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LAUNDERING MEASURES AND
THE FINANCING OF TERRORISM
(MONEYVAL)

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2nd REGULAR FOLLOW-UP PROGRESS REPORT

4th ROUND MUTUAL EVALUATION OF MALTA

DECEMBER 2015

Malta is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 49th Plenary meeting (Strasbourg, 8-11 December 2015). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 49th plenary at http://www.coe.int/moneyval.

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LIST OF ACRONYMS USED

ACR	Annual compliance report
AML/CFT	Anti-money laundering and combating the financing of terrorism
AMU	Asset Management Unit
ARB	Asset Recovery Bureau
C	Compliant
CC	Criminal Code
CMC	Compliance Monitoring Committee
DNFBP	Designated non-financial businesses and professions
ECS	Economic Crimes Squad
EU	European Union
FATF	Financial Action Task Force
FIAU	Financial Intelligence Analysis Unit
FIU	Financial Intelligence Unit
ISIL	Islamic State of Iraq and the Levant
LC	Largely compliant
MER	Mutual evaluation report
MFSA	Malta Financial Services Authority
ML	Money laundering
NC	Non-compliant
NPO	Non-profit organisation
NRA	National risk assessment
PC	Partially compliant
PMLA	Prevention of Money Laundering Act
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
R	Recommendation
SR	Special Recommendation
STR	Suspicious transaction report
TF / FT	Terrorist financing / financing of terrorism
TF Convention	United Nations International Convention for the Suppression of the Financing of Terrorism
UNSCR	United Nations Security Council resolution

1. INTRODUCTION

1. The 4th round on-site visit to Malta took place from 29 May to 4 June 2011. MONEYVAL adopted the mutual evaluation report (MER) of Malta under the 4th round of assessment visits at its 38th Plenary meeting (March 2012).[1] At the same time, Malta was placed into regular follow-up on the basis of Rule 48 (a) of the Rules of Procedure, and was encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER, or very soon thereafter, though the Plenary retains discretion to allow further time where this is necessary.

2. As a result of the evaluation process of Malta, 25 Financial Action Task Force (FATF) Recommendations[2] were evaluated as "compliant" (C), 15 as "largely compliant" (LC), 9 as "partially compliant" (PC) and 0 as "non-compliant" (NC). Malta was rated PC in respect of the following Recommendations:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Recommendation 13 (Suspicious transaction reporting) Special Recommendation IV (Suspicious transaction reporting)
Key Recommendations rated PC (no Key Recommendations were rated NC)
Recommendation 3 (Confiscation and provisional measures) Special Recommendation III (Freeze and confiscate terrorist assets)
5 other Recommendations rated PC (no other Recommendations were rated NC)
Recommendation 16 (DNFBP R.13-15 and 21) Recommendation 17 (Sanctions) Recommendation 24 (DNFBP regulation, supervision and monitoring) Recommendation 25 (Guidelines and Feedback) Special Recommendation VIII (Non-profit organisations)

3. Malta reported back to the Plenary and provided information on actions it had taken or was taking to address the factors/deficiencies underlying any of the 40 + 9 Recommendations that were rated PC at the 44th Plenary (April 2014). On 27 November 2014 Malta submitted a second interim report for examination by MONEYVAL at the 46th Plenary meeting (December 2014) and on 27 March 2015 Malta submitted a third interim report for examination by MONEYVAL at the 47th Plenary meeting (April 2015). At that latter meeting, the Plenary agreed that Malta will fully report and make a request for removal from the regular follow-up by submitting a full fourth regular follow-up report for examination by MONEYVAL. At the 48th Plenary meeting (September 2015), it was agreed that the application will be heard at the 49th Plenary in December 2015. Malta submitted its full follow-up report on 28 October 2015.

4. This paper is drafted in accordance with the procedure for removal from the regular follow-up, following the request formulated by Malta to consider its application under the Rules of Procedure. The paper attached contains a detailed description and analysis of actions taken by Malta in respect of the Core[3] and Key[4] Recommendations rated PC in the MER (none of the core and key Recommendations were rated NC).

[1] See www.coe.int/MONEYVAL.
[2] It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.
[3] The Core Recommendations as defined in the FATF procedures are: R.1, SR. II, R.5, R.10, R.13 and SR.IV.
[4] The Key Recommendations as defined in the FATF procedures are: R.3, R.4, R.26, R.23, R.35, R.36, R.40, SR.I, SR.III, and SR.V.

5. The procedure requires that the country has an effective anti-money laundering and combating the financing of terrorism (AML/CFT) system in force, under which the State or territory has implemented the core and key recommendations at a level of or at a level essentially equivalent to a C or LC, taking into consideration that there would be no re-rating. The Plenary may retain some limited flexibility with regard to those Recommendations listed in paragraph 1 that are not core Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

6. As prescribed by the mutual evaluation procedures, Malta has provided the Secretariat with a full report on its progress. The Secretariat has drafted a detailed analysis of the progress made for the two Core Recommendations which were rated PC (R.13 and SR.IV) and the two Key Recommendations which were rated PC (R.3 and SR.III).

7. On a general note concerning all applications for removal from regular follow up: the procedure is described as a paper desk-based review, and by its nature it is less detailed and thorough than a mutual evaluation report. The analysis focuses on the Recommendations that were rated PC (none of the Core and Key Recommendations were rated NC), which means that only a part of the AML/CFT system is reviewed. Such analysis essentially consists of looking into the main laws, regulations and other material to verify the technical compliance of domestic legislating with the FATF standards. In assessing whether sufficient progress has been made, effectiveness is taken into account to the extent possible in a paper-based review and primarily through a consideration of data provided by the country. It is also important to note that these conclusions do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

2. MAIN CONCLUSIONS AND RECOMMENDATIONS TO THE PLENARY ON PROGRESS MADE SINCE THE 4TH ROUND MER

MONEYVAL Core Recommendations

8. As regards R.13 (Suspicious transactions reporting), the 2012 MER had identified three deficiencies, out of which one related to effectiveness concerns and two were legal gaps. Three recommendations have been made to address them. Malta has made important progress since the adoption of the 2012 MER by addressing the deficiencies identified under R.13, most importantly with regard to the criminalisation of terrorist financing (TF), which impacted on the reporting obligations. Amendments to the Criminal Code (CC) have clarified the legal provisions defining the TF offences and the relevant terms.

9. Several actions have also been taken to address the effectiveness concerns, in particular by organizing various trainings and awareness-raising events for subject persons and issuing sector-specific guidance. A comprehensive analysis of their implementation can only be undertaken during an on-site visit and is limited in the context of a desk-based review. Malta's current level of compliance with R.13 is assessed to be essentially equivalent to LC.

10. With respect to SR.IV (Suspicious transaction reporting), the 2012 MER had identified three deficiencies, out of which two were related to effectiveness concerns. Malta has addressed the deficiencies in the incrimination of TF and has taken additional

measures, notably organizing trainings and issuing guidance to strengthen the effective implementation of the requirements under SR.IV. However, it should be noted again that a comprehensive analysis of their implementation may only be undertaken during an on-site visit and is naturally limited in the context of a desk-based review. Malta's current level of compliance with SR.IV is assessed to be essentially equivalent to LC.

MONEYVAL Key Recommendations

11. Concerning R.3 (Confiscation and provisional measures), the Maltese authorities have reviewed their existing regime regarding provisional measures and confiscation. A working group was established and meetings were held between the various authorities concerned to review and assess the freezing and confiscation regime. As a result, amendments were introduced to the Prevention of Money Laundering Act (PMLA) to extend the timeframe of validity of attachment orders. This could mitigate the concern expressed in the 2012 MER that insufficient time periods are a factor in the limited use of attachment orders in domestic cases, it being understood that, within this desk-based analysis, practitioners' experiences and opinions could not be properly evaluated.

12. In addition, amendments to the CC were adopted, enabling the Minister for Justice to establish an Asset Recovery Bureau (ARB). The Bureau was established in October 2015. This development will ensure that a centralised unit shall be responsible for the tracing of proceeds of crime and for the identification, attachment, freezing, management and confiscation of such assets.

13. The measures undertaken have brought the level of compliance with R.3 to a level essentially equivalent to LC, although the extension of the validity period for attachment orders and the establishment of the ARB have yet to prove their practical value. In order to allow for future evaluations of the effectiveness of the regime, authorities are encouraged to strengthen their information position concerning the use of freezing, attachment and confiscation orders.

14. Concerning SR.III (Freezing and confiscating terrorist assets), Malta has taken measures which address several recommendations. The country has made progress with respect to guidance and communications, and has conducted several training initiatives for subject persons, including designated non-financial businesses and professions (DNFBPs). Moreover, measures aimed at desk-based and on-site monitoring of compliance by DNFBPs with financial sanctions obligations have been developed.

15. At the same time, Malta has not yet issued clear and publicly known procedures for de-listing and unfreezing. In relation to assets of EU internal terrorists, it is still not clear whether the legal framework in place would enable their immediate freezing, since no such assets have been identified in Malta so far. Notwithstanding these outstanding issues which will certainly deserve continuous attention in future reviews, it was concluded that most of the shortcomings for SR.III have been sufficiently addressed in order to reach a satisfactory level of compliance comparable to a "largely compliant"-rating.

Conclusion

16. The mutual evaluation follow-up procedures indicate that, for a country to have taken sufficient action to be considered for removal from the process, it must have an effective AML/CFT-system in force under which it has implemented all core and key recommendations at a level essentially equivalent to C or LC, taking into account that

there would be no re-rating. The remaining deficiencies on SR.III, notably the absence of clear and publicly known procedures for de-listing and unfreezing and the continuing lack of the practical use of the legal mechanism which would specifically require immediate freezing of funds of EU "internal" or "domestic" terrorists, still give rise for concern. This is especially in light of the current threats faced by the international community in relation to the financing of terrorism, such as in the context of ISIL. At the same time it must be taken into account that the country has progressed sufficiently in most of the areas mentioned above and that, according to the Maltese authorities, the freezing of funds of EU internal terrorists does not pose operational difficulties in practice.

17. Consequently, MONEYVAL decided at its 49th Plenary meeting that Malta should be removed from the follow-up and moved to the biannual update procedure.

3. OVERVIEW OF MALTA'S PROGRESS

National Risk Assessment

18. Since the adoption of the 2012 MER, the Government of Malta has commissioned a national risk assessment (NRA) to identify the money laundering and financing of terrorism (ML/FT) risks faced by Malta. The Financial Intelligence Analysis Unit (FIAU) was tasked with the coordination of the project that was initiated in November 2013, has managed to complete this study and is currently finalising the report and action plan that will be presented to the Maltese Government for eventual publication and implementation of the necessary mitigating measures.

19. The FIAU publishes in its Annual Report various ML/FT-related statistics and provides an account of the predominant typologies and trends noticed in cases it analysed. These cases were disseminated to the police for further investigation. The Annual Report of 2014 highlights the following typologies: the involvement of companies incorporated in Malta which are linked to foreign nationals; and the attempt to misuse services or products provided by credit institutions. The major proceeds-generating offences are not considered to have changed considerably since the 4th round MER (these were drug-related offences as well as other economic crimes such as fraud, misappropriation and undeclared income).

Legislative developments

20. Since the adoption of the 2012 MER, there have been various developments which are of particular relevance and aimed at strengthening the AML/CFT legal regime. These were notably the enactment of Legal Notice 464 of 2014, adopted on 16 December 2014 (Legal Notice 464 of 2014) amending the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) and Act III of 2015, adopted 20 February 2015 (Act III of 2015), which amended the PMLA and the Criminal Code. These amendments were mainly intended to address the shortcomings identified in the 2012 MER.

21. The Company Service Providers Act (CSPA, Chapter 529 of the laws of Malta), which regulates company service providers, was adopted on 24 December 2013. By virtue of the enactment of this Act, the provision of company services in Malta has been regulated and made subject to a licensing procedure carried out by the Malta Financial Services Authority (MFSA).

22. In addition, Act VIII of 2015 entered into force on 17 March 2015. This act amended the money laundering offence under the PMLA, introduced a heftier fine, increased the maximum term of imprisonment, and also clarified the provisions on corporate ML/FT liability. The same Act also introduced amendments to the confiscation and freezing regime.

23. The FIAU has continued to be active by publishing guidance and interpretative notes to assist subject persons in fulfilling their obligations under the PMLFTR. The FIAU has published the Implementing Procedures Part 1 (20 May 2011 – amended on various occasions), which is a general AML/CFT guidance note applicable to all subject persons, as well as three sets of sector-specific procedures (i.e. the Implementing Procedures Part II relative to the Banking Sector (18 November 2011 – amended), Legal Procurators (20 May 2015) and Land-Based Casinos (25 September 2015)).

24. Other guidance and interpretative notes were also issued by the FIAU to assist subject persons in dealing with specific risks and to provide interpretation on particular AML/CFT obligations. These include a guidance note on high-risk and non-cooperative jurisdictions (4 April 2012); an interpretative note on the AML/CFT obligations of professional firms (28 January 2014); and a guidance note on the Investment Registration Scheme 2014 (22 July 2014).

4. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE CORE RECOMMENDATIONS RATED PC

25. This section sets out the Secretariat's detailed analysis of the progress, which Malta has made in relation to the Core Recommendations rated PC.

Recommendation 13 – Suspicious transactions reporting (rating PC)

Deficiency 1: Deficiencies in the incrimination of TF might limit the reporting obligations.

Recommended action 1: Further clarification in the definition of terrorism financing is required.

Measures adopted and implemented: This deficiency has been fully addressed.

26. In the last MER, the evaluators considered that deficiencies in the incrimination of TF might limit the reporting obligations. It was considered unclear whether the interpretation of Article 328F CC would cover the financing of "legitimate activities" furthering terrorism as required under SR.II. The evaluators found that there was a lack of a clear provision to cover direct and indirect financing of terrorism, and that an additional mental element was present in Maltese law, which was not in line with Article 2(1) (a) of TF Convention.

27. Extensive amendments to the provisions under the CC which criminalise TF have been adopted. These amendments entered into force by virtue of the publication of Act III of 2015 and clarified the legal provisions which define the TF offences.

28. Firstly, with the amendments to Article 328B and 328F CC (replacement of sub-article (3) of Article 328B and sub-article (1) of Article 328F), the term "terrorist offences" was substituted with the term "terrorist activities", which covers financing of "legitimate activities" furthering terrorism. This legislative change has thus clarified that Article 328F covers financing of "legitimate activities" furthering terrorism, as required under SR.II.

29. Secondly, amendments to Articles 328B and 328F (replacement of sub-article (3) of Article 328B and sub-article (1) of Article 328F) CC have clarified that any direct or indirect contribution to a terrorist group or individual would constitute TF, irrespective of whether such funding contributes to the licit or illicit activities of the terrorist group or individual.

30. Thirdly, by virtue of the amendments to Article 328A CC and in particular the introduction of the term "terrorist activities" (introduction of a new sub-article (4) to Article 328A, which is then referred to in Articles 328B, 328E-328H), it has been clarified that the financing of terrorist acts (mentioned in the treaties which are listed in the Annex to the United Nations International Convention for the Suppression of the Financing of Terrorism, hereinafter the TF Convention) is regarded as financing of terrorism under Maltese law.

31. According to the 2012 MER, a mental element of TF was included in Articles 328F and 328H CC (a person who has a reasonable cause to suspect that money or property provided by him is to be used for the purposes of terrorism, shall be guilty of an offence). Difficulties arose from the language of Article 328A CC, which limited the financing of terrorism to acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328A (1) a), b) and c). The MER considered that the financing of the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention. The new amendments to the CC, described in previous paragraphs, clarify the interpretation of Article 328A.

Deficiency 2: The scope of reporting requirements relates to money laundering only, not to proceeds of criminal activity.

Measures adopted and implemented**:** This deficiency has been fully addressed.

32. This deficiency has been remedied by virtue of an amendment to Regulation 15(6) and 15(9) of the PMLFTR which establishes the reporting obligation for persons and entities subject to the AML/CFT obligations under the PMLFTR, as well as for supervisory authorities. These amendments, brought into force by the publication of Legal Notice 464 of 2014 on 16 December 2014, clarify that subject persons and supervisory authorities are not only required to report to the FIAU transactions and activities linked to ML or FT, but also funds that are known or suspected to involve proceeds of crime.

33. This amendment led to other ancillary amendments to the PMLA. One such amendment is to Article 16(1)(a) which authorises the FIAU to receive reports in relation to funds that are known or suspected to involve proceeds of crime. Further amendments to Article 16(1)(b) and Article 31 enables the FIAU to disseminate analytical reports and other information to the police when the former has reasonable grounds to suspect that a transaction or activity involves criminal proceeds. Thus, it can be concluded that this deficiency has been fully addressed.

Deficiency 3: The low number of STRs including credit institutions gives rise to concerns about the reporting regime (effectiveness).

Recommended action 2: Encourage greater reporting of STRs (both for ML and FT suspicions) by obliged persons through awareness-raising of the reporting requirements and through providing sector-specific guidance, including red flags/indicators.

Measures adopted and implemented**:** This deficiency has been largely addressed.

34. As already noted in the Secretariat analysis of the first 4th round follow-up report, the FIAU has embarked on various training and awareness-raising initiatives aimed at enhancing the subject persons' (i.e. financial institutions and DNFBPs) understanding of their AML/CFT obligations (including reporting), which have resulted in a steady increase in the number of STRs.

35. As concerns sector-specific guidance, the FIAU has issued procedures specifically dedicated to the banking sector, legal procurators and land-based casinos. In addition, drafts of sector-specific procedures have been finalised at the time when this report was submitted to MONEYVAL and were subject to review by the FIAU for the following sectors: notaries, real estate agents, company service providers, trustees and insurance companies, as well as fiduciaries. The FIAU reported also to be reviewing first drafts procedures for the accountancy sector and remote gaming companies. Further progress by publishing other sets of sector-specific procedures is expected in 2016.

36. These efforts and initiatives, which promote knowledge and awareness on AML/CFT issues (including reporting obligations), had a positive impact on the level of reporting to the FIAU. A sharp increase in reporting could be detected during the period 2012-2015, when compared to previous years which were subject to the 4th round assessment. In the banking sector there has also been a considerable increase in the number of STRs reported, while the securities sector has submitted very few STRs.

Table 1. Number of STRs for money-laundering and terrorist financing per reporting entity, 2012-2015

	2012		2013		2014		2015 (End June)	
	ML	**TF**	**ML**	**TF**	**ML**	**TF**	**ML**	**TF**
Banks	57	1	66	0	108	4	30	2
Insurance sector	0	0	1	0	1	0	3	0
Securities sector (Regulated Markets)	1	0	1	0	1	0	0	0
Investment firms	3	0	9	0	9	0	9	0
Currency exchange	0	0	0	0	0	0	0	0
Other Financial Institutions (Money Remitters and Payment Service Providers)	12	0	9	0	16	1	9	0
Retirement Scheme Administrators	0	0	0	0	1	0	0	0

Recommended action 3: Encourage greater use of the postponement powers.

Measures adopted and implemented: This recommended action has been addressed.

37. The last MER noted the low number of postponement requests by subject persons which, in the opinion of the evaluators, questioned its effective application in the context of the reporting regime. The evaluators concluded that it remained unclear whether this was due to insufficient training or deficiencies in supervision.

38. The Maltese authorities reported that the postponement mechanism under Article 28 of the PMLA is considered an effective tool, enabling subject persons to request the postponement of transactions deemed suspicious. Nonetheless, an initiative was undertaken to review and improve the current system to render it more effective and to encourage greater use of its power.

39. Subsequent to a consultative process that involved the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism, a new Article 28 was introduced under the PMLA by virtue of Act III of 2015. This amendment has strengthened the postponement mechanism through the extension of the maximum period of duration of the suspension from twenty-four hours to three working days, thus enabling the FIAU to conduct a more detailed analysis of the facts available, before taking a decision whether or not to issue a postponement order.

40. Moreover, the FIAU has been granted the power to suspend transactions on the basis of information in its possession and subsequent to requests received by foreign Financial Intelligence Units. This latter development brought the postponement mechanism under Maltese law in line with the provisions of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Funding of Terrorism (CETS No. 198) and is expected to induce a greater use of the postponement powers.

41. In addition, in order to encourage greater use of the postponement powers, changes were also carried out to Regulation 16 of the PMLFTR (refer to Annex 4 – Legal Notice 464 of 2014). By virtue of this amendment subject persons are now allowed to disclose during the course of judicial or administrative proceedings, the fact that they have not carried out particular transactions due to the issuance of a postponement order. Thus subject persons who may eventually be sued for damages for having failed to process a transaction, may actually cite in their defense, during judicial or administrative proceedings, the reason why they failed or delayed in carrying out a transaction (i.e. that they were prohibited from doing so due to the existence of a postponement order). Although the number of postponement requests by subject persons remained limited, the authorities have taken important steps to encourage greater use of the postponement powers. The FIAU is also currently working on providing additional guidance. Therefore, it can be concluded that this recommendation has been addressed.

Overall conclusion

42. Malta has made important progress since the adoption of the last MER by addressing the deficiencies identified under R.13, in particular as regards the criminalisation of TF and with respect to extending the scope of reporting requirements to proceeds of criminal activity (deficiencies 1 and 2).

43. Several measures have been taken to address the effectiveness concerns by raising the awareness of subject persons. The amendments made to the CC have clarified the

legal provisions defining the TF offences and the relevant terms, which will positively impact on the TF reporting regime (deficiency 3). As is usually the case with a desk-based review, an analysis on effectiveness is limited in this context and comprehensive analysis could only be undertaken through an on-site visit.

44. Therefore, Malta has addressed the main deficiencies identified in the MER which permits to consider its level of technical compliance with R.13 as essentially equivalent to LC.

Special Recommendation IV – Suspicious transactions reporting (rating PC)

Deficiency 1: Deficiencies in the incrimination of TF might limit the reporting obligations.

Recommended action 1: Further clarification in the definition of terrorism financing is required.

Measures adopted and implemented**:** This deficiency has been fully addressed.

45. Extensive amendments to the provisions under the CC that criminalize TF have been adopted. These amendments clarify the legal provisions which define the TF offences under Maltese law. A detailed explanation and analysis of the most salient features of these amendments is provided in paragraphs 27-33 above.

Deficiency 2: Low level of awareness and understanding on TF red flags and indicators among reporting entities; concerns related to the confusion among the reporting entities in relation to the implementation of SR.III and the reporting obligations under SR.IV.

Recommended action 4: Provide specific TF training and guidance, red flags and indicators for better understanding the difference between the implementation of SR.III and the reporting obligations under SR.IV.

Measures adopted and implemented**:** This deficiency has been partially addressed.

46. As indicated above, the FIAU organised and participated in various training and awareness-raising events which focused on the preventive measures to counter TF, including the reporting of suspicions and the implementation of financial sanctions imposed on persons and entities linked with terrorism.

47. The provision of guidance in the Implementing Procedures Part I (under section 3.1) on the implementation of SR.III obligations, the effectiveness of which was not evaluated for the purposes of the 4th round MER, and the work carried out by the FIAU to expand the current section 3.1 to provide further guidance, are also considered to be positive steps to increase further awareness and to enable clarifying the distinction between the obligations under SR.III and SR.IV.

48. Section 3.1 of the Implementing Procedures Part I makes a specific reference to subject persons' obligation to have systems in place to detect whether persons requiring their services are subject to financial sanctions, and provides guidance on the application of this requirement. The Implementing Procedures were issued by the FIAU on 20 May 2011. Given the proximity of their issuance to the MONEYVAL on-site visit carried out between 29 May and 4 June 2011, their effectiveness was not evaluated for the purposes of the 4th round MER.

49. The FIAU has been working on expanding the current section 3.1 to provide further guidance on the application of financial sanctions imposed in relation to persons or entities linked with terrorism. A revised version of that provision has already been drafted by the FIAU. That revised provision, besides stipulating that subject persons should have systems in place to determine whether their customers are subject to financial sanctions, will require such checks to be carried out on any person that is connected to the applicant for business. It will also provide a definition and examples of persons deemed to be connected to the applicant for business. Those persons should also be screened for determining whether they are subject to financial sanctions.

50. Authorities have reported that the amendments to section 3.1 were published for consultation on 30 November 2015. A period of two months consultation will be held among the members of the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism, before the amendments will enter into force.

51. Apart from written guidance under the Implementing Procedures Part I, guidance has also been provided during various training initiatives. Two training seminars spanning over six sessions were delivered from May to July 2012 and September to November 2012. Similar training seminars were also held from 27 May to 12 June 2014. During these seminars, which were attended by representatives of all categories of subject persons, particular sessions were dedicated to CFT and the freezing of terrorist assets, including guidance on the obligations of subject persons to report suspicions of TF and to freeze the assets of identified terrorist and terrorist organisations. The training also covered suspicions transaction reporting and red flags and indicators of TF.

52. A training session dedicated entirely to CFT was delivered by an FIAU official at an AML/CFT day conference organised by a private institution in April 2015. During this seminar, which was open to all subject persons (including DNFBPs), the issue of applying financial sanctions on persons or entities linked with TF was addressed.

53. Malta has also issued in September 2015 new indicators and red flags in the land-based casinos sector-specific procedures, which, contain a section on red flags and activities, including potential indicators of ML/TF. The inclusion of similar sections is being considered in the drafting of other sector-specific procedures, which the FIAU is currently working on.

54. In addition, the MFSA, as the financial regulator, issues on a regular basis on its website notices and communications to bring to the attention of the general public the lists of designated persons and entities, reminding supervised entities of their obligations in this respect.

Deficiency 3: Low level of reporting (effectiveness issue).

Recommended action 2: Encourage greater reporting of STRs (both for ML and TF suspicions) by obliged entities by raising awareness of the reporting requirements and by providing sector-specific guidance, including red flags/indicators.

Measures adopted and implemented**:** This deficiency has been largely addressed.

55. The FIAU issued three sets of sector-specific guidance (which cover reporting aspects) for the banking sector, legal procurators and land-based casinos since the evaluation.

56. Furthermore, sector-specific procedures for various sectors (notaries, real estate agents, company service providers, trustees and insurance companies, as well as

fiduciaries, have been finalized and are subject to review by the FIAU. The FIAU is also currently reviewing first drafts for the accountancy sector and remote gaming companies. The aim is to make further progress and publish other sets of sector-specific procedures in 2016.

57. In addition to the training provided by the FIAU, various initiatives have been taken by representative bodies and private entities. At the time when this report was submitted, the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism was discussing the broadening of AML/CFT training to cover the widest span possible of subject persons using experts from the different sectors represented on the Committee. A training plan is also envisaged that will ensure that training is addressed to all sectors concerned.

58. It is difficult to ascertain through a paper based off-site review that effectiveness was enhanced on TF reporting, although the statistics that were provided (see Table 1 on page 11) show that more reports have been made.

Overall conclusion

59. Malta has made progress since the adoption of the MER by addressing the legal gaps identified under SR.IV, and by taking several measures to address the effectiveness concerns. Hence, from a desk-based review, it appears that Malta has brought its level of compliance with the requirements under SR.IV to a level essentially equivalent to LC.

5. REVIEW OF THE MEASURES TAKEN IN RELATION TO THE KEY RECOMMENDATIONS RATED PC

60. This section sets out the Secretariat's detailed analysis of the progress which Malta has made in relation to the Key Recommendations rated PC.

Recommendation 3 – Confiscation and provisional measures (rating PC)

Deficiency 1: The lack of information on freezing orders made with regard to proceeds-generating predicate offences, coupled with the lack of evidence of the use of attachment orders in proceeds-generating cases, raises doubts as to the effectiveness of the freezing and attachment regime.

Deficiency 3: Effectiveness of attachment order regime is questioned in domestic cases.

Recommended action 1: The effectiveness of the attachment order regime should be reviewed.

Measures adopted and implemented: This deficiency has been largely addressed. Recommended action 1 was largely implemented.

61. In the 4th round MER, evaluators deemed it likely that insufficient time periods are a factor in the use of the attachment order in domestic cases. Due to its short duration in most domestic cases, the application for such orders was considered to be a difficult tactical decision. Though an attachment order had been used in some ML and other cases, the extent of its use pre-charge or on-charge was unclear for the evaluating team.

62. Malta reports that high-level discussions were held between the FIAU, the Office of the Attorney General and the Commissioner of Police. An assessment of the attachment

order regime was carried out in order to identify any shortcomings affecting its effectiveness. Following these, a decision was taken to amend the legal provisions regulating the issuance of the attachment order under the PMLA. Amendments to Article 4 of the PMLA came into force on 20 February 2015 by virtue of the enactment of Act III of 2015.

63. The changes introduced have extended the applicable validity period of the attachment order to forty-five days, renewable by an additional forty-five days under certain circumstances. The original thirty day period was assessed to be too short to enable an effective use of this investigative tool. In addition, pursuant to the amendments of sub-article (9) of Article 4 of the PMLA, any police officer may serve attachment orders and this competence is no longer limited to police officers holding a rank of inspector. The authorities consider that the revised validity period and the new possibility for any police officer to serve attachment orders will render the procedure more efficient and more effective and will induce investigators to make more use of the attachment order. Therefore, the effectiveness of the attachment order regime has been reviewed and important steps to improve the regime have been taken.

Table 2. Use of attachment and freezing orders in ML cases

	2012	**2013**	**2014**	**2015 (end of August)**
Attachment orders	6	5	3	1
Freezing orders	No information	12	13	7

64. The statistics provided show that the amount of attachment orders in domestic cases has slightly increased, from an average of one per year in the 2005-2010 period to six in 2012, five in 2013, three in 2014 and one case so far in 2015 (as of 31 August). Several freezing orders (which form the measure applied to block a suspect's funds and other property upon arraignment) were issued in ML cases (12 in 2013, 13 in 2014 and 7 in 2015 (until end of August)).

Recommended action 2: The continued utility of the court-appointed official to trace assets should be reviewed and financial investigation in major proceeds-generating cases should be enhanced.

Measures adopted and implemented: This recommendation has been largely implemented.

65. Meetings were held between the various authorities concerned, including the FIAU, the Office of the Attorney General, the Police and the Registrar of the Criminal Courts, to review and assess the freezing and confiscation regime. This led to an amendment to Article 23D CC, entrusting the Registrar of the Criminal Courts with tracing assets, as opposed to court appointed officials, as used to be the case at the time of the 4th round MER. A dedicated Asset Management Unit (AMU) was set up in 2012 within the Registry of the Superior Criminal Courts to implement this function in practice. The AMU is operational and its staff currently consists of five persons: one assistant registrar, two deputy registrars, one executive officer and one clerk. According to the authorities, the centralisation of the asset tracing function and its allocation to a focused unit has helped to render the asset tracing procedure more effective and efficient.

66. In addition, changes were made to the CC in March 2015 which led to the establishment of an Asset Recovery Bureau (ARB) within the Ministry of Justice (Legal

Notice 357 of 2015, ARB Regulations, 2015, on 30 October 2015[5]). The members of the ARB have been appointed effective as from 1 November 2015. The ARB will effectively operate as soon as the Minister will issue an order to bring Legal Notice 357 of 2015 into effect.

67. The ARB Regulations, besides establishing the ARB, set out the functions of the Bureau (Article 6) and its powers (Articles 7 – 10). The Bureau Board consists of the Commissioner of Police, the Commissioner for Revenue, the Director General of the Courts and the Director of the FIAU (or their representatives), and any other public officer as the Minister of Justice may determine (Article 11). The Bureau Officers shall, as far as possible, be members of the Executive Police, officers of the Commissioner for Revenue and persons recruited from amongst other public officers (Article 17).

68. According to the authorities, the establishment of the ARB shall not only enhance the current capabilities of tracing the proceeds of crime. It will also ensure that a centralised unit shall be responsible not just with the tracing of proceeds of crime, but also with the identification, attachment, freezing, management and confiscation of such assets. Its functions thus encompass and are broader than those of the AMU. Upon the completion of a transitory period, the functions of the AMU will be transferred to the ARB.

69. Regarding financial investigations, a number of positive measures have recently been taken with respect to the Economic Crimes Squad (ESC) of the Malta Police. Its personnel has increased from fifteen persons to forty persons and it now comprises ten investigation teams, of which three are fully dedicated to anti-money laundering and seven to address economic crimes issues. Also, a Financial Crimes Analysis Unit has been set up in October 2015, although this unit is not yet operational. Finally, the ECS is in in the process of purchasing specialized software to assist with financial investigations.

70. The institutional developments related to asset tracing and financial investigations are very recent. It is expected that these will positively impact in the future on asset tracing and also on the level and quality of financial investigations. Therefore, this recommendation has been largely implemented.

Deficiency 2: The lack of information on confiscation orders on laundered property raises doubts about the effectiveness of the confiscation regime overall.

Recommended action 3: The effectiveness of the freezing and confiscation regime overall should be kept under active review by the senior national coordination mechanisms.

Measures adopted and implemented: This deficiency is being addressed. Recommended action 3 was largely implemented.

71. Some of the developments that were described above relating to the review of the asset tracing regime are also relevant in this context. The authorities reported that the effectiveness of the freezing and confiscation regime is kept under review on an ongoing basis by the Board of Governors of the FIAU, which is composed of nominees from the office of the Attorney General, the MFSA, the Police and the Central Bank of Malta.

[5] http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=12426&l=1.

72. Moreover, as a consequence of the active review since the 4th round MER, it was considered necessary to strengthen the confiscation regime by virtue of amendments to Article 23C CC. These amendments, which came into force in March 2015, led *inter alia* to a lowering of the level of proof necessary for the forfeiture of property that is disproportionate with the lawful income of the convicted person.

73. The recent establishment of the ARB shall ensure that a centralised unit is responsible for the identification, attachment, freezing, management and confiscation of criminal assets. This development is expected to contribute towards a significant increase in the effectiveness of the confiscation regime. Work has been started to address the lack of comprehensive statistical data with respect to the application of provisional measures and confiscation, although at the time of this report it has not yet been completed.

Overall conclusion

74. The Maltese authorities have taken various steps, including legislative and institutional actions, to address the effectiveness concerns expressed in the MER and improve the regime for confiscation. In order to allow for future evaluations of effectiveness of the regime, authorities are encouraged to strengthen their information position on the use of confiscation orders. It is positively noted that the working group responsible for the revision of the freezing and confiscation regime is also working to establish a comprehensive system for the retention of statistical data and that the ARB was established. Overall, it can be concluded that the level of compliance with R.3 is equivalent to LC. At the same time authorities are urged to proceed with addressing the issue of collection of relevant statistics, given that those will assist the authorities with the current NRA process and the preparations for the 5th evaluation round onsite visit.

Special Recommendation III – Freezing and confiscating terrorist assets (rating PC)

Deficiency 1: There is not any clear and publicly known procedure for de-listing and unfreezing.

Recommended action 1: Maltese authorities should provide an effective and publicly known national procedure for the purposes of de-listing and unfreezing in appropriate cases in a timely manner.

Measures adopted and implemented: This deficiency has not been addressed and the recommendation has not been implemented.

75. According to the Maltese authorities, the matter is currently under review. The authorities reported that meetings have been held between the concerned authorities, namely the FIAU, the Office of the Attorney General and the Ministry of Foreign Affairs with the intention of devising an action plan to implement this recommendation. This shortcoming remains.

Deficiency 2: No evidence that designation of EU internals has been converted into the Maltese legal framework.

Recommended action 2: The authorities should ensure that EU internals are converted into Maltese legislation.

Measures adopted and implemented: This deficiency has not been fully addressed and the recommendation has not been fully implemented. However, it is considered in this analysis that this is a question of effectiveness rather than a deficiency in the legal framework.

76. The authorities reiterated that, in their view, EU internals are covered by Maltese legislation by virtue of Legal Notice 156 of 2002 which implements UNSCR 1373. They state that there exists a legal requirement in Malta to freeze the assets of all known or suspected terrorists, irrespective of whether these are EU internals or non-EU internals. Malta also has general enabling legislation which could be used to apply asset freezing measures to EU internal terrorists. Under the National Interest (Enabling Powers) Act, the Prime Minister may make regulations to include identified EU internals which would allow for the freezing of their assets, without the need to apply for a court order.

77. Since no assets of EU internal terrorists have been identified in Malta, no EU internals have been the subject of such regulations; hence these legal powers have not been tested in practice. The authorities have confirmed that the freezing of funds of EU "internal" or "domestic" terrorists would not pose operational difficulties in practice, should assets of such terrorists be identified in Malta. It must be emphasized nonetheless that the continuing lack of the practical use of the legal mechanism is an outstanding issue that will warrant special attention in future reviews of Malta's terrorist asset freezing system.

Deficiency 3: Concerns over the effectiveness of the freezing system at the request of another country that relies on judicial proceedings.

Recommended action 3: Assess the effectiveness of the freezing system at the request of another country which relies on judicial procedures.

Measures adopted and implemented: Malta has not received any freezing request from a foreign authority; hence the system in place was never tested.

78. The 2012 MER concluded that, although attachment orders may be of some practical utility in certain circumstances where speed is essential, it was unlikely to provide a permanent solution to the freezing of assets under UNSCRs 1267 and 1373. Consequently, evaluators expressed concerns about the application of a judicial-based mechanism in executing foreign requests for freezing funds or economic resources of individuals or entities.

79. The authorities reiterate their view that the freezing of funds or economic resources of identified individuals or entities at the request of another country can take place in a very short period of time. Under this procedure the Court issues an order upon the request of the Attorney General. This court order (attachment order) is issued on the same day of the request and is valid for a forty-five day period (extendable by another forty-five days up to a maximum of ninety days) and, as was already the case before, this can apply indefinitely where the suspect is outside Malta. Although authorities are convinced that this procedure can work well, they have nonetheless initiated a review to assess whether other additional measures may assist to further strengthen the current mechanism. Malta has not received any requests from another country to freeze funds or economic resources in Malta. The authorities were thus not in a position to assess this effectiveness concern.

Deficiency 4: Insufficient guidance and communication mechanisms with DNFBP (except Trustees) regarding designations and instructions including asset freezing.

Recommended Action 4: Further guidance is required and development of communication mechanisms with DNFBP (except Trustees), regarding designations and instructions including asset freezing.

Measures adopted and implemented: This deficiency has been largely addressed, and the recommendation has been largely implemented.

80. Malta has carried out various raising awareness activities and provided guidance to relevant persons and entities, including DNFBPs. Various initiatives described under SR.IV are also relevant in the context of this recommendation. As described above (in paragraphs 47 – 50), the FIAU's 2011 publication of Implementing Procedures as general AML/CFT guidance notes applicable to all subject persons, is a positive development. These make specific reference to subject entities' obligation to have systems in place to detect whether persons requiring their services are subject to financial sanctions. As described under the analysis for SR.IV, the FIAU is currently working on expanding the relevant section to provide further guidance. Hopefully this revision will soon be finalised and communicated to relevant persons and entities, including DNFBPs. Furthermore, the training sessions described in paragraphs 51 – 52, which were organized for all categories of subject entities including DNFBPs, encompassed instructions on the freezing of terrorist assets.

81. The authorities are advised to continue the awareness and guidance training for subject persons (including DNFBPs), and to ensure that effective communication exists between authorities and DNFBPs to instruct them on freezing requirements. Further improvement will be made if the revised guidance note, a draft of which is currently being considered, will be published and disseminated among subjects (including DNFBPs). Taking into consideration the information provided above it can be concluded that this deficiency has been largely addressed.

Deficiency 5: Insufficient monitoring for compliance of the DNFBPs.

Recommended action 5: Take additional measures as necessary to monitor effectively the implementation of SR.III requirements by DNFBPs.

Measures adopted and implemented: This deficiency has been largely addressed and the recommendation has been largely implemented.

82. In the 4th round MER, it was reported that, except for the financial sector and trustees, there is no monitoring for compliance regarding obligations with the sanctions regime. Since 2012, subject persons (including all DNFBPs) are obliged to submit an annual compliance report (ACR) on an annual basis. According to the authorities, the ACR enables the FIAU to monitor the effective implementation of SR.III. When completing the ACR (according to a fixed template), subject persons must indicate whether they have procedures in place to comply with the relevant provisions on targeted sanctions related to terrorism and TF, namely UNSCR 1267/1999, UNSCR 1373/2001 and related EU regulations. They also must give a brief overview of the procedures which they have in place.

83. Moreover, authorities report that the implementation of SR.III requirements is also monitored during on-site visits carried out on DNFBPs. The FIAU has taken various measures to increase the number of on-site supervisory action for DNFBPs, as a result of which a wider range of DNFBPs were monitored for the implementation of AML/CFT obligations, including SR.III requirements. The FIAU, which is entrusted with the AML/CFT supervision of DNFBPs, has increased its supervisory staff from three to seven officers and further staff increases are planned. In 2015, a specialised AML/CFT unit has been established within the MFSA which will take over the role previously performed by the supervisory units within the MFSA of assisting the FIAU in carrying out on-site inspections of the financial institutions licensed by the MFSA. Authorities

expect that this will eventually free some of the FIAU's resources to be effectively used for the supervision of DNFBPs.

84. It is assumed that the combination of off-site monitoring through mandatory ACRs, including for DNFBPs, and increased on-site supervision of DNFBPs has contributed to strengthening the controls of the implementation of SR.III requirements. This deficiency has thus been largely addressed and the recommendation has been largely implemented. Statistics show however that certain categories of DNFBPs have not been supervised through on-site visits in the period 2012 – 2015. Authorities are thus encouraged to consider expanding their supervisory action to ensure that compliance with the sanctions regime of all relevant categories of subject persons is adequately monitored through on-site visit activities to reach sufficient monitoring for compliance of all DNFBPs.

Deficiency 6: The effectiveness concerns on R.3 might affect the effective application of criterion III.11.

Measures adopted and implemented: This deficiency has been largely addressed.

85. As noted under R.3, measures have been adopted to address the identified effectiveness concerns. Thus, it can be concluded that this deficiency has been largely addressed.

Overall conclusion

86. The 4th round MER identified one technical deficiency related to Malta's legislative framework (deficiency 1) and several effectiveness issues (deficiencies 2-6) related to the implementation of SR.III. Malta has taken measures which address several recommendations, although shortcomings remain, most notably in the effective use of the legal framework to convert EU internals into Maltese law. Also, Malta has not yet issued clear and publicly known procedures for de-listing and unfreezing. However, it can be concluded that most of the shortcomings for SR.III are sufficiently addressed to reach a satisfactory level of compliance comparable to a LC rating.

MONEYVAL Secretariat