 April 2020.

⁴³ Legal Notice 118 of 2020, [Mandatory Non-essential Travel between Malta and Gozo Order](#), 1 April 2020.

prohibited immigrants on board of any boats, ships or other vessels, nor to ensure the availability of a “safe place” on the Maltese territory to any persons rescued at sea.⁴⁴ The NGO Alarm Phone, acting on information received from migrants in one of the boats, accused the AFM of having a ship approach the migrant boat and then proceed to leave, and another AFM ship returning only to attempt to cut the electrical cord to their engine and leave afterwards.⁴⁵ Two days prior, NGO Sea Eye ship *Alan Kurdi* rescued 150 migrants from sea and began searching for a port to disembark their rescued migrants at, but Malta declined to allow permission for the ship to disembark.⁴⁵

On 11th April, the Office of the Prime Minister refused to deny these claims.⁴⁶ when questioned by the media on the validity of claims of sabotage by the AFM towards the migrants’ boat engine NGO Alarm Phone reported on 12th April that two boats carrying migrants were still stranded within the Maltese SAR with one boat reporting to the NGO that they had been drifting for over two days, taking in water, and having run out of food, water, and fuel. “*We are ready to intervene should a boat be in dire need*” *an unnamed AFM source said to the Times of Malta on the 12th April 2020.*⁴⁷ On 15th April, five bodies were recovered whilst migrants also reported seven missing to the IOM on a boat that had been within the Maltese SAR. The migrants were rescued by a Libyan fishing ship that returned them to Libya.⁴⁸

After the rescue, the Malta Authorities issued a press release that explained their actions and contested the fact that the boat was left floating in the Maltese SAR, meaning that the boat was not left adrift inside Malta’s SRR but actions were taken to coordinate the rescue. Malta stated that once the location of the boat was confirmed and was confirmed to be in the Maltese SAR, the AFM “called nearby vessels to assist”, of which one commercial vessel arrived to assist and a Libyan fishing vessel arrived afterwards to pick up the migrants.⁴⁹ On 16th April, concern was raised by the UN and IOM that the migrants rescued in the Maltese SAR were returned to a Libya considering its status as an “unsafe port”⁵⁰. On the same day, Maltese civil society organisation, Republika, filed a police report against AFM soldiers for the reports over the previously mentioned accusation that AFM officials cut the line of their engine and told the migrants that nobody wanted them in Malta. Republika stated that “If these allegations are true, then the actions taken by one or more members of the crew of P52, or the whole crew itself, would amount to attempted homicide”. The NGO filed a second police report against Prime Minister Robert Abela and AFM colonel Jeffrey Curmi for “for their inaction after being informed that people were at sea at risk of dying”⁵¹. This criminal complaint further developed on 21st April as Republika introduced new evidence that when AFM soldiers approached the vessel, they did not cut the engine line, but rather asked the migrant operating it to pull the kill switch. This new evidence appears to show that the alleged sabotage was merely a rescue procedure adopted during rescue operations.⁵²

⁴⁴ The Malta Independent, [Malta accepts group of rescued migrants, but says it will not allow more disembarkations](#), 9 April 2020.; The Associated Press, [Malta rescues 70 migrants, suspends rescues due to virus](#), 10 April 2020; The New York Times, [Malta Accused of Sabotaging Migrant Boat](#), 9 April 2020.

⁴⁵ InfoMigrants, [150 migrants rescued in Mediterranean by Alan Kurdi](#), 7 April 2020.

⁴⁶ Times of Malta, [OPM refuses to deny claims that AFM sabotaged migrant boat](#), 11 April 2020.

⁴⁷ Times of Malta, [‘We are dying’ migrants adrift in Maltese waters - Archbishop calls for rescue](#), 12 April 2020.

⁴⁸ Times of Malta, [Five migrants found dead in boat stranded in Maltese waters](#), 15 April 2020.

⁴⁹ Government of Malta, [STATEMENT BY THE GOVERNMENT OF MALTA](#), 15 April 2020.

⁵⁰ The Malta Independent, [Malta left migrants to die of thirst; people returned to ‘torture and rape,’ NGO says](#), 16 April 2020.

⁵¹ Malta Today, [Repubblika ask police to investigate army's alleged sabotage of migrant boat](#), 16 April 2020.

The Government of Malta faced further accusations on 25th April when the Times of Malta published an exposé that accused the Government of Malta of orchestrating the return of the migrants to Libya through a fishing vessel registered in Libya, but owned by a Maltese national. Times of Malta cites a government source as stating that this using manoeuvre to return the migrants to Libya was “a convenient way around the rules”.⁵³ Malta was responsible for rescuing an additional group of migrants who were stranded in their SAR on 29th April, with NGO Alarm Phone reporting a group who numbered 60 migrants.⁵⁴ These migrants were rescued the next day (30th April) by a Maltese fishing trawler after the Maltese government asked for it to intervene. The Government of Malta made a statement afterwards that these migrants would not be allowed to disembark from their boats to Malta as a consequence of the closure of ports because of the COVID-19 pandemic. The Malta Independent cited government sources stating that “while Malta had rescued the migrants, it cannot take them in. In view of this, arrangements were made with a private company to keep the migrants on one of its vessels off the Maltese coastline”.⁵⁵ On the same day, it was announced the migrants would be transferred to a different private vessel, chartered by the Maltese government, and rest their anchored just outside Maltese territorial waters until a further solution is found.⁵⁶ A magisterial inquiry was also held 30th April into the aforementioned criminal complaint filed by Repubblika that produced a statement by a former government official of Malta, Neville Gafa, who stated that he had been contacted by the Maltese Office of the Prime Minister to assist with the situation involving migrants in the Maltese SAR between 12th April and 15th April. Neville Gafa stated to an online newspaper in response to the news of the inquiry that “I confirm that on Easter Sunday and the following days, I was involved in a mission so that a boat of 51 irregular immigrants, be taken to a port in Tripoli. The boat also had five dead bodies,”.⁵⁷ The New York Times released an investigative report on 30th April into the same incident further expanding that Mr. Gafa was selected by the government for his connections to Libya and that 3 vessels were used in coordination rather than the initially listed singular “commercial vessel” written in previous governments press releases and news reports. One of the reported commercial vessels involved in the operation, *Dar Al Salam 1*, was also the vessel reported to have rescued the migrants on 30th April. .⁵⁸

1.3 Impact of measures on particular groups

Select the three most relevant groups from the following:

- *persons with disabilities,*
- *homeless people,*
- *older people (which should include older persons in institutions),*
- *Roma and Travellers (FRA would like to see this group covered in those Member States with significant Roma populations)*
- *detainees*
- *or another group not listed that have immersed in your country as facing particular challenges - before selection, this should be discussed with FRA.*

⁵³ Times of Malta, [How a Maltese fishing boat pushed migrants back to Libya](#), 25 April 2020.

⁵⁴ Times of Malta, [62 migrants adrift in Malta's search and rescue zone, NGO says](#), 29 April 2020.

⁵⁵ The Malta Independent, [Updated: Migrants rescued, to be kept on private vessel off Maltese coast](#), 30 April 2020.

⁵⁶ Malta Today, [Rescued migrants to be kept on Captain Morgan vessel outside territorial waters](#), 30 April 2020.

⁵⁷ Malta Today, [Malta government asked Gafà to coordinate migrant pushbacks to Tripoli](#), 30 April 2020

⁵⁸ New York Times, [Latest Tactic to Push Migrants From Europe? A Private, Clandestine Fleet](#), 30 April 2020.

Malta has made several measures related to the protection of and care for senior individuals during the COVID 19 pandemic. On 28th March, Legal Notice 111 of 2020 was passed, the Protection of Vulnerable Persons Order, which quarantined several classes of vulnerable persons to their homes for their protection against the COVID-19 virus. The Order states in Article 2(1) that “those categories of persons specifically listed in sub-article (2), hereinafter referred to as ‘vulnerable persons’, are to remain segregated in their residence”. Article 2(2)(a) continues to list as one of the aforementioned specific category of “persons of sixty-five (65) years of age or over” as one of the groups to be quarantined in their homes. These individuals are only allowed to leave their homes to “attend medical appointments, obtain medical care or treatment, acquire food, medicine, other daily necessities, or to attend to any other essential or urgent personal matter” as stated in Article 2(3). Individuals affected by this measure can be exempt under Article 2(2) if they are a person who “occupies a public office, is a Member of Parliament, employed in the health services sector or is a healthcare professional, and, or, who occupies an essential headship position”.⁵⁹ To help accommodate and aid those affected by the Order, the Local Enforcement System Agency has helped distribute medicine and other supplies to the homes of those affected.⁶⁰

The Government of **Malta** has additionally implemented measures specifically affecting older patients in Gozo. On 17th April, Steward Health Care Malta, a private corporation who runs Gozo General Hospital, transferred older residents from the geriatric wing of the Gozo General Hospital to a different facility to allow for further beds to be made available for COVID-19 patients. This transfer was accompanied with renovations made the previous weeks to allow for the inclusion of “new motorised beds and other mobility equipment ... with nurse call systems, storage of clinical and nonclinical supplies, and shower facilities for staff”. These changes were also accompanied by the assurance that “the residents will be looked after by the same hospital staff to minimise disorientation and ensure continuity of care”.⁶¹ On 23rd April, the Times of Malta published an article presenting criticisms for the quality of its living spaces in the hotel from the families of patients being cared for there. Criticisms ranged from accusations that “The rooms are too small for two patients,” to issues such as “the corridors and lift are also small. The building is a far cry from the good conditions at the hospital, and the move to such claustrophobic conditions has been traumatic for the elderly”.⁶² The Social Care Standards Authority, the relevant government agency for ensuring quality of care, responded to these criticisms with an investigation whose results were published in the Government Gazette on the 26th April. The results of this investigation found that the patients were receiving the same level of care as they previously received at Gozo General Hospital and that the facility was adequate and in line with previously established requirements, but as well issued several recommendations for improving the quality of life of patients residing there. They also announced that the Social Care Standards Authority will be making follow-up visits to ensure issues are addressed and if needed will “take the necessary action in the best interest of the older persons”.⁶³ On 10th April 2020, it was reported that the first case of the virus was found in an institutional setting for older people. The Superintendent of Public Health announced that a resident and two carers working in homes had contracted the virus, the older

⁵⁹ Legal Notice 111 of 2020, [Protection of Vulnerable Persons Order](#), 28 March 2020.

⁶⁰ Times of Malta, [Wardens distributing supplies to elderly and quarantined](#), 17 April 2020.

⁶¹ Times of Malta, [Transfer of elderly residents from Gozo Hospital complete](#), 17 April 2020.

⁶² Times of Malta, [Families ‘horrified’ by conditions at Gozo hotel](#), 23 April 2020.

⁶³ Government of Malta, [Press Release by the Ministry for the Family, Children’s Rights and Social Solidarity and by the Parliamentary Secretariat for Active Ageing and Persons with Disability: the Social Care Standards Authority issues the outcome of the Gozo hotel investigation](#), 26 April 2020.

⁶⁴ Times of Malta, [Resident and carers in elderly homes among 13 new coronavirus cases](#), 10 April 2020.

There is no further information about additional cases in these homes, and none of the mortalities have been cases in care homes.

The second particular group who has been affected in Malta is those with disabilities. Malta has introduced a measure related to the protection and care for individuals with certain disabilities during the reference period. Individuals with certain disabilities that make them more vulnerable to COVID-19 are affected under the same quarantine order as senior individuals, Legal Notice 111 of 2020, Protection of Vulnerable Persons Order.⁶⁵ There is no specific data available with regard to level of vulnerability, or reported cases of persons with disabilities.

The final particular group affected in Malta is refugees and asylum seekers residing in detention and open centres. So far, Hal-Far Open Centre has been under quarantine almost 4 weeks. On 5th April, the Health Ministry of **Malta** announced that the facility would be placed under a 14-day mandatory quarantine after authorities found among residents a cluster of 8 positive tests of COVID-19 during the previous 3 days. They also announced that the medical presence within the centre would be increased in coordination between health authorities and the Red Cross of Malta who operate a clinic within the centre.⁶⁶ Health Minister, Chris Fearne also announced that “the medically vulnerable who lived at the centre were being relocated for better protection and more focused care”.⁶⁷ On 15th April, the Ministry for Home Affairs opened a new health care facility in Hal Far Open Centre to help and assist in the handling of COVID-19 cases among residents by enabling an additional 150 people to observe mandatory quarantines before being returned to the general population. *The second facility run by the Malta Red Cross meant that the number of persons residing in the centre decreased by 20%.*⁶⁸ The Health and Home Affairs Ministry jointly announced on 17th April that the quarantine would be extended an additional 14 days after the expiration of the previous quarantine on 19th April.⁶⁹ The quarantine of the centre and management of the centre during this time has been subject to criticism from NGOs as well as the media. The Times of Malta reported on 10th April, that the centre was being insufficiently supplied with basic necessities and that “authorities had fallen short on their promises of soap and additional sanitary facilities.” Neil Falzon, director of NGO Aditus responded to the issue stating that the facilities in the centre were below standard hygiene and were posing a “public health risk”.⁷⁰ This issue was resolved the same day, after private citizens responded with financial donations to purchase the necessary essential sanitary products and arrange for their delivery to the Agency for Welfare of Asylum Seekers (AWAS) who manages the centre.⁷¹

⁶⁵ Legal Notice 111 of 2020, [Protection of Vulnerable Persons Order](#), 28 March 2020.

⁶⁶ Government of Malta, [COVID-19 Info Bulletin No. 25](#), 5 April 2020.

⁶⁷ Times of Malta, [Watch: Hal Far open centre residents placed under mandatory quarantine](#), 5 April 2020.

⁶⁸ Government of Malta, [Press Release by the Ministry for Home Affairs, National Security And Law Enforcement: New medical centre opens in Hal Far to better contain the spread of COVID-19 among the migrant community](#), 15 April 2020.

⁶⁹ Times of Malta, [Hal Far open centre lockdown extended for two more weeks](#), 17 April 2020.

⁷⁰ Times of Malta, [Lack of sanitation still a big issue at Hal Far open centre](#), 10 April 2020.

⁷¹ Times of Malta, [Hal Far residents to get sanitary products thanks to community fundraiser](#), 10 April 2020.

2 Users' data - privacy and data protection

2.1 Arrangements between public authorities and other actors to allow collection, sharing and processing of user data

There have been no further developments since the 20th March press release⁷² from the Office of the Information and Data Protection Commissioner, as reported in the previous reference period. There have been no reports of the sharing of users' data by telecom operators or other applications.

2.2 Legal framework enabling collection, processing, sharing and storage of user data

There have been three relevant changes to the legal framework enabling collection, processing, sharing and storage of user data during the reference period. There is no information publicly available as to whether the Office of the Information and Data Protection Commissioner was consulted on the amendments, or as yet, any information regarding how these legislative amendments have so far been implemented.

Legal Notice 107 of 2020, the Processing of Data concerning Health for Insurance Purposes (Amendment) Regulations was issued on 27th March 2020. The notice amends Regulation 4 of principal Regulations to read as follows: "4.(1) The processing of data concerning health shall be deemed to be in the substantial public interest when such processing is necessary for the purpose of the business of insurance or insurance distribution activities. (2) The processing referred to in this regulation shall be subject to the suitable and specific measures designed to safeguard the fundamental rights and freedoms of data subjects."⁷³ The amendment of these Regulations could allow for data specific to COVID-19 to be shared with insurance providers, for example, deeming it to be in the public interest. However, the amendment also adds the sub-article in reference to the fundamental rights and freedoms of data subjects, which takes into account possible fundamental rights issues with such data processing.

Also on 27th March 2020, Act No. XI of 2020 was enacted, an Act to amend the Re-Use of Public Sector Information Act. The amendment adds the following sub-article to Article 1 of the Act: "(3) This Act shall also apply to facilitate information sharing for public administration purposes in line with any law."⁷⁴ Article 24 of the Act was also amended, further regulating the procedure when a public sector body has not complied with the provisions of the Act, such as the issuing of an enforcement notice, and giving the public sector body 20 days to appeal against the proceedings.⁷⁵ This amendment is relevant in the context of the COVID-19 virus as it allows for the facilitation of the sharing of information held by public bodies for public administration purposes. However, it is not clear what such purposes could be at this stage. In addition, such legislation could be utilised by the police for the enforcement of quarantine measures, thus facilitating the sharing of health data between health services and police. The amendment is however made subject, in line with the broader act to the provisions of the Data Protection Act.

⁷² Office of the Information and Data Protection Commissioner, [Press Release: Processing of personal data in the context of COVID-19](#), 20 March 2020.

⁷³ Legal Notice 107 of 2020, [Processing of Data concerning Health for Insurance Purposes \(Amendment\) Regulations](#), 27 March 2020.

⁷⁴ ACT No. XI of 2020, [AN ACT to amend the Re-Use of Public Sector Information Act, Cap. 546.](#), 27 March 2020.

⁷⁵ ACT No. XI of 2020, [AN ACT to amend the Re-Use of Public Sector Information Act, Cap. 546.](#), 27 March 2020.

2.3 Privacy and data protection concerns and possible solutions

Concerns have been raised, as in other EU Member States, with regard to contact tracing applications. The media reported the concerns of the Maltese UN Special Rapporteur on the Right to Privacy, Prof. Joe Cannataci, who referred to smartphone and other contact-tracing apps as potentially being “amongst the most privacy-intrusive developments in technology in the last twenty years”.⁷⁶ Noting that Malta enjoys the safeguards and remedies offered by the GDPR Regulations, he affirmed that “the EU is seeking to ensure that all apps deployed in its territory comply with those standards of protection set out in the GDPR, which are, very literally, the highest in the world.” Stating that at present, the EU is generally only favouring apps which a citizen would download and use voluntarily, which adhere to the various required standards. He concluded the media interview by stating: “It’s the control-freak’s dream scenario and potentially a human rights nightmare,” adding “Extreme vigilance and careful scrutiny are required”.⁷⁷ Both the Deputy Prime Minister and the Superintendent of Public Health have made it clear in their public communications that Government will respect the provisions of the GDPR and that when Malta implements a contact tracing app, this will be privacy-preserving.⁷⁸

Political party Alternativa Demokratika (AD) has also highlighted concerns about contact tracing technology. Speaking in response to statements made at an Opposition Party press conference by Nationalist Party MP Ivan Bartolo in support of mass surveillance technology and wearable geolocation devices, spokesperson of AD, Ralph Cassar, stated that such measures were unnecessary. He added that there was already a spirit of cooperation from the public to control the pandemic, predicting that such measures would “breach the relationship of trust between health authorities and the public and may have long lasting repercussions.”⁷⁹

On 21st April 2020, the Maltese branch of Accountancy and Business Consultancy firm, RSM, published an article outlining the data protection implications of remote working. The article highlights that there are concerns with regard to GDPR and that there are some circumstances that may make organisations more vulnerable to breaches of data and constitute potential data security gaps. These include: “Violating the organisation’s guidelines by the employees on processing, storing or sending information, using inadequately secured private or mobile devices (with no antivirus software, out-of-date operating system software and applications, no encryption solutions, etc.) or using an unsecured Wi-Fi network (e.g. with no strong password); Having no back-up plan or alternative communication and work scenarios in the event that basic remote work resources (such as the VPN or communication platform) become unavailable (e.g. due to overload); Access by third parties to the company device or company sensitive documents (for example, family members / friends can use the device); Hardcopy material used at the remote worksite can be lost or stolen; Loss or theft of company device; Transferring documents and data carriers (e.g. from the office to home); Hindered access to people providing support on data protection (IT, DPO, Compliance Officer, etc.); and the employees having low awareness of threats related to personal data protection.”⁸⁰ The firm presented some possible solutions to mitigate these risks and remain compliant with GDPR Regulations. These include the creation of a remote work policy and procedure, creation of a remote data access policy, the

⁷⁶Malta Today, [Contact-tracing apps could be our Orwellian nightmare, says expert](#), 25 April 2020.

⁷⁷ Malta Today, [Contact-tracing apps could be our Orwellian nightmare, says expert](#), 25 April 2020.

⁷⁸ See for example: Malta Today, [Fourth death, one new case but recoveries push active cases down](#), 25 April 2020.

⁷⁹ Malta Today, [Greens call contact-tracing app ‘a totalitarian regime’s wet dream’](#), 25 April 2020.

⁸⁰ RSM Global: Malta, [COVID-19 – Remote Working and Data Protection Implications](#), 21 April 2020.

encryption of devices, pseudonymised or encrypted data transfer, the establishment of a clear notification procedure of data breach incidents and education and awareness for employees on data security issues.⁸¹

2.4 Any other privacy and data protection concerns

On 7th April, Ganado Advocates published an article on the data protection concerns with regard to workplace screening for COVID-19. The article states that although the interest of an employer to conduct COVID-19 symptom screening is clear, there are data protection implications and possible restrictions that should apply. For instance, the receipt of the outcome of a test result would include the processing of personal data, and therefore applicable data protection rules would need to be observed. In the context of positive test results, this would, in particular, constitute processing of health data, which itself is listed in the General Data Protection Regulation (“GDPR”) as being a special category of personal data and is subject to a higher level of protection. The article states that in addition, in the case of positive test results or suspected infections, there are potentially further data protection considerations, such as whether an employer should (or is permitted to) communicate the details of the infection to the rest of the workforce (including the identity of the affected employee). The article continues to outline the specifics with regard to health data and the GDPR, and whether health data can be collected in the context on COVID-19, also highlighting the aforementioned press release of the Information and Data Protection Commissioner. The article also discussed the concept of Duty of Care and how this relates to the pandemic, stating that employers have a general duty of care under Maltese law to ensure the health and safety at all times of its employees as well as any other individuals who may be carrying out work for that employer. This is enshrined in Article 6 of the Occupational Health and Safety Act (Cap. 424) and constitutes a foundational health and safety obligation for employers under our law.⁸²

⁸¹ RSM Global: Malta, [COVID-19 – Remote Working and Data Protection Implications](#), 21 April 2020.

⁸² Ganado Advocates, [COVID-19 Symptom Screening in the Workplace: Data Protection Implications and Restrictions](#), 7 April 2020.