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Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no°198)

Assessment Report of the Conference of the Parties to CETS no°198[1]

MALTA

[1] Adopted at the 6th meeting of the Conference of the Parties to the CETS no°198 (Strasbourg, 29 September – 1 October 2014)

Malta is a State Party to the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS no°198) since 1 May 2008. This assessment of the implementation of the Convention in Malta followed the decision of the 5th meeting of the Conference of the Parties (C198-COP) in 2013. This Assessment Report was adopted at its 6th meeting (Strasbourg, 29 September – 2 October 2014).

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ACRONYMS

CETS 108 - The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data, Strasbourg 28.I.1981

CETS no°198 - Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism adopted by the Council of Europe, Warsaw , 16.V.2005

DDO – Dangerous Drugs Ordinance

ETS 141 - Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime adopted by Council of Europe, Strasbourg, 8.XI.1990.

ESW - Egmont Secure Web

FATF – Financial Action Task Force

FIU – Financial Intelligence Unit

FIAU - Financial Intelligence Analysis Unit

MKPO - Medical and Kindred Professions Ordinance

MER – Mutual Evaluation Report

MoU - Memoranda of Understanding

PMLA - Prevention of Money Laundering Act

TABLE OF CONTENTS

A. BACKGROUND INFORMATION AND GENERAL INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION 5

B. MEASURES TO BE TAKEN AT NATIONAL LEVEL 7

I. GENERAL PROVISIONS 7

1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6 7

2. Corporate liability – Article 10 paragraphs 1 and 2 10

3. Previous decisions – Article 11 14

4. Confiscation - Article 3 paragraph 1, 2, 3, 4 of the CETS 198 14

5. Management of frozen and seized property – Article 6 20

6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d 22

7. International co-operation 25

7.1. Confiscation – Articles 23 paragraph 5, Article 25 paragraphs 2 and 3 25

7.2 Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; Monitoring of transactions – Article 19 paragraphs 1 and 5 27

7.3. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6 31

8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 32

9. Postponement of domestic suspicious transactions – Article 14 41

10. Postponement of transactions on behalf of foreign FIUs – Article 47 43

11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c. 45

II. OVERALL CONCLUSIONS ON IMPLEMENTATION OF THE CONVENTION 47

III. ANNEXES 49

A. BACKGROUND INFORMATION AND GENERAL INFORMATION ON THE IMPLEMENTATION OF THE CONVENTION

1. The Council of Europe Convention on Laundering, Search, Seizure, Confiscation of the Proceeds from Crime and Financing of Terrorism, which is the treaty number 198 in the Council of Europe Treaty Series (referred hereinafter as CETS no°198 or "the Convention") establishes under Article 48 a monitoring mechanism which is responsible for following the implementation of the Convention, the Conference of the Parties (COP).

2. The Convention came into force on 1 May 2008, when 6 instruments of ratification were deposited with the Secretary General of the Council of Europe, all of which were Member States of the Council of Europe.

3. The monitoring procedure under this Convention deals with areas covered by the Convention that are not covered by other relevant international standards on which mutual evaluations are carried out by MONEYVAL and the Financial Action Task Force (FATF). At its second meeting in April 2010, the COP adopted an evaluation questionnaire based on areas where the Convention "adds value" to the current international AML/CFT standards and agreed that the Conference would normally assess the countries in the order that they ratified the Convention[2]. At its fifth meeting, it agreed that Malta, Republic of Moldova and Montenegro would be the next countries to be assessed under this mechanism.

4. The monitoring questionnaire was sent for completion to the Maltese authorities in September 2013. The responses to the questionnaire were coordinated by the Financial Intelligence Analysis Unit (FIAU) and were received in January 2014. The draft report was prepared by the rapporteurs: Mrs Carla Leão(Portugal) on the issues of the functioning of FIU, Mrs Stela Buiuc (Republic of Moldova) on new legal aspects under the CETS no°198 and Mrs Mariana Radu (Romania) on international co-operation. This monitoring report by the COP is based primarily on a desk review of the replies by Malta to the monitoring questionnaire. Public information available in MONEYVAL adopted evaluation under the 4th round have been considered and taken into account. This report is not intended to duplicate but complement the work of other assessment bodies.

5. Malta signed the Convention on 16th May 2005 and ratified it on 30th January 2008. It entered into force in respect of Malta on 1st May 2008. Malta has deposited a series of declarations (see annex IV)[3] in connection with the ratification.

6. The draft report was discussed at a pre-meeting on 22 May 2014 and submitted for discussion and adoption by the COP in September 2014.

7. Malta is a member of MONEYVAL and has been the subject of four evaluations by MONEYVAL. The fourth round assessment was discussed and adopted by MONEYVAL in March 2012. The evaluation report is available on MONEYVAL's website (www.coe.int/MONEYVAL). The evaluation report contains information on the

[2] Countries that ratified on the same day the Convention are in principle assessed in alphabetical order.
[3] A list of declarations and reservations to CETS 198 is kept up-to date on the website of the Treaty Office of the Council of Europe at http://www.conventions.coe.int/Treaty/Commun/ListeDeclarations.asp?NT=198&CM=8&DF=27/03/2012&CL=ENG&VL=1 .

developments which have occurred in Malta after the last evaluation report, from which those of relevance, in the context of this report, can be synthesized as follows:

- Since the last evaluation, Malta has further enhanced the criminal provisions to more effectively fight money laundering and financing of terrorism, which are now largely in line with the standard set by the Financial Action Task Force. Convictions for money laundering have been achieved in practice.

- The legal requirements for provisional measures and confiscation are carefully constructed in Malta, but insufficient information on freezing and confiscation orders in cases other than money laundering raised doubts as to the effectiveness of the criminal confiscation regime overall.

- The financial sector is adequately monitored and supervised in Malta, and the concept of the risk-based approach has been introduced through regulation. However, although the reporting obligation for suspicions of terrorism financing is in place, the level of suspicious transaction reports for both money laundering and terrorist financing remains relatively low compared with the size of the financial market.

- The legal framework for mutual legal assistance is sound and allows the judicial authorities to give sufficient assistance in money laundering and terrorism financing cases, including the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets. The legal provisions regulating the mutual legal assistance appear to be effectively applied in practice by Maltese authorities.

8. The first 4th round follow-up report on Malta was adopted by the MONEYVAL Plenary in March 2014. It emphasized the steps taken in respect of the core and key Recommendations rated PC in the 4th round MER. The Committee agreed that the progress appeared to have been made on effective implementation of the reporting system, but on the technical shortcomings only draft bills were reported. Following the Plenary discussion, Malta was invited to provide an interim progress report before the 46th Plenary in December 2014, to be satisfied that progress on the deficiencies is on track.

B. MEASURES TO BE TAKEN AT NATIONAL LEVEL

I. GENERAL PROVISIONS

1. Criminalisation of money laundering – Article 9 paragraphs 3, 4, 5, 6

The areas where it is considered that the Convention adds value on money laundering criminalisation are as follows:

- The predicate offences to money laundering have to, as a minimum, include the categories of offence in the Appendix to the Convention (which puts the FATF requirements on this issue into an international legal treaty [article 9(4)]).
- As to proof of predicate offence, paragraphs 5 and 6 establish new legally binding standards to better facilitate the prevention of money laundering: clarification that a prior or simultaneous conviction for the predicate offence is not required [article 9(5)], and to clarify that a prosecutor does not have to establish a particularised predicate offence on a particular date [article 9(6)].
- To allow for lesser mental elements for money laundering of suspicion (and negligence, the latter of which was to be found also in ETS141) [article 9(3)].

9. The relevant Convention provisions are set out in Annex I.

Description and analysis

10. Money laundering has been criminalised under Article 2 of Prevention of Money Laundering Act (PMLA) and it is read as follows :

(i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;

(vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v);

11. In addition to Article 2 of PMLA, money laundering continues to be criminalized also under the Dangerous Drug Ordinance (DDO) – Article 22(1C)(a), and the Medical and Kindred Professions Ordinance (MKPO) – Article 120A(1D)(a). The money laundering offences provided in the Ordinances have similar language. According to MONEYVAL's 3rd MER on Malta, the money laundering provisions of PMLA can additionally be applied to drug offences under DDO and MKPO[4] .

Article 9(3)

12. With regard to the knowledge of the origin of the money laundering offence, Article 2 of PMLA clearly covers the situations when money laundering offence can be established even when the person was only "*suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity*". The lesser subjective mental element for money laundering offence was introduced in 2007[5], it concerns suspicion and does not allow for negligent money laundering. The intentional element of the money laundering offences under DDO and MKPO also include suspicion.

Article 9(4)

13. Initially, according to the instrument of ratification[6], the predicate offences for money laundering were limited to the offences which are punishable by the deprivation of liberty or a detention order for a maximum of more than one year. Maltese authorities informed that since then, it extended the range of predicate offences for money laundering offence to any criminal activity[7], adopting in this way the so-called all crimes approach[8]. All the categories of offences listed in the Appendix to CETS no°198 are covered by Maltese criminal and special legislation and therefore can constitute predicate offences for money laundering.

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[4] DANGEROUS DRUGS [CAP. 101. 13
(1C) (a) A person shall also be guilty of an offence against this Ordinance who uses, transfers the possession of, sends or delivers to any person or place, acquires, receives, keeps, transports, transmits, alters, disposes of or otherwise deals with, in any manner or by any means, any money, property (whether movable or immovable) or any proceeds of any such money or property with intent to conceal or convert that money or property or those proceeds and knowing or suspecting that all or a part of that money or property, or of those proceeds, was obtained or received, directly or indirectly, as a result of -
(i) the commission of any of the offences mentioned in subarticle (1) or subarticle (1D)(a) or in subarticle (1E); or
(ii) any act of commission or omission in any place outside these Islands which if committed in these Islands would constitute an offence under subarticle (1) or subarticle (1D)(a).
(b) In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

[5] Amendment introduced by the Act XXXI of 2007

[6] Deposited on 30 January 2008

[7] Article 2 of PMLA : "criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: (a) a crime or crimes specified in Article 3 (1) (a) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced (in the English language only) in the First Schedule to this Act; or (b) one of the offences listed in the Second Schedule to this Act.

[8] MONEYVAL's 3rd MER describes that Malta extended the money laundering provisions under PMLA to any criminal offence in 2005.

Article 9(5)

14. A prior or simultaneous conviction of the predicate offence is not required for having a conviction on money laundering. Under Article 2(2) (a) of PMLA, a person may be convicted for money laundering even in the absence of a judicial finding on the guilt of the person in respect of the underlying criminal activity. Under the same article, the prosecution is not required to prove a conviction in respect of the underlying criminal activity, which may be established on the basis of circumstantial or other evidence.

Article 9(6)

15. As required by Article 9(6) of CETS no°198, it is not necessary, according to Article 2(2)(a) of PMLA, to establish precisely what is the predicate offence which generated the proceeds.

Effective implementation

16. As noted above, the mental element of the money laundering offence was extended and includes also the suspicion of the unlawful origin of property, which should help the prosecution of money laundering cases. So far, there is no information as to the impact of the new element on the investigation and prosecution of money laundering, since 2007, when it was introduced.

17. The Maltese authorities informed about a case of 2012[9] where the court established that the shifting of the burden of proof, with respect to the origin of the alleged proceeds of crime, is subject to the condition that the prosecution merely *prima facie* proves that the person acted with the intent to launder the money and that he/she knew, or at least ***suspected,*** that the alleged proceeds were proceeds of crime. No other relevant practice seems to be in place.

18. In order to prove that in practice there is no need for a prior or simultaneous conviction for the predicate offence for achieving a conviction on money laundering, the same case was given as an example. The Court of Appeal stated that in terms of the provisions of PMLA and DDO, the Attorney General may charge a person of the offence of money laundering even though no proof for a previous conviction for an offence exists. The Attorney General is only required to prove a connection between the alleged proceeds and the criminal activity. According to the Report on fourth assessment visit of Malta[10], there are two cases in 2009 where the court accepted that it was sufficient for the prosecutor to establish only the link between the money and the drug trafficking operations. The second case resulted in an autonomous money laundering conviction. The subsequent jurisprudence in 2012 proves that the autonomous money laundering convictions can be achieved. Additionally to the 2009 standard on the required level of proof, in the 2012 case, the court went on to say that the Attorney General is only required to prove that the property in possession of the accused does not tally with the accused's lifestyle. So, the proof is satisfied on the basis of the circumstantial evidence. It seems that this is a "landmark" case, as the principle on the required level of proof established here, was quoted later on in another case of 2012[11] .

19. The Maltese authorities argued that the same jurisprudence proves that there is no need to establish precisely the underlying predicate offence that generated the

[9] Police vs. Carlos Frias Matteo, Court of Appeal, January 2012
[10] March 2012
[11] The Republic of Malta vs. Morgan Ehi Egbomon, Criminal Court, October 2012

proceeds. In Police vs Carlos Frias Matteo, the court accepted that the proceeds came from crime even if the charge did not specify the predicate offence. The level of proof which requires the prosecutor to prove, on a *prima facie* basis, that there is no logical explanation with regard to the origin of the proceeds in possession or under control of the accused, seems also to ensure the applicability of this provision. Nevertheless, based on the statistics on the prosecuted money laundering cases provided by the Maltese authorities, it is evident that there are only few cases in practice where the prosecution did not indicate the underlying predicate offence.

20. The analysis of the statistics on money laundering prosecutions provided by the Maltese authorities illustrates that, for the period 2011-2013, the number of prosecutions of autonomous money laundering cases appears to be still limited, e.g. 6 cases, out of 19, were autonomous money laundering cases. In the absence of any updated statistics on money laundering convictions, the conclusion of the Fourth assessment visit report of 2012 on the effectiveness in relation to autonomous money laundering convictions, remains valid. The money laundering prosecutions and convictions remain in majority focused on self-laundering cases, though the recent achieved autonomous convictions represent important progress in this respect.

Recommendations and comments

21. The recent success in achieving autonomous money laundering convictions should be an important factor to encourage the law enforcement authorities to pursue more autonomous money laundering cases. Further measures need to be taken in order to raise the awareness among prosecutors and judges of the elements of the money laundering offence, as interpreted by the courts.

2. Corporate liability – Article 10 paragraphs 1 and 2

The areas where it is considered that the Convention adds value are as follows:

- Some form of liability by legal persons has become a mandatory legal requirement (criminal, administrative or civil liability possible) where a natural person commits a criminal offence of money laundering committed for the benefit of the legal person, acting individually who has a leading position within the legal person (to limit the potential scope of the liability). The leading position can be assumed to exist in the three situations described in the provisions (see Annex II).

- According to Article 10 paragraph 1:

  "*Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:*
  a). a power of representation of the legal person; or
  b) an authority to take decisions on behalf of the legal person; or
  c) an authority to exercise control within the legal person,
  as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences."

- The Convention expressly covers lack of supervision (article 10 paragraph 2 makes it a separate, additional requirement).

Description and analysis

22. Legal persons are criminally liable for money laundering offences under Article 3(4) of the PMLA. A drug related money laundering offence involving a legal person cannot be prosecuted under DDO and MKPO. The provisions of PMLA will be applicable in this case. In order to see the full range of criteria relevant for establishing the criminal liability, Article 3(4) of the PMLA must be read in conjunction with Article 121D of the Criminal Code, which provides for corporate criminal liability for offences under the Title III of the Criminal Code of Crimes against the administration of justice and other public administration.

23. Thus, the involvement of any natural person who has a leading position is a mandatory condition – the person must be "the director, manager, secretary or other principal officer of a body corporate" or a person a) "having a power of representation of such a body" or b) "having an authority to take decision on behalf of that body" or "having authority to exercise control within that body" (Article 121D of the Criminal Code). Also, the money laundering offence must be "committed for the benefit, in part or in whole, of that body corporate" (Article 3(4) of the PMLA). It can be concluded that the above mentioned articles cover the requirements of the CETS No.198 in relation to the categories of the natural persons who have leading positions within the legal persons.

24. Pursuant to Article 3(4) of the PMLA a prerequisite of the criminal liability of a legal person is that a certain natural person has to be found guilty of an offence of money laundering under the Act. In legislating in this way, Malta has opted for the so-called "identification liability model" according to which those who control or manage the affairs of a company ("the directing mind") are regarded, in a sense, as the company itself.

25. There is also a provision sourced more from the so-called "vicarious liability concept", namely Article 3(2), which introduces a presumption of guilt of every person who, at the time of the commission of an offence against the provisions of the PMLA by a body of persons, whether corporate or unincorporated, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity. This person is not deemed guilty if he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

26. Thus for corporate criminal liability to be established the only way to show that a natural person has committed a money laundering offence is by obtaining a final judgment issued by a court on the money laundering offence committed by that natural person.

27. From the Explanatory Report to CETS No.198 it is clear that the Convention aims to establish a system of corporate liability, which would enable countries to prosecute ML/TF offences independently of the prosecution of the natural person. Practice had revealed serious difficulties in prosecuting natural persons acting on behalf of the legal persons involved in money laundering and financing of terrorism offences, especially in business transactions. In view of the size of corporations and the complexity of organizational structures, it becomes more and more difficult to identify a natural person who may be held responsible for a money laundering offence. A forceful

argument of the Explanatory Report was the fact that sometimes legal persons escape the liability of natural persons involved due to their collective decision-making process.

28. Considering the arguments set out above, the current liability of legal persons as it is provided by Article 3(4) initially appeared not to fully satisfy the requirements of the Convention as long as there is an additional condition to find a natural person guilty of a ML offence. The Convention requires establishing that the ML offence has been The authorities however have explained that Article 3(1) of the PMLA should be also considered as a legal source for the liability of legal person:
"Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment."

29. They have stated that a careful reading of Article 3(1) in conjunction with Article 4(d) of the Interpretation Act, Cap.249, Laws of Malta provides a solid basis for the legal argument that the current wording in no way excludes the possibility of charging or accusing a body corporate per se with an offence of money laundering. Art 4(d) of Cap.249 provides: "(d) the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not.".

30. This view is reinforced when one reads the provision which immediately follows, and which creates a legal presumption that every person who occupied a role of responsibility within the body corporate, or even if he was merely purporting to act in any such capacity, is guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. In fact the said provision very explicitly envisages that the criminal act was done by a body corporate ("Where an offence against the provisions of this Act is committed by a body of persons"). The possibility that only a pecuniary penalty be applied in lieu of a term of imprisonment, which would undoubtedly only apply with respect to a legal person, also militates in favour of this argument. Article 3(4) can be perceived as an additional provision which provides for the possibility of corporate liability being applied where an infringement is committed for the benefit of a legal person by a natural person who occupies a leading position within that legal person.

31. This provision reflects the general provision providing for corporate liability in the Criminal Code (Art.121D) and one notes that the punishment provided under the Code for the said offence was retained in the PMLA provision.

32. However Article 3(4) is not a provision establishing criminal conduct, since this is addressed by Article 3(1), but provides for consequences of a conviction of a natural person for money laundering done for the benefit of the legal person, by penalising also the body corporate. It is interesting to note that whilst in Art 3(1) the offence has been committed by the body corporate, in Art.3(4) the offence is committed by a natural person for the benefit of a legal person. In cases falling under Article 3(4) the natural person would not be exempted from punishment as provided under Article 3(1).

33. The authorities have admitted that for the avoidance of any doubts in this regard the punishments should be aligned or provision made for separate provisions aimed at differentiating offences committed by a natural or legal person. The 3rd Mutual Evaluation Report of MONEYVAL, when referring to corporate criminal liability for money laundering offence, indicated Article 3(1) of PMLA. Before the introduction of corporate criminal liability, the said article, when referring to "any person" regarded

only natural persons. After the introduction of corporate criminal liability, the expression "any person" might include as well legal persons. According to the Interpretation Act of 4 February 1975, with the subsequent amendments, the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not. Thus, Article 3(1) of PMLA, read in conjunction with Article 4(d) of the Interpretation Act, and Article 3(4) of PMLA provides for the possibility to hold liable a legal person based on two different articles. In this case, the fine (multa) applied to a legal person, based on Article 3(4) of PMLA, cannot exceed 1,164,686.70 Eur. Nevertheless, based on Article 3(1) of the PMLA the fine applied to natural and legal persons can be established up to 2,329,373.40 Eur. The Maltese authorities also indicated that in cases falling under Article 3(4) of PMLA, the natural person would not be exempted from punishment as provided under Article 3(1) of PMLA and the rapporteurs agree with this conclusion.

34. By virtue of Article 3(7) of the PMLA, Article 248E(4) of the Criminal Code is also applicable in case of money laundering offences. It extends the applicability of corporate criminal liability to the situations where the commission of the offence "was rendered possible because of the lack of supervision or control by a person" who was in a leading position, over the actions of a natural person who was an employee or otherwise in the service of the body corporate.

Effective implementation

35. Malta introduced corporate criminal liability in 2002[12] for some specific offences, including money laundering, terrorism, abuse of public authority, trafficking in persons, etc. Still, after about 12 years of being in force, according to the information provided by the Maltese authorities, these provisions were not applied in practice and there are no cases, including money laundering, when a legal person was convicted. The Maltese authorities, started to achieve some success in relation to convictions for money laundering, since 2007[13], however, no final convictions, have been reported to involve legal persons. Some substantial success in prosecution of money laundering cases involving legal persons started to be achieved since 2011 – 3 cases out of 7, in 2011 and 7 cases out of 10, in 2012. No money laundering case prosecuted in 2013 involved legal persons.

36. The legal provisions establishing corporate criminal liability are partially in line with Article 10 (1, 2) of CETS No. 198 and it appears that since 2011 some success in this respect was achieved at the prosecution phase. The lack of convictions of legal persons in money laundering cases cannot lead to the conclusion that the respective legal provisions are used and implemented effectively. However, in the light of the recent prosecutions, some progress can be expected in the following years.

Recommendations and comments

37. The absence of convictions for legal persons, 12 years after the introduction of corporate criminal liability in Malta needs to be reviewed by the Maltese authorities. It should be established whether there are any legal or practical obstacles that impedes obtaining of convictions of legal persons, including in money laundering cases. In the course of this, the need for a conviction of a natural person for money laundering should be reconsidered.

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[12] Amendments introduced by Act III of 2002
[13] The information is based on the statistics on money laundering convictions illustrated in the Fourth Assessment Visit Report of MONEYVAL (2012)

38. The Maltese authorities are recommended to clarify the corporate liability regime, by aligning the penalties provided by both, Article 3(1) and Article 3(4) of PMLA.

39. The Maltese authorities are also advised to draw up guidance and instructions for the law enforcement and prosecutors that would explain the practical application of the legal provisions on corporate criminal liability.

3. Previous decisions – Article 11

> Article 11 is a new standard dealing with international recidivism. It recognises that money laundering and financing of terrorism are often carried out transnationally by criminal organisations whose members may have been tried and convicted in more than one country. Article 11 provides for a mandatory requirement for the State to take certain measures but does not place any positive obligation on courts or prosecution services to take steps to find out about the existence of final convictions pronounced in another State-Party; its wording is as follows:
>
> "Each Party shall adopt such legislative and other measures as may be necessary to provide for the possibility of taking into account, when determining the penalty, final decisions against a natural or legal person taken in another Party in relation to offences established in accordance with this Convention."

Description and analysis

40. In the replies to the Questionnaire, the Maltese authorities have informed that the possibility of the courts to take into account foreign judgments was introduced expressly especially for transposing Article 11 of the CETS No. 198[14].

41. Article 49[15] of the Criminal Code as it was modified in May 2014, provides that a person is deemed to be a recidivist if, after being sentenced for any offence by a judgment, even when delivered by a foreign court, which has become *res judicata*, he commits another offence.. The Maltese law does not require separate proceedings for the recognition of a foreign judgment as a precondition for establishing recidivism.

Recommendations and Comments

42. It can be concluded that the Maltese judicial authorities are in a position to take into account final decisions taken by another Party in relation to offences established in accordance with CETS No 198. Though, there is no information available as to what is the actual practice, it should be taken into consideration that Malta has certain experience, as an EU Member State, in exchanging the information extracted from the criminal records within the framework of EU legal instruments.

4. Confiscation - Article 3 paragraph 1, 2, 3, 4 of the CETS 198

> The confiscation and provisional measures set out in the Convention which are considered to add value to the international standards are in the following areas:

[14] Amendment of the Article 49 of the Criminal Code, introduced by Act XXXI of 2007
[15] CRIMINAL CODE, TITLE V, OF RECIDIVISTS, Definition of recidivist

- Article 3 paragraph 1 introduces a new notion to avoid any legal gaps between the definitions of proceeds and instrumentalities as, according to it, *"Each Party shall adopt such legislative and other measures as may be necessary to enable it to confiscate instrumentalities and proceeds or property the value of which corresponds to such proceeds **and laundered property**."*

- Confiscation has to be available for ML **and to the categories of offences in the Appendix** (and no reservation is possible) (Article 3 paragraph 2).

- Mandatory confiscation for some major proceeds-generating offences is contemplated under this Convention (Article 3 paragraph 3 [Annex III]). Though not a mandatory provision, the drafters sent a signal that, given the essential discretionary character of criminal confiscation in some countries, it may be advisable for confiscation to be mandatory in particularly serious offences, and for offences where there is no victim claiming to be compensated.

- Reverse burdens are possible (after conviction for the criminal offence) to establish the lawful or other origin of alleged proceeds liable to confiscation – Article 3 paragraph 4 [subject to a declaration procedure in whole or in part].

Description and analysis
General

43. The confiscation regime (forfeiture, according to the Maltese legislation) is based on the provisions of the Criminal Code, PMLA and DDO[16.] Forfeiture is a consequence of the punishment for the crime established by law. It may be ordered by the court in the absence of a conviction, if the manufacture, use, carrying, keeping or sale of the goods is an offence as such. The forfeiture measure has a mandatory character and is applicable in relation to all categories of offences listed in the Appendix to CETS No 198.

44. The confiscation of *corpus delicti*, instrumentalities, used or intended to be used in the commission of any crime, and of "*anything obtained by such crime*" is dealt with under Article 23 of the Criminal Code:23. (1) *The forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property*."

45. Article 23 of the Criminal Code refers to any crime, and not to relevant offence, thus it can be assumed to cover as well money laundering and drug related offenses under PMLA and DDO.

46. The provisional measures in place for preventing any dealing, transfer or disposal of property subject to forfeiture are the attachment and freezing orders.

47. An attachment order may be issued by the court upon an application of the Attorney General to that effect. By means of an attachment order, all moneys and other

[16] The relevant provisions on forfeiture under DDO are also mainly applicable in the case of MKPO.

movable property due or pertaining or belonging to the suspect are attached in the hands of third parties (garnishees). Upon being issued the order prohibits the suspect from transferring or otherwise disposing of any movable or immovable property. This order is served on the garnishees and the suspect and is valid for a period of 30 days which can be extended further for another 30 days if new evidence comes to light. If the suspect person is away from Malta the period of 30 days is held in abeyance and the attachment order continues indefinitely.

48. The suspect person is also required to declare in writing to the Attorney General the nature and the source of the attached property (Article 4(6) of PMLA, Article 435A(1) of the Criminal Code and Article 24A(6) of DDO). Any disclosure of the information related to the attachment order that is likely to prejudice the effectiveness of the order or the investigation connected to it is punishable.

49. The freezing order may be requested by the Attorney General in relation to an accused person. It will remain in force until the final judgment is pronounced (Article 5 of PMLA, Article 435A (2) of the Criminal Code and Article 22A(1) of DDO). The freezing order may be obtained only when or after the indictment is issued.

Instrumentalities, proceeds or property the value of which corresponds to such proceeds

50. The text is clear with regard to instrumentalities, but it also refers to goods obtained by crime. Article 3(a) of PMLA gives the definition of the term proceeds, which is similar to the one contained in CETS No 198. It includes derived proceeds and any income or other benefit derived from proceeds. Based on this, it is obvious that the term proceeds has a broader meaning than "*anything obtained by such crime*". In this respect, the forfeiture of the proceeds from crime in the meaning of CETS 198 is dealt with separately.

51. The forfeiture of *the proceeds of the offence* is covered expressly by Article 23B(1) of the Criminal Code, but this time the article is applicable only to *relevant offences*.

52. Article 23A defines "*relevant offences*" as follows:

> "*Relevant offence*" means any offence not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year.

53. The offences listed in the Appendix to the Convention are provided by the Maltese law with punishments of more than one year of imprisonment. (Annex VIII).

Subsequently, the forfeiture of the proceeds of the money laundering offences is dealt with, in the same manner, under Article 3(5) of PMLA. The forfeiture of the proceeds from drug related offences is possible based on Article 22(3A) of DDO.

54. The provisions of the criminal and special legislation empower the court to order the forfeiture of property the value of which corresponds to the value of proceeds. In respect of *relevant offences*, it is ensured by Article 23B (1). The value of proceeds from money laundering offences can be confiscated under Article 3(5)(a) of PMLA. Article 22(3A) (d) of DDO enables the forfeiture of "*all moneys or other movable property, and of the entire immovable property of the person*" who was found guilty, thus covering the value of the proceeds.

55. Any property which is in possession or under the control of the person found guilty is deemed to be derived from the offence in issue (relevant offences and money laundering offences), unless proved to the contrary, is liable to forfeiture by the court – Article 23B(1A) of the Criminal Code and Article 3(5)(a) of PMLA. Such a presumption is also broadly covered by Article 22(3A) (d) of DDO which offers the possibility to forfeit all moneys or other movable property, and of the entire immovable property of the person found guilty, however, this article refers to the "property of the person", which might not cover the property *in possession* or *under control* of the person. The right of the person found guilty or any person having an interest, to bring an action for a declaration that any or all of the property forfeited is not profits or proceeds from crime, is also applicable only in case of the *relevant offences* and *money laundering offences* and exclude the offences under DDO.

56. Article 23B(2) of the Criminal Code, Article 3(5)(b) of PMLA and Article 22(3B) of DDO grants the possibility to impose a fine (*multa*) when it is not possible to forfeit the proceeds. The amount of the fine shall be the equivalent of the proceeds of the offence:

"Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, to the payment of a fine (multa) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure."

Laundered property

57. Confiscation of the *laundered property* is covered by Article 3(5) of PMLA. According to its provisions, beside the mandatory confiscation of the proceeds, which are defined broadly enough, "*any property of or in the possession or under the control*" of the person found guilty, is deemed to be derived from the offence of money laundering and liable to confiscation. This is applicable even when the said property passed into the hands of third parties and, even if the proceeds of the property are situated in any place outside Malta. Moreover, the property of the person found guilty, which is considered to be disproportionate to his lawful income, shall also be liable to forfeiture.

Burden of Proof – Article 3(4)

58. The property of the person found guilty shall be deemed to be derived from money laundering or a relevant offence "*unless proved to the contrary*" (Article 3(5)(a) of PMLA and 23B(1A) of the Criminal Code). The burden of showing the lawful origin of such property lies on the person charged or accused. The reversal of burden of proof is provided by Article 22(1C)(b) of DDO and is applicable *mutatis mutandis* to money laundering and relevant offences by virtue of Article 3(3) of PMLA and Article 23C(2) of the Criminal Code.

59. According to the explanations provided by the authorities these provisions work in such a manner that whilst the overriding obligation to prove a case beyond reasonable doubt lies exclusively on the prosecution, once the prosecution has brought about the level of evidence to substantiate that there is no lawful explanation as to the possession or activities carried out on the monies/property/assets, it will be for the accused to bring forward that evidence to counteract and overturn the presumption which comes into being. Reversal of the onus provisions means that the burden of

proof only falls on the suspect/accused when the prosecution provides evidence that the suspect/accused has given no reasonable explanation showing that money, property or proceeds are not the proceeds of crime. No relevant jurisprudence has been provided by the Maltese authorities.

Confiscation to apply to the offences in the appendix – Article 3(2)*; *Mandatory confiscation for particular offences – Article 3(3)

60. As noted, forfeiture has a mandatory character and is applicable in relation to all categories of offences listed in the Appendix to CETS No 198.

Effective implementation

61. The effectiveness of the attachment order regime was questioned in the Fourth assessment visit report. Having considered the issues raised by the evaluators of the 4th MONEYVAL assessment the rapporteurs of the current assessment express also their concerns as to tactical difficulties which may be encountered by investigators when they have to take precautionary measures. As long as the precautionary measures are only possible through the attachment orders during the investigation (which is limited to 30 days plus another 30 days if there is additional evidence), before an indictment to be issued, the time limits of the attachment order may complicate tactical decisions to take such measures to an extent that impacts on effectiveness of the seizure regime.

62. In the context of the first round follow-up Report of Malta adopted at the MONEYVAL Plenary in March 2014 the Maltese authorities reported on a Draft Bill aimed to increase the effectiveness of the seizing and confiscation regime. The main feature of the proposed amendments is the extension of the term of validity of the attachment orders, from thirty day validity to a forty-five day period which may be prolonged to a further forty-five day period under certain circumstances, so increasing the maximum term of validity of the attachment order to ninety days. Whether that change will have a significant impact on the results in domestic confiscation is a moot point. The rapporteurs are of the opinion that the system should provide law enforcement with the appropriate tools to initiate more and more seizure measures in the appropriate cases in the domestic context at early stages in the investigation before assets are dissipated. Sometimes investigation of an organized crime activity for instance, requires much more than ninety days, circumstances in which the decision to seize assets through an attachment would be very much complicated by the time limits of the current regime of the attachments and it is not excluded that situation will not be substantially changed by the proposed amendments.

63. According to the information submitted to MONEYVAL by Malta for the first follow-up report, the number of attachment orders issued between 2011 and 2013 is as follows:

Attachment Orders (2011 – 2013)

Year	Attachment Orders
2011	8
2012	6
2013	15

64. In replies to the questionnaire, the Maltese authorities presented the number of freezing orders issued by the courts with regard to the assets and proceeds of the accused persons:[17]

Freezing Orders issued by the courts.

2008	12
2009	29
2010	46
2011	32
2012	44
2013	61

65. The tables above reflect that the measure of restraining the assets through an attachment order has been taken at an early stage of the investigations in only a few cases where a subsequent freezing order has been issued later in the proceedings. There is no information related to the number of domestic cases within the total number of freezing orders.

66. Though it is obvious that the number of the freezing orders increased substantially in 2013, compared to the previous years, it is hard to draw any proper conclusions on the effectiveness of these measures, in the absence of the statistics on the amount of the frozen and confiscated assets.

67. The Maltese authorities indicated that during the period 2010-2013 an amount of 541,934 Eur and assets in value of 61,646 Eur were confiscated. Nevertheless, the amount of confiscated money and assets appears to be very small compared, for example, to that of the alleged laundered property invoked in the prosecution phase or the frozen assets. For example, the amount of frozen assets related to money laundering cases, was more than 2 million Eur in 2010 and 87,059,186 Eur in 2011.[18]

68. The Fourth assessment visit report concluded that the application of provisional measures had started to be applied more often in practice in relation to money laundering cases, compared to the situation of 2005. There were concerns as to the extent that these measures apply to other cases, besides drugs and money laundering offences. No statistics were available with respect to the amount of frozen assets, number of confiscations and the amount of confiscated assets. Nevertheless, the statistics provided on money laundering convictions show, for instance, that confiscation was applied only in three out of seven cases. The confiscated assets were *corpus delicti*, laundered proceeds and the assets found in the possession of the accused person.

69. Value confiscation is possible and the Maltese authorities indicated[19] that in some cases the provisions on the reversal of the burden of proof were used in practice.

70. Furthermore, the available statistics on confiscation in money laundering cases indicate that the regime is underused and the amount of confiscated property is significantly smaller compared to the alleged laundered property and frozen property.

[17] The Orders were issued based on the provisions of the PMLA, Criminal Code and DDO
[18] Statistics on the amount of frozen assets provided by the Fourth assessment visit report of 2012
[19] Information contained in the Fourth assessment visit report of 2012

Recommendations and comments

71. The Maltese authorities should consider amending the legislation as necessary to provide law enforcement authorities with more appropriate legal instruments to freeze assets at an early stage of an investigation without putting them under disproportionate pressures to finalise investigations.

72. Maltese authorities are advised to undertake measures targeted to improve the effectiveness of the provisional measures and of the confiscation system.

73. Likewise, efforts should be made in order to structure the statistics on frozen and confiscated property on yearly bases and on categories of offences covered by the Appendix to the Convention.

5. Management of frozen and seized property – Article 6

The Convention introduces a new standard which relates to the requirement of proper management of the frozen and seized property enshrined in Article 6 which reads as follows:

> *"Each Party shall adopt such legislative or other measures as may be necessary to ensure proper management of frozen or seized property in accordance with Articles 4 and 5 of this Convention."*

Description and analysis

74. The frozen and seized property is managed according to the provisions of the Title IV of the Criminal Code.20 Based on these norms, the registrar is responsible for holding the property connected with the criminal proceedings, until its final conclusion (including the eventual proceedings of appeal). The registrar is responsible for ensuring that all the property delivered to him is properly catalogued, stored and preserved and kept in a secure place. The adequacy of these actions is to be determined by the registrar. With the approval of the Minister responsible for Justice, the registrar may appoint another person or persons to hold the property on his behalf. The title also contains norms on dealing with prohibited property[21] after certification of the nature of the property given by the Comptroller of Customs; the registrar shall apply to the court for an order for its disposal.

75. Notwithstanding the existence of Article 669, there is no formal internal procedure on how the management of different types of property is to be implemented. The legislator gave discretion to the registrar to determine the adequacy of the actions to be taken. Article 673 of the Criminal Code does refer to situations when the property shall be disposed of before the finalization of the proceedings. Such situations include *inter alia*: when a considerable space is necessary for keeping the property due to its nature, quantity or dimensions; when the property is subject to deterioration or depreciation or the cost of its upkeep is out of proportion to its value; where it is not practicable or convenient for any other reason to keep such property. The court shall decide on such a disposal, upon the application by the Attorney General or by the registrar, with the mandatory consent of the Attorney General.

[20] Title IV of the Criminal Code *Of property belonging to the person charged or accused or to other persons and connected with criminal proceedings.*

[21] According to Article 671 prohibited property is the property which may not be imported into Malta

76. The Registrar is also responsible for conducting inquires to trace and ascertain the whereabouts of any money or other property mentioned in the freezing or forfeiture orders (Article 23D of the Criminal Code).

77. The Minister responsible for Justice is entitled, according to Article 668 of the Criminal Code, to make regulations which would detail the rules on the registration and preservation of the property connected to criminal proceedings and on the manner of record keeping of the movements of any such property. No information is available as to the existence of such regulations.

Effective implementation

78. The Criminal Code provisions ensure a minimum legal basis for the management of frozen and seized assets. The system in place does not seem to cover adequately the standard desired by the Convention. The replies to the questionnaire do not contain other information that demonstrates effectiveness of the system.

79. The findings of the Fourth assessment visit report of 2012 emphasize that the procedure for quantification, realization and coordination of the follow-up of the freezing and forfeiture orders appears to be fragmented and ad-hoc.

80. Since the 4th round of evaluation the system for asset tracing has been reviewed and the procedure whereby court-appointed officials were entrusted with these functions has been replaced. The function of tracing moneys or property belonging to charged or convicted persons has now been entrusted to the Registrar of the Criminal Courts under article 23D of the Criminal code and is no longer carried out by court appointed officials.

81. A Unit was set up within the Court Registry to manage frozen and confiscated assets. The legal basis for this unit is unclear. Moreover from information provided by the authorities it is clear that law enforcement currently has little support from such unit. It is strongly advised that a specialized national agency is established, or a specialized asset management unit is created within an existing entity or authority.

82. This kind of unit would be able to provide pre-restraint and seizure planning strategies as well as management once the assets have been properly seized or restrained.

83. It is not clear if the system as it is structured at the time of the current assessment is able to face the important challenges of the managing of seized assets in practice. While for seized currency, funds on deposit and other financial instruments usually a non–complex management and oversight is required. Tangible property (boats, vehicles, real estate, etc.) can be more challenging. Specific issues arise with perishable or rapidly depreciating assets. The seizure of business structures and activities would present the most serious risks and challenges, as difficult choices have to be made. In fact, the defendants who prevail in confiscation court proceedings may seek compensation for losses imputable to the asset manager in case of damage caused to the property, depreciation of its value, etc. These sorts of issues could inhibit to a large extent the initiatives of the law enforcement agencies and also of the judiciary.

Recommendations and comments

84. The Maltese authorities are strongly advised to consider introducing more detailed provisions that would allow an adequate management of the frozen and seized assets. Consideration might be given to the efficient use, for special purposes, of the forfeited

assets, or the advantage of establishing the duty of the person in charge of their management to increase, where possible, the value of the assets. It is also worth recalling the previous recommendations22 on the need for a more effective asset recovery strategy for proceeds.

6. Investigative powers and techniques required at the national level – Article 7 paragraphs 1, 2a, 2b, 2c, 2d

The areas where the Convention is considered to add value are as follows:

- The provisions of article 7 introduce powers to make available or seize bank, financial or commercial records for assistance in actions for freezing, seizure or confiscation. In particular: Article 7 paragraph 1 provides that "Each Party shall adopt *such legislative and other measures as may be necessary to empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized in order to carry out the actions referred to in articles 3, 4 and 5. A Party shall not decline to act under the provisions of this article on grounds of bank secrecy*."

- Article 7 paragraph (2a) provides for power to determine who are account holders: "*To determine whether a natural or legal person is a holder or beneficial owner of one or more accounts, of whatever nature, in any bank located in its territory and, if so obtain all of the details of the identified accounts*;"

- Article 7 paragraph (2b) provides for the power to obtain "historic" banking information *"To obtain the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more specified accounts, including the particulars of any sending or recipient account*;"

- Article 7 paragraph (2c) [subject to declaration under article 53] provides for the power to conduct "prospective" monitoring of accounts as it provides for "*To monitor, during a specified period, the banking operations that are being carried out through one or more identified accounts;*"

- Article 7 paragraph (2d) provides for the power to ensure non-disclosure *"To ensure that banks do not disclose to the bank customer concerned or to other third persons that information has been sought or obtained in accordance with sub-paragraphs a, b, or c, or that an investigation is being carried out."*

- States should also consider extending these powers to non-banking financial institutions (article 7 paragraph (2d)).

Description and analysis

Article 7 paragraph 1

85. In the case of money laundering offences, Article 4 of the PMLA (Prevention of Money Laundering Act) empowers the Attorney General, when there is a reasonable cause to suspect that a person is guilty of a ML offence, to apply to the Criminal Court for an investigation order. The Criminal Court will issue such an order if it concurs with the Attorney General's request. The application for the investigation order must be clear as regards the reasonable cause for suspicion and the reasonable grounds for the assumption that the material to which the application relates is of substantial value for the investigation. If there is a need for any further clarifications in relation to the

[22] The recommendations of the Fourth assessment visit report of 2012

application for the investigation order, the Criminal Court can require to hear the Attorney General (Article 4(7) of the PMLA).

86. The investigation order grants access to "particular material or material of a particular description" which is in possession of the person named in the order, including a body or association of persons, as well as granting the power "*to enter any house, building or other enclosure for the purpose of searching for such material*" (article 4(1) of the PMLA). When the investigation order concerns information contained in a computer, the material shall be produced or shall take a form in which it can be taken away, and to be visible and legible.

87. The same powers of investigation of the Attorney General are provided in article 435A(1) of the Criminal Code in relation to the relevant offences, i.e. any offence not being one of an involuntary nature liable to the punishment of imprisonment or of detention of more than one year, excluding the crimes under the Dangerous Drugs Ordinance (DDO), Medical and Kindred Professions Ordinance (MKPO) and the PMLA. Pursuant to this article, the provisions of Article 4 of the PMLA shall be applied *mutatis mutandis*, including the provisions regulating the investigation order. In relation to drug related offences, the investigation order can be issued based on Article 24A of DDO.

88. Bank secrecy does not constitute an impediment to criminal investigation. Article 4(3)(b) of the PMLA provides that an investigation order shall have effect notwithstanding any obligation of secrecy or other restrictions upon the disclosure of information imposed by any law or otherwise. The special legislation on professional secrecy contains as well norms imposing an obligation to disclose information, otherwise covered by professional secrecy, when it is required, *inter alia*, for the investigation of a criminal offence or in the course of a prosecution for a criminal offence (article 6B of the Professional Secrecy Act).

89. The Criminal Code (article 257) exempts from the liability for professional secrecy disclosure when the persons who, by reason of "their calling, profession or office" have a duty of professional secrecy, disclose the information to a public authority in relation to an investigation of the offences under DDO, MKPO and PMLA. According to the interpretation given by the article 3(1) of the Professional Secrecy Act, the persons under the duty of professional secrecy also include employees and officers of financial and credit institutions. The disclosure may be authorized or ordered by the court for the purpose of preventing, disclosing or detecting the commission of acts that amount or are likely to amount to a criminal offence (article 9, par. 1 of the Professional secrecy act).

Article 7 paragraph 2 a)

90. The information on the identity of the holder and the beneficial owner of an account, and the details of an account can be obtained by the FIAU, upon a simple request. A court order is needed to make it available to the investigation and prosecution authorities. In this respect, the Attorney General must apply for an investigation order, based on Article 4(1) of the PMLA and Article 435A(1) of the Criminal Code.

91. The CDD measures that must be maintained by persons or entities subject to the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR), including banks, other financial and non-financial institutions, businesses and professions, based on Regulation 4 of the PMLFTR, shall comprise, *inter alia*, the identification and verification of the identity of the applicant for business and the identification of the beneficial owner which is specified in further detail under Regulation 7 of the PMLFTR. The identification of the beneficial owner must be

performed to such an extent as the subject person is satisfied of knowing who the beneficial owner is and shall comprise reasonable measures to understand the ownership and control structure in the case of legal persons, trusts and similar legal arrangements. Subject persons shall not keep anonymous accounts or accounts in fictitious names.

92. Subject persons are obliged to ensure that all CDD records and other relevant information is made available to the relevant competent authorities, when the request for such information has the purpose of preventing money laundering and funding of terrorism (Regulation 13(1),13(6) of the PMLFTR). The description of the record-keeping obligation has a comprehensive character and obliges the subject persons to maintain, for a period of at least five years*, inter alia*, records indicating the nature of the evidence of the performed CDD (Regulation 13(2),13(3) of the PMLFTR).

Article 7 paragraph 2 b)

93. Pursuant to Regulation 13 of the PMLFTR, the subject persons are obliged to keep, for at least five years, records containing details relating to the business relationship and all transactions carried out by that person in the course of the established business relationship or occasional transactions. The records shall include the original documents or other copies which are admissible in court proceedings.

94. The Regulations do not specify if the records regarding the transactions shall include the particulars of any sending or recipient account. The Maltese authorities argued that by means of an investigation order, the authorities are able to obtain and to gain access to any material which is likely to be of substantial value to the investigation, including any particulars of bank accounts and banking operations.

Article 7 paragraphe 2 c)

95. Monitoring of banking operations that are being carried out through one or more identified accounts can be performed based on a monitoring order. Article 4B of the PMLA enables the Attorney General to apply to the Criminal Court for a monitoring order in case of suspicion that there is a money laundering offence. Based on such an order, the banks are required to monitor for a specific period the transactions or banking operations being carried out through one or more accounts. The monitored accounts can be of a specific suspect, can be suspected to have been used in the commission of an offence or can provide information about the offence or the circumstances of the offence. The results of the monitoring must be communicated to the persons or authority indicated by the Attorney General and the collated information is transmitted subsequently to the Attorney General.

96. With respect to other offences covered by the Appendix to CETS No. 198, including drug related offences, the monitoring order can be requested based on Article 435AA(1) of the Criminal Code. The relevant offence for the purpose of monitoring under Article 435AA (1) means any offence which is liable to the punishment of imprisonment or of detention for a term of more than one year. As it can be seen from the Annex VIII of the report, the predicate offences covered by the Appendix to the Convention may be punishable by a term of imprisonment under one year.

Article 7 paragraphe 2 d)

97. Malta does have legislative measures in place to ensure the non-disclosure of information as required by Article 7(2) of CETS No. 198.

98. In case of an investigation order, the disclosure that an investigation is being undertaken or any other information that is likely to prejudice the investigation is prohibited by Article 4(2) of PMLA, Article 24A(2) of DDO and Article 435A(1) of the Criminal Code. The disclosure of the information related to a monitoring order is forbidden by Article 4B(2) of PMLA and Article 435AA(2) of the Criminal Code. Prohibition of information's disclosure by a subject person, a supervisory authority or any of their official or employee with regard to an investigation or an information that has been or will be transmitted to the FIAU, is ensured by Regulation 16(1) of the PMLFTA.

99. The requirements of Article 7 of CETS No. 198 cannot be applicable as well to the non-bank financial institutions. The monitoring order issued by the Court under the provisions of the Criminal Code and PMLA is limited only to bank accounts.,

Effective implementation

100. In the replies to the questionnaire, the Maltese authorities informed that in 2013, 16 investigation orders were issued, compared to 8, issued in 2012. According to the information provided by the Maltese authorities, the criminality rate in the country has increased in 2013 (with 17,585 reported offences), compared, for example, with 14,290 offences reported in 2011. In the case of particular predicate offences, such as drug offences and fraud, there has been a constant increase of the reported offences during the period 2004-2013, up to 2.6 times (drug offences) and 3.9 times (fraud). Bearing in mind the overall incidence of proceeds-generating crime in Malta, the number of the issued orders appears to be very low.

101. Moreover, no monitoring orders were issued in practice by the courts.

Recommendations and comments

102. Malta implemented most of the requirements of CETS No 198 stated under Article 7. The legal provisions in place establish sufficient power in order to obtain information on account holders, including the beneficial owner, to obtain the "historic" banking information. The legislative measures are also sufficient to prevent the disclosure of the information related to the investigation or monitoring order. The statistics provided by the Maltese authorities indicate that the powers provided for in this Convention are not being used regularly in investigations of proceeds generating crimes and that no monitoring orders have been issued by the courts.The Maltese authorities are encouraged to further raise awareness of the practical possibilities for law enforcement of these powers.

7. International co-operation

7.1. Confiscation – Articles 23 paragraph 5, Article 25 paragraphs 2 and 3

The Convention is considered to add value in the following areas:

The Convention introduces a new obligation to confiscate that extends to "*in rem*" procedures. Hence, Article 23 paragraph 5 reads as follows:

> "*The Parties shall co-operate to the widest extent possible under their domestic law with those Parties which request the execution of measures **equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions**, in so far as such measures are ordered by a judicial authority of the*

requesting Party in relation to a criminal offence, provided that it has been established that the property constitutes proceeds or other property in the meaning of Article 5 of this Convention." (i.e. transformed or converted etc)

Asset sharing (though Article 25(1) retains the basic concept that assets remain in the country where found, the new provisions in Article 25(2) and (3) require priority consideration to returning assets, where requested, and concluding agreements).

Description and analysis

103. From the perspective of international cooperation in general, the Maltese system does not have a special law dedicated exclusively to this topic. Provisions related to international cooperation are to be found in the Maltese Criminal Code (in different parts and chapters) as well as in special criminal laws adopted with the purpose of regulating the prevention and combating of money laundering - Prevention of Money Laundering Act (PMLA) - and drug trafficking offences - Dangerous Drugs Ordinance (Ordinance).

104. International cooperation for confiscation purposes is covered by article 435D of the Criminal Code dealing with confiscation orders (conviction based confiscation) as well as by Article 11 of PMLA and Articles 24 D of the Ordinance.

105. Thus, according to Maltese law a foreign confiscation order providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Ordinance.

106. The meaning of foreign confiscation order is also covered by the Maltese law and includes any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property. In the context of the international cooperation for the confiscation purposes relevant offence means an offence consisting of any act or omission which if committed in these Islands, or in corresponding circumstances, would constitute an offence, other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year.

107. There are however no legal provisions allowing the Maltese authorities to execute measures equivalent to confiscation leading to the deprivation of property, which are not criminal sanctions.

Effective implementation

108. Malta is in position to grant any assistance to identify, trace and temporarily freeze any property related to a criminal offence notwithstanding no conviction has been obtained on the basis of a request for legal assistance.

Recommendations and comments

109. It is therefore recommended to Malta to ensure that its authorities co-operate to the widest extent possible under its domestic law with Parties that seek assistance in the execution of measures equivalent to confiscation leading to the deprivation of property which are not criminal sanctions, within the meaning of the Convention's provisions.

7.2 Investigative assistance – Article 17 paragraphs 1, 4, 6; Article 18 paragraphs 1 and 5; Monitoring of transactions – Article 19 paragraphs 1 and 5

The areas where the Convention is considered to add value here are the following:

- The Convention introduces the power to provide international assistance in respect of requests for information on whether subjects of criminal investigations abroad hold or control accounts in the requested State Party. Indeed, Article 17 paragraph 1 reads as follows: *"Each Party shall, under the conditions set out in this article, take the measures necessary to determine, in answer to a request sent by another Party, whether a natural or legal person that is the subject of a criminal investigation holds or controls one or more accounts, of whatever nature, in any bank located in its territory and, if so, provide the particulars of the identified accounts."* This provision may be extended to accounts held in non-bank financial institutions and such an extension may be subject to the principle of reciprocity.

- The Convention also introduces power to provide international assistance in respect of requests for historic information on banking transactions in the requested Party (which may also be extended to non-bank financial institutions and such extension may also be subject to the principle of reciprocity). Article 18 paragraph 1 provides that *"On request by another Party, the requested Party shall provide the particulars of specified bank accounts and of banking operations which have been carried out during a specified period through one or more accounts specified in the request, including the particulars of any sending or recipient account.*"

- The Convention is considered to add also value as it establishes the power to provide international assistance on requests for prospective monitoring of banking transactions in the requested Party (and may be extended to non bank financial institutions). Article 19 paragraph 1 reads as follows:

  "Each Party shall ensure that, at the request of another Party, it is able to monitor, during a specified period, the banking operations that are being carried out through one or more accounts specified in the request and communicate the results thereof to the requesting Party."

Description and analysis

110. Investigative assistance is afforded based on any applicable treaty (bilateral/multilateral) or agreement/understanding in force with the requesting state or based on the reciprocity.

111. Malta has also extended the investigative assistance to accounts held in non-bank financial institutions. Thus, the Maltese authorities explained that any entity which is believed to have in its possession or control any assets/property/monies and information pertaining to a suspect, whether held directly, indirectly or on behalf of a trust of which the suspect is a direct/indirect beneficiary, will fall within the reach of the

order and thus be obliged (by law) to give all information and where an attachment order is issued to enforce the temporary freezing of the said property/assets/monies.

112. The provisions for obtaining information from Malta on bank accounts and on bank transactions are provided in Article 435B of the Criminal Code and 24B of the Ordinance dealing with investigation and attachment orders. None of the two of the above mentioned requests for investigative assistance is regulated *expressis verbis*.

113. This is not the case for requests for monitoring the banking transactions which are expressly regulated in Article 435BA of the Criminal Code for predicate offences (including financing of terrorism) and Article 9A of the PMLA for money laundering offences. Under Articles 435AA of the Criminal Code and 4B of the PMLA, the Attorney General may apply to the Criminal Court for a monitoring order where there is a reasonable cause that a person is guilty of a predicate offence (Art 435AA) or money laundering (Article 4B). Articles 435AB of the Criminal Code and Article 9A of the PMLA regulate requests made by a foreign judicial or prosecutorial authority for a monitoring order to be issued in Malta.

114. A monitoring order issued in terms of the PMLA in the context of a suspected ML offence requires a bank: to monitor for a specified period the transactions or banking operations being carried out through one or more accounts in the name of the suspect; or through one or more accounts suspected to have been used in the commission of the offence; or which could provide information about the offence (or the circumstances thereof), whether before, during or after the commission of the offence, including any such accounts in the name of legal persons. A monitoring order issued in terms of the Criminal Code in the context of a predicate offence only covers banking operations (but not banking transactions). Additionally, the Criminal Code does not require banks to monitor banking operations carried out through one or more accounts suspected to have been used in the commission of the offence or which could provide information about the offence (or the circumstances thereof), whether before, during or after the commission of the offence, including any such accounts in the name of legal persons. The scope of the monitoring order is therefore more restricted under the Criminal Code. As a result a request from a foreign authority for a monitoring order to be issued in the context of a predicate offence would be more restricted than a similar request in the case of a ML offence.

115. Each and every time foreign requests are in respect of the money laundering offence (alone or together with one of the predicate offences), those foreign requests for monitoring bank transactions are to be handled in accordance with Art. 9 A and 4 B. Otherwise, the applicable provisions are of a general nature, Article 435BA becoming applicable.

116. Information with regard to bank transactions or operations may be transmitted, upon request or on its own motion, by the FIAU to any foreign body, authority or agency which it considers to have functions equivalent or analogous to those of the FIAU, and with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta.

117. The exchange of information is subject to such conditions and restrictions as the FIAU may determine, including the prior conclusion, if it deems so necessary, of any memorandum of understanding or other agreement, to regulate any such exchange of information. Information may be exchanged in accordance with article 16(1)(k), if such information is considered to be relevant to the processing or analysis of information or to investigations regarding financial transactions related to money laundering or funding of terrorism and the natural or legal persons involved.

118. The combined analyses of Articles 435B, 435BA of the Criminal Code with Article 24A and 24 B of the Ordinance indicated that in respect to the executions of foreign requests on investigative assistance the following conditions which would have to be observed in a similar domestic case are applied: thresholds (relevant offence) and dual criminality.

Thresholds (relevant offence)

119. According to the Maltese law, for the purpose of requests under Articles 17, 18 and 19, the relevant offence means an offence, not being one of an involuntary nature, consisting of any act or omission which if committed in these islands, or in corresponding circumstances, would constitute an offence liable to the punishment of imprisonment or of detention for a term of more than one year. The categories of offences in the appendix to the Convention are covered by the category "relevant offences" in Maltese law. (see Annex VIII)

Dual criminality

120. The requirement for double criminality only exists as a pre-requisite in the issue of investigation and attachment orders. In all other measures this is not a pre-requisite.

121. It was underlined that whilst Malta, to date, has never refused such assistance the actual wording is not of a mandatory nature. This means that if the double criminality requirements remain unmet, this does not necessarily imply that Malta will not execute the request. The same applies in so far as the requirement that the execution of the request is inconsistent with the law of Malta. In practice all requests related to investigations and prosecutions of conduct which is punishable as an offence in Malta (and not a political offence or a purely military offence or a request which has as a goal that of punishing the offender for the exercise of his fundamental rights and freedoms such as religious belief, creed or on the basis of racial and discriminatory considerations).

122. According to the reply, while dual criminality is required, the consideration of the behaviour in question limits itself to whether such behaviour is punishable under Maltese law. No other issues are assessed.

123. Thus, Article 649 paragraph 5 of the Criminal Code refers to the condition that the facts amounting to the offence, which such person is accused or suspected to have committed, amount also to an offence which may be prosecuted in Malta.

Effective implementation

124. Measures have been taken specifically to answer requests made under Articles 17, 18, 19. Malta was able to provide such investigative assistance before the entrance into force of the CETS 198. In terms of Article 19, it should be taken into account that it is discretionary in nature being up to each Party to decide if and under what conditions the assistance may be given in a specific case.

125. The fact that Malta adopted legislative measures is meritorious and must be noted among good practices.

126. There are differences between Article 435BA of Criminal Code and Article 9A and 4B of PMLA mentioned above, as regards the accounts that can be monitored. However it is important that, in the context of money laundering, *monitoring* is extended to the transactions or banking operations being carried out also through one or more

accounts suspected to have been used in the commission of the offence or which could provide information about the offence or the circumstances thereof, whether before, during or after the commission of the offence, including any such accounts in the name of legal persons.

127. The Maltese authorities have informed that steps are underway in order to align the texts of articles mentioned above and this will eliminate any inconsistency.

128. The Attorney General only receives and examines the requests submitted by the foreign authorities. The actual execution of the foreign requests for investigative assistance lies with the court and is dealt by article 649.

129. The Attorney General *may* apply to the Criminal Court for an investigation order or an attachment order or for both. The same procedure is applicable for requests for monitoring the banking transactions. Where the Attorney General decides to *communicate to a magistrate* a *foreign request made for any investigation*, search or/and seizure, the magistrate shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The Maltese law states that the magistrate *shall comply* with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta. Such provisions shall only apply where the foreign request is made pursuant to, and in accordance with any treaty, convention, agreement or understanding between Malta and the requesting country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party.

130. The quoted article also states that a declaration made by or under the authority of the Attorney General *confirming* that the foreign request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters *shall be conclusive evidence of the matters contained in that certificate.* The total amount of requests received by Malta in 2013 were 103 and 12 were made by Malta. Of the incoming requests the only requests which involved the intervention of the Criminal Court – where an attachment order and/or investigation order was requested by the foreign authority- totaled 12 investigation orders (10 of which were also accompanied by an attachment order). In 2012 Malta received 81 requests whilst it transmitted 18. Of these 3 investigation orders and 3 attachment orders were issued by the Criminal Court.

131. These measures apply in relation to all requesting states irrespective of their membership of the Council of Europe, European Union or United Nations Organization. This is positive. The assistance of this kind may be granted also based on reciprocity.

132. Requests for legal assistance can also be executed by the Police and this is the mode of execution which is opted for so as to reduce the burden on the courts when measures, not of a coercive nature are involved. Interviews of witnesses/suspects, gathering of evidence and all other measures which do not require the release from professional secrecy of a witness (only the Court may authorise this exemption), are generally executed by the Police.

133. The data provided by Maltese authorities is general and relates to both requests on bank accounts and on bank transactions. It seems that no separate data on each kind of request was collected, since when bank accounts are being requested, the bank is also asked to provide information on banking transactions which would appear

suspicious or indicative of some illegal activity (example amounts over a certain threshold or where the transaction itself is of dubious character; multiple same day transfers would fall within this latter category).

134. In terms of Article 19, no requests were received for the issuance of monitoring orders.

Recommendations and comments

135. In general, it is considered that the legislative and operative approach undertaken by the Maltese authorities is a pragmatic one, being able to lead in real time to noticeable, positive results in the cooperation with foreign authorities, on all levels. The Maltese legislation does not create supplementary conditions or obligations beyond to the general standards of international cooperation, which is very positive.

136. As regards the statistical records in terms of Articles 17 and 18, , the data communicated by the Maltese authorities does not provide for separate statistics as regards requests formulated based on Art. 17 and Art. 18. The Maltese authorities have to take into account that each of the measures provided by Articles 17 and 18 is self-standing and may also be requested in respect of a bank account that has become known to the foreign investigating authorities or by any other means or channels (e.g. FIAU). On the other hand, it is difficult for any requested state to provide such accurate statistics, taking into account that the requests for legal assistance formulated by the requesting state do not disclose in most cases the legal international instrument that constitutes the basis of their request. Nor do they clearly state what is the object of the request, so that it could be more easily identifiable by the requested state.

137. It is recommended to Malta to ensure that they are in position to provide clear statistical data as regards the total number of requests for Articles 17 and 18 assistance (including the requests for which the Attorney General made an application, and whether it was executed or refused);

138. The authorities may wish to extend the scope of the monitoring order under Article 435AA to bring it in line with the equivalent order as set out under Article 4B of the PMLA. This would ensure that the authorities are in a position to provide the widest possible cooperation in relation to requests for a monitoring order in the context of a predicate offence, as is already the case with respect to the ML offence.

7.3. Procedural and other rules (Direct communication) – Article 34 paragraphs 2 and 6

The Convention is considered to add value in that it introduces the possibility for direct communication prior to formal requests. According to article 34 paragraph 6:

> *"Draft requests or communications under this chapter may be sent directly by the judicial authorities of the requesting Party to such authorities of the requested Party prior to a formal request to ensure that it can be dealt with efficiently upon receipt and contains sufficient information and supporting documentation for it to meet the requirements of the legislation of the requested Party."*

Description and analysis

139. In Malta, direct contact is possible as a matter of practice and not as a matter of law. No legislative provisions are in existence allowing the judicial authority to formally contact and send, in case of urgency, requests for investigative assistance, provisional measures and confiscation and communications related to them directly to foreign authorities.

140. The legislative framework of international cooperation shows that the Attorney General has the general competence to receive requests formulated by foreign authorities and to transmit requests formulated by Maltese authorities. According to the information made available by the Maltese authorities, the practical efficiency of such a system is positive. Even though the internal and external flow of requests is handled at the level of the central authority This creates the conditions for good coordination and consultation. Caseworkers within the Central Authority, participate at the level of EJN and Eurojust.

Effective implementation

141. Preliminary contacts at different levels (police and prosecuting authorities) and in the framework of different networks, such EJN or different EU bodies (Eurojust and Europol) is a practice used according to the Maltese authorities.

Recommendations and comments

142. Even if the application of Article 34 paragraphs 2 and 6 is optional, it is recalled that the Convention itself aims, *inter alia* , to speed up communications between the authorities of the Parties to render more effective (from time and operational perspectives) international co-operation under this Convention.

143. It is recommended to Malta to ensure that foreign authorities can easily identify the appropriate local Maltese authorities and also that Maltese authorities engage with foreign authorities, as necessary;

8. International co-operation – Financial Intelligence Units - Article 46 paragraphs 3, 4, 5, 6, 7, 8, 9, 10, 11, 12

It is considered that the added value of the Convention in A.46 is that it sets out a *"detailed machinery for FIU to FIU cooperation, which is not subject to the same formalities as judicial legal cooperation."* The relevant provisions are set out in full.

Paragraph 1 *Parties shall ensure that FIUs, as defined in this Convention, shall cooperate for the purpose of combating money laundering, to assemble and analyse, or, if appropriate, investigate within the FIU relevant information on any fact which might be an indication of money laundering in accordance with their national powers.*

Paragraph 2 *For the purposes of paragraph 1, each Party shall ensure that FIUs exchange, spontaneously or on request and either in accordance with this Convention or in accordance with existing or future memoranda of understanding compatible with this Convention, any accessible information that may be relevant to the processing or analysis of information or, if appropriate, to investigation by the FIU regarding financial transactions related to money laundering and the*

natural or legal persons involved.

Paragraph 3 *Each Party shall ensure that the performance of the functions of the FIUs under this article shall not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities.*

Paragraph 4 *Each request made under this article shall be accompanied by a brief statement of the relevant facts known to the requesting FIU. The FIU shall specify in the request how the information sought will be used.*

Paragraph 5 *When a request is made in accordance with this article, the requested FIU shall provide all relevant information, including accessible financial information and requested law enforcement data, sought in the request, without the need for a formal letter of request under applicable conventions or agreements between the Parties.*

Paragraph 6 *An FIU may refuse to divulge information which could lead to impairment of a criminal investigation being conducted in the requested Party or, in exceptional circumstances, where divulging the information would be clearly disproportionate to the legitimate interests of a natural or legal person or the Party concerned or would otherwise not be in accordance with fundamental principles of national law of the requested Party. Any such refusal shall be appropriately explained to the FIU requesting the information.*

Paragraph 7 *Information or documents obtained under this article shall only be used for the purposes laid down in paragraph 1. Information supplied by a counterpart FIU shall not be disseminated to a third party, nor be used by the receiving FIU for purposes other than analysis, without prior consent of the supplying FIU.*

Paragraph 8 *When transmitting information or documents pursuant to this article, the transmitting FIU may impose restrictions and conditions on the use of information for purposes other than those stipulated in paragraph 7. The receiving FIU shall comply with any such restrictions and conditions.*

Paragraph 9 *Where a Party wishes to use transmitted information or documents for criminal investigations or prosecutions for the purposes laid down in paragraph 7, the transmitting FIU may not refuse its consent to such use unless it does so on the basis of restrictions under its national law or conditions referred to in paragraph 6. Any refusal to grant consent shall be appropriately explained.*

Paragraph 10 *FIUs shall undertake all necessary measures, including security measures, to ensure that information submitted under this article is not accessible by any other authorities, agencies or departments.*

Paragraph 11 *The information submitted shall be protected, in conformity with the Council of Europe Convention of 28 January 1981 for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108) and taking account of Recommendation No R(87)15 of 15 September 1987 of the Committee of Ministers of the Council of Europe Regulating the Use of Personal Data in the Police Sector, by at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation applicable to the requesting FIU.*

Paragraph 12 *The transmitting FIU may make reasonable enquiries as to the use made of information provided and the receiving FIU shall, whenever practicable, provide such feedback.*

Description and analysis

Article 46 paragraphs 1, 2 and 3

144. The main legislative instrument under Maltese law which provides a comprehensive regime for the prevention, investigation and prosecution of money laundering is the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta). Funding of terrorism is criminalised trough specific provisions under sub-title IV A of Title IX of Part II of Book First of the Criminal Code (Chapter 9 of the Laws of Malta).

145. The Financial Intelligence Unit of Malta is the Financial Intelligence Analysis Unit (FIAU), an independent government agency established under the Prevention of Money Laundering Act (PMLA).

146. The FIAU was established as an administrative FIU in 2002, reporting to Parliament through the Minister of Finance. It is composed of the Board of Governors, the Director and its permanent staff. The Board of Governors is composed of four members nominated from the Office of the Attorney General, the Central Bank of Malta, the Malta Police Force and the Malta Financial Services Authority.

147. The core functions of the FIAU are the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and the funding of terrorism. The FIAU is also responsible for monitoring compliance with the relevant legislative provisions.

148. The Prevention of Money Laundering Act (PMLA) sets out the internal cooperation functions of the FIAU as a central authority in the national Anti-Money Laundering/Counter-Financing of Terrorism (AML/CTF) system. The PMLA also sets out the general responsibility of the FIAU to co-operate and exchange information with supervisory authorities, where that information is relevant to the processing or analysis of information or to investigations regarding financial transactions related to Money Laundering and Financing of Terrorism. The "*supervisory authorities*" include an extensive range of entities, such as the Central Bank of Malta, the Malta Financial Services Authority, the Registrar of Companies or the Lotteries and Gaming Authority. Moreover, FIAU is authorised to disclose any document or information relating to the affairs of the FIAU, or information on any person which the FIAU has acquired in the exercise of its duties or its functions under the PMLA to supervisory authorities, whether situated in Malta or outside Malta.

149. The information exchange with foreign FIUs is regulated as one of the general functions of the FIAU and as an exemption from prohibition of disclosure rules. In addition, the FIAU plays an active role in the field of overall international information exchange and can obtain financial, law enforcement and administrative information on behalf of foreign counterparts.

150. Under Article 16(1)(k) of the PMLA, the Maltese FIU is authorised to exchange information, spontaneously or upon request, with any foreign body, authority or agency that shares functions equivalent or analogous to those of the FIAU. However, such authority is not conditioned by the status or type of the counterpart FIU (i.e. whether it is an administrative, law enforcement or judicial type FIU).

151. The FIAU is also bound by the provisions of Council Decision (2000/642/JHA) when exchanging information with EU-FIUs. Article 3 thereof requires that the ability of EU-FIUs to exchange information between themselves should not be affected by their internal status, regardless of whether they are administrative, law enforcement or judicial authorities. In that line, the FIAU does not take in consideration the internal

status or type of the counterpart FIUs when exchanging information. The statistical data provided at the end of this section shows that between 2011 and 2013 the FIAU exchanged information mostly with administrative types of FIUs, which however may be explained by the fact that there are far more administrative type FIUs than other types.

Article 46 paragraph 4

152. When exchanging information with counterpart FIUs the Maltese FIU makes use of either the Egmont Secure Web (ESW) or the FIU.Net.

153. Requests for information through the ESW are effected by the FIAU using a 'Request for FIU information" template form. Such template form requires the provision of information on the case under investigation in respect of which the FIAU would be requesting information – (see the Annex V)).

154. Since February 2014 a revised template of "Request for information from FIAU" has been adopted – (see the Annex VI).This template is used by financial analysts for all requests for information made, whether through ESW or FIU.Net. The template, which is used for exchanges both through ESW and FIU-Net, requires the provision of information on the case under investigation in respect of which the FIAU would be requesting information

155. All the Memoranda of Understanding (MoU) concluded by the FIAU with foreign FIUs contain a particular provision that requires every request for information to be accompanied by a brief statement of the underlying facts. The FIAU has to date concluded Memoranda of Understanding with the FIUs of the following jurisdictions: Belgium, Cyprus, the Principality of Monaco, Latvia, Slovenia, Romania, San Marino, Canada, South Africa, Tunisia, and Japan.

156. The 'Request for FIU information' template form which the FIAU makes use of when requesting information from counterpart FIUs over the ESW and the FIU-Net, requires the provision of information as to how and for what purpose(s) the information request would be used. In completing this request form the FIAU indicates that the information sought would be availed of for intelligence purposes in a money laundering investigation and limits the use of the information requested for the purpose stated, i.e., for intelligence purposes. Requests for information, through the FIU-Net, which are solely intended to establish whether a particular person or entity is known to the counterpart FIU are not accompanied by information on how such information sought would be used since such information would clearly be requested for FIU purposes only.

157. When the FIAU intends to disclose information obtained to third parties, the prior consent of the requested FIU is obtained. Upon requesting such consent the FIAU indicates to the requested FIU, the third party to whom the information would actually be disclosed and informs the requested FIU about the purpose of such a disclosure. It is important to note that the FIAU requests and makes use of information for intelligence purposes and moreover discloses information strictly for such purposes.

Article 46 paragraph 5

158. In pursuing its functions, as envisaged under article 16 of the PMLA, including the function to exchange information with foreign FIUs (Article 16(1)(k)), the FIAU is empowered to demand any information it deems relevant and useful from any reporting entity, law enforcement authority, supervisory authority, government ministry, department, agency or body, any other public authority and any legal or physical

person. This authority emanates from the provisions of Articles 30 and 30A of the PMLA. Information obtained through such means may be exchanged with foreign FIUs, in line with Article 16(1)(k) of the PMLA without the need for a formal letter of request.

159. Regulation 15(11) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) obliges every reporting entity to reply to requests for information by the FIAU as soon as it is reasonably practical and in no case later than five working days from when the demand is first made, unless there exist exceptional circumstances which warrant the extension of such period. The average working time taken by the FIAU to respond to requests for information is contained within the statistics provided at the three tables titled “Requests for cooperation and assistance (…)”.

160. In practice when the FIAU is requested to provide information which it does not hold in its own database or does not have direct access to, the FIAU demands such information from the appropriate competent authority, entity or person. In such cases, the FIAU is not bound and does not disclose to the requested third party the fact that such information is being requested to provide information to a foreign FIU. When demanding information from domestic competent authorities, entities or persons in order to reply to a request for information of a foreign FIU, the FIAU seeks the prior consent of the requesting FIU to disclose information to the domestic competent authority, entity or person being enquired. This procedure is not applied in practice when the requesting FIU would have specifically demanded information which is held by a supervisory or competent authority. In such case the FIAU immediately requests the concerned supervisory or competent authority to provide the requested information without demanding the prior consent of the requesting FIU.

Article 46 paragraph 6

161. In accordance with Article 34(3) of the PMLA, the FIAU may refuse to disclose information if:
i) In its opinion such disclosure could lead to causing prejudice to a criminal investigation in course in Malta; or
ii) Due to exceptional circumstances, such disclosure would be clearly disproportionate to the legitimate interests of Malta or of a natural or legal person; or
iii) Such disclosure would not be in accordance with fundamental principles of Maltese Law.

162. In terms of the provison to Article 34(3) of the PMLA, when the FIAU refuses to disclose information on the basis of one of the reasons mentioned in the same sub-article, the FIAU is bound to clearly explain to the body or authority, requesting the disclosure of the document or information, the reason why it is refusing to disclose information. The FIAU has never refused to disclose information for the above reasons.

163. According to the information provided by the Maltese authorities, to date the FIAU has only refused to disclose information in a small number of cases where it could not be ascertained that the information being requested would be used for the purposes of analysing transactions or activities suspected of involving money laundering or financing of terrorism. The FIAU does not retain statistical data with regards to declined requests made by counterpart FIUs, however the Maltese authorities indicated that the number of declined request was negligible.

Article 46 paragraph 7

164. In terms of exchanging information the FIAU abides by the provisions of EU Council Decision (2000/642/JHA) in relation to counterpart EU-FIUs, which provisions are directly applicable. Article 5(1) of the Council Decision states that information or documents obtained in terms of the Council Decision are intended to be used for the purposes laid down in Article 1(1) thereof (i.e., to assemble, analyse and investigate relevant information within the FIU on any fact which might be an indication of money laundering in accordance with their national powers). Subsequently Article 5(2) states that the FIU transmitting information may impose restrictions and conditions on the use of information for purposes other than those stated in Article 5(1), and in accordance with Article 5(3) the transmitting FIU would have to provide its consent for the dissemination of information by the receiving FIU to third parties to be used in criminal investigations and prosecutions.

165. As a member of the Egmont Group of FIUs, the FIAU also abides by the "Egmont Group of Financial Intelligence Units Principles for Information Exchange between Financial Intelligence Units". In terms of such principles FIUs requesting information are required to demand the prior consent of the requested FIU to be able to disseminate information to further third parties.

166. In practice, and in line with the above indicated legislative provisions and principles, any decision to disclose information obtained from counterpart FIUs to competent authorities and third parties, is always implemented subsequent to the consent of the FIU providing such information. As already stated, all the Memoranda of Understanding concluded with foreign FIUs contain a particular provision which obliges the receiving FIU to obtain the consent of the transmitting FIU prior to disseminating any information to third parties for further use.

Article 46 paragraph 8

167. According to the information provided, when transmitting information or documents to counterpart FIUs, besides making reference to the general principle that the information provided should be used for a money laundering or financing of terrorism analysis, the FIAU demands that:
- The provided information is used only for intelligence purposes;
- It is not disseminated to further third parties without the prior consent of the FIAU; and
- Such information is not used in judicial proceedings without the appropriate request for assistance.

Article 46 paragraph 9

168. By virtue of Article 34(4) of the PMLA, the FIAU is authorised to disclose any document or information it obtains in the exercise of its functions to any competent authority in Malta or outside Malta which would be investigating any act or omission, which if committed would tantamount to money laundering or funding of terrorism. Moreover by virtue of the proviso to Article 34(4) of the PMLA the FIAU may provide its consent to the dissemination of the information or documents provided for money laundering or financing of terrorism prosecution purposes.

169. The FIAU is thus granted the discretion to allow the requesting FIU to disseminate the information provided for subsequent money laundering or financing of terrorism investigations and prosecutions. Although the exercise of this discretion is not regulated by any legal provision under Maltese law, in practice the FIAU does not withhold its consent for the information to be used for intelligence purposes in money laundering or financing of terrorism investigation. Moreover the information provided

may not be used as evidence in any judicial prosecution and in such cases evidence should be obtained through the appropriate legal channels. These conditions are made known to the FIU requesting information, when the information is actually provided and also when the receiving FIU requests authorisation to disseminate information provided by the FIAU. It is important to note that to date the FIAU has never refused to provide its prior consent for the dissemination of information for investigation purposes, except where the investigations in question were not linked to money laundering or funding of terrorism.

170. The FIAU may opt not to disclose information to the requesting FIU in the cases explained further above in relation to Article 46 paragraph 6.

Article 46 paragraph 10

171. The FIAU implements various security measures to protect information held within its premises, including information received from other FIUs, and to ensure that such information is being handled by the appropriate personnel and in line with the FIAU's functions. These security measures include intruders' alarms securing windows and doors, and CCTV with the recording module protected in a safe. In addition, there is a special safe for particular sensitive documents in a specific room within the same premises, the access to which is also monitored by CCTV. IT security, email encryptions, and firewalls are also put in place. The officers and employees of the FIAU are screened by the Malta Security Service prior to their employment with the FIAU and every three years thereafter.

172. As regards access to information, only the Director of the FIAU and the financial analysts have access to the STR database. Requests for information may only be accessed by the Director of the FIAU, financial analysts and the international relations officer. The members of the Board of Governors of the FIAU, which in terms of Article 18(2) of the PMLA are responsible for the policy to be adopted by the FIAU and are not involved in the functions of the FIAU, do not have access to any of the databases of the FIAU. The rights to access the segments of the FIAU's servers that contain intelligence and STR information have only been conferred to the financial analysts and the Director, while the international relations officer is granted access to the segment of the FIAU's server which contains information relative to requests from counterpart FIUs.

173. To prevent the loss of any information held by the FIAU, weekly backups are performed. Information is stored on hard-disks and deposited in a different location. The FIAU has multiple servers dedicated for external communication (ESW and FIU.Net) and for internal databases. Moreover the financial analysts within the FIAU, by way of procedure, exchange information with foreign counterparts only through secure channels, mainly the ESW and the FIU.Net.

Article 46 paragraph 11

174. The CoE Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (CETS 108) was signed by Malta at 15/1/2003, ratified at 28/2/2003 and it entered into force at 1/6/2003. On another hand Data Protection Act was issued in Malta in 2001 (Act XXVI of 2001) and it has been amended several times until now, to be in line with the requirements of this Convention.

175. According to Article 5 of this Act , the Act "*shall not apply to processing operation concerning public security , defence, State Security, and activities of the State in areas of criminal law, provided that the Minister*…….."

176. The Maltese authorities have clarified that The FIAU is exempted from the provisions of the Data Protection Act ("DDA"), when it processes data and personal data for criminal purposes, and this in terms of Article 5 of the same DDA. Nonetheless the FIAU would be subject to the provisions of the DDA with regard to all other data processing operations which are not covered by the exemption under article 5. In order to ensure compliance with the requirements and procedures of the DDA, where applicable, an FIAU officer, acting as the Unit's Data Protection Officer, oversees the FIAU's data processing operations.

177. The obligation to exchange data only with foreign counterparts that follow at least the same rules of confidentiality and protection of personal data as those that apply under the national legislation, is ensured in terms of the Egmont Principles for Information Exchange between FIUs. These principles require FIUs receiving information to protect and keep secure information received, and lay down various measures which ought to be in place to ensure this.

As stated in paragraph 143 above when exchanging information the FIAU either uses the ESW or the FIU-Net. Through the ESW the FIAU exchanges information with Egmont Members which are subject to the Egmont Principles for Information Exchange, and hence subject to the data protection requirements explained above. The FIAU also makes use of the FIU-Net to exchange information with FIUs from EU member states which are required to implement equivalent data protection requirements in line with Directive 95/46/EC and which are established in jurisdictions being signatories to CETS No. 108.

178. In terms of Article 34 of the PMLA, the FIAU, its staff as well as its agents (whether still in the service of the FIAU or not) are not permitted to disclose any information acquired by the FIAU during the exercise of its functions, unless such a disclosure is authorised under the PMLA for the purposes of carrying out the functions of the FIAU or when such disclosure is specifically required by an express provision of any other law. This prohibition covers, without any distinction, all the information which is received by the FIAU in the conduct of its functions, and hence it includes information which is received from foreign counterparts.

179. In terms of Article 33 of the PMLA any official or employee of the FIAU would be liable to a criminal offence if he/she tips off any suspect or third party; that an investigation is being carried out by the FIAU, that any reporting entity has transmitted information to the FIAU or that the FIAU has transmitted information to the police for further investigations. Such an offence is punishable by a fine not exceeding €116,468.67, by imprisonment to a term not exceeding five years or by both such fine and imprisonment.

180. In accordance with Article 257 of the Maltese Criminal Code, any person who by his office becomes the depositary of any secret confided in him shall not disclose such secret, unless compelled by law to do so. Infringements of this article give rise to a criminal offence which is sanctioned by a fine not exceeding €46,587.47 or by imprisonment for a term not exceeding 2 years or by both such fine and imprisonment.

181. The staff and officials of the FIAU are bound by the provisions of this article in relation to any information which they receive in lieu of their office. Article 3 of the Professional Secrecy Act (Chapter 377 of the laws of Malta), clearly states that officials or employees of the State are bound by the provisions of Article 257 of the Criminal Code. The term 'official or employees of the State' as defined under Article 2 of the Professional Secrecy Act includes also employees of any body corporate established by law such as the FIAU.

Article 46 paragraph 12

182. The FIAU is authorised to request and make enquires as to the use of transmitted information and also to provide feedback to a foreign FIU making such a request. In practice the FIAU requests feedback on the outcome of cases in relation to which the FIAU would have been requested to provide information, when the FIAU would be conducting an analysis having common suspect/s or links. Moreover where subsequent to a request for information made by a foreign counterpart the FIAU believes that there may be a link to Malta, the FIAU requests the foreign counterpart to provide further information which would shed further light on the possible link with Malta. Such enquiries are also made by foreign counterparts to the FIAU, to which it replies in accordance with the powers to exchange information granted under Article 16(1)(k). Nonetheless it is important to point out that enquiries from foreign FIUs merely intended to acquire further information as to the use of information they would have provided to the FIAU are not frequently received by the FIAU.

Effective implementation

183. According to the Maltese authorities, during the last three years counterpart FIUs have never refused to provide requested information to the FIAU due to the fact that the FIAU failed to provide the necessary information to enable the receiving FIU to execute the request in a timely and efficient manner. The analysis team moreover also indicated that during the last three years it has never received any complaint for not providing the requested information and moreover was on several occasions commended for providing the requested information and also further information in a timely manner. The figures of the requests for cooperation and assistance for 2001-2013 are comprised by Annex VII.

184. List of MoUs signed by the FIAU

FIU	Internal Status
Belgium	Administrative
Canada	Administrative
Cyprus	Judicial / Police
Japan	Administrative
Latvia	Administrative
Monaco	Administrative
Romania	Administrative
San Marino	Administrative
Slovenia	Administrative
South Africa	Administrative
Tunisia	-

Recommendations and comments

185. The working practices and the rules followed by the Maltese FIU meet the requirements of Article 46.

9. Postponement of domestic suspicious transactions – Article 14

> The Convention is considered to provide added value by requiring State Parties to take measures to permit urgent action in appropriate cases to suspend or withhold consent to a transaction going ahead in order to analyse the transaction and confirm the suspicion.

Description and analysis

186. The FIAU is empowered to delay the execution of suspicious transactions (which is equivalent to a postponement order) in accordance with Article 28 of the PMLA. In terms of Article 28 an obliged entity that is aware or suspects that a transaction that is to be executed is linked to money laundering or financing of terrorism is bound to inform the FIAU before executing that transaction and to provide all information concerning the transaction, including the period within which it is to be executed. The FIAU may then opt to postpone the execution of such transaction for a period of up to 24 hours, if it deems such action necessary given the urgency or seriousness of the case. The suspension period starts to run from the time when the subject person is notified of the FIAU's decision.

187. Draft amendments to Article 28 of the PMLA have been presented to Government of Malta, which shall be included in a bill to be presented to Parliament in the coming months. The amendments are intended to strengthen the postponement powers of the FIAU and enhance the postponement mechanism.

188. Currently, the FIAU may exercise its authority to postpone or oppose the execution of a suspicious transaction, subsequent to a suspicious transaction report which would have been filed by an obliged entity in terms of Article 28 of the PMLA.

189. Under the proposed amendments to Article 28 of the PMLA the authority to postpone or oppose the execution of a suspicious transaction will not be limited to cases when a suspicious transaction report would have been submitted. The FIAU would have the authority to exercise this power following a suspicious transaction report, on the basis of information in its possession and also upon the request of a foreign counterpart FIU.

190. Currently the maximum duration of a postponement order in terms of Article 28 of the PMLA is 24 hours. This period starts to run from when the obliged entity is notified of the order issued by the FIAU.

191. Under the proposed amendments to Article 28 of the PMLA the maximum duration of the suspension will be extended to 3 working days. Under the revised mechanism the FIAU would be required to suspend the transaction by means of a written notification which is to be submitted to the subject person concerned and which is initially valid for a one working day period. When the postponement order is to be issued subsequent to information received from a subject person the written notification of postponement should be made within one working day from when the FIAU is provided with relative information from the subject person. Within this one working day period the transaction would be suspended. The FIAU would then be able to suspend the transaction for a

further two working day periods by the issuance a further two notifications, each valid for one working day.

Effective implementation

192. In order to strengthen the effectiveness of the postponement system, the FIAU has proposed amendments to Article 28 of the PMLA which have been presented to Government of Malta for consideration in December 2013, and which are expected to be tabled in Parliament in the coming months. The new Article 28 of the PMLA has been drafted and agreed upon subsequent to a consultation process which involved various competent authorities, such as the Malta Police, the Office of the Attorney General, the Malta Financial Services Authority and the Lotteries and Gaming Authority, as well as other stakeholders from within the financial sectors which play an important role in the prevention of money laundering and funding of terrorism. The new postponement mechanism is being strengthened by extending the maximum period of duration of the suspension from 24 hours to 3 working days and by conferring to the FIAU to power to suspend transactions on the basis of information in its possession and subsequent to requests received by foreign FIUs. The extension of the time period will enable the FIAU to conduct a more detailed analysis of the facts available before taking a decision whether or not to issue a postponement order.

193. This new Article 28 has been included in a comprehensive bill which amends various parts of the Criminal Code and the PMLA, which has been presented to Government for consideration in December 2013.

194. The table hereunder indicates the number of postponement orders/attachment orders issued as from 2006 to 2013 and the value of transactions in respect of which the postponement orders/ attachment orders were issued.

Year	Postponement orders issued by the FIAU	Value of transaction/s postponed	Subsequent attachment order issued by prosecution	Value of transaction/s in respect of which a subsequent attachment order was issued
2006	1	Data not available	Data not available	Data not available
2007	1	GBP 154,000	Data not available	Data not available
2008	0	0	0	0
2009	3	-USD 500,000 -USD 62,000 -EUR 10,000	2	-USD 500,000 -USD 62,000
2010	0	0	0	0
2011	0	0	0	0
2012	2	-€3,300,000 -€6,150	2	-€3,300,000 -€6,150
2013	0	0	0	0

Recommendations and comments

195. In accordance with Article 28 of the PMLA, the Maltese FIU is allowed to postpone the execution of suspicious transactions, i.e. exercising its authority to postpone or oppose the execution of a suspicious transaction, subsequent to a suspicious transaction report which would have been filed/ submitted by an obliged entity.

196. Perceiving the need to enhance the authority to postpone the execution of suspicious transactions, under the proposed amendments to Article 28 of the PMLA, the FIAU should be in a position to strengthen its postponement controls, having the authority to exercise this power through above mentioned draft legislation:
- following a suspicious transaction report;
- on the basis of information in its possession; and also
- upon the request of a foreign counterpart FIU.

10. Postponement of transactions on behalf of foreign FIUs – Article 47

Article 47 establishes a new international standard, namely: *"1 Each Party shall adopt such legislative or other measures as may be necessary to permit urgent action to be initiated by a FIU, at the request of a foreign FIU, to suspend or withhold consent to a transaction going ahead for such periods and depending on the same conditions as apply in its domestic law in respect of the postponement of transactions.* *2 The action referred to in paragraph 1 shall be taken where the requested FIU is satisfied, upon justification by the requesting FIU, that:* *a the transaction is related to money laundering; and* *b the transaction would have been suspended, or consent to the transaction going ahead would have been withheld, if the transaction had been the subject of a domestic suspicious transaction report."*

Description and analysis

197. When providing information in relation to the implementation of article 14 of CETS No. 198, the postponement of suspicious transactions is regulated by virtue of Article 28 of the PMLA. The said Article 28 authorises the FIAU to postpone suspicious transactions which would have been reported by obliged entities prior to their execution. The FIAU is not empowered to exercise such an authority at the request of a foreign FIU; however this is being addressed through a proposed amendment to Article 28 of the PMLA as explained hereunder.

198. Subsequent to a consultative process that involved various competent authorities, such as the Malta Police, the Office of the Attorney General, the Malta Financial Services Authority and the Lotteries and Gaming Authority, as well as other stakeholders from within the financial sectors which play an important role in the prevention of money laundering and funding of terrorism, a new Article 28[23] has been

[23] The proposed new Article 28 to regulate postponement orders is laid down hereunder:
"28. (1) Where the Unit is informed by a subject person that a transaction to be carried out is suspected or known to be related to money laundering or the funding of terrorism, or to involve property that may have derived directly or indirectly from, or constitutes the proceeds of, criminal activity, or where, on the basis of information in its possession, including upon a request by a foreign body, authority or agency which is considered to have functions equivalent or analogous to those of the Unit, the Unit knows or suspects that a transaction to be carried out by a subject person is related to money laundering or the funding of terrorism, or involves property

proposed. This new Article 28 will authorise the FIAU to oppose the execution of suspicious transactions subsequent to reports by obliged entities as well as on the basis of information in its possession, including upon a request by a foreign body, authority or agency which is considered to have functions equivalent or analogous to those of the FIAU.

199. The new Article 28 has been included in a comprehensive draft bill which amends various parts of the Criminal Code and the PMLA, which was presented to Government of Malta for consideration in December 2013.

Effective implementation

200. The FIAU does not have the necessary legal basis to be able to postpone a suspicious transaction subsequent to the request of a foreign counterpart; it has taken active steps to remedy this state of affairs.

Recommendations and comments

201. At this time, the Maltese FIU does not have the necessary legal basis to be able to postpone a suspicious transaction subsequent to the request of a foreign counterpart.

202. However, the new recently proposed Article 28 will allow the FIAU to oppose the execution of suspicious transactions subsequent to reports by obliged entities as well as on the basis of information in its possession, including upon a request by a foreign body, authority or agency which is considered to have functions equivalent or analogous to those of the FIAU.
These expected changes are very welcome by the rapporteurs.

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that is derived from or constitutes the proceeds of criminal activity, the Unit may, where it considers such action necessary, oppose the execution of the transaction and a notification of such opposition shall be made to the subject person concerned by any written means;
Provided that where the Unit opposes the execution of the transaction following receipt of information from the subject person, the notification of such opposition shall be made to the subject person by not later than one working day following the day on which the information was received by the Unit and the subject person shall, within such period, not carry out the transaction in question.

(2) The opposition by the Unit shall suspend the execution of the transaction for a period of one working day following the day of the notification by the Unit referred to in subarticle (1), unless the Unit shall, by any written means, authorise earlier the execution of the transaction.

(3) The Unit may, at its discretion, extend the period referred to in subarticle (2) by a further working day where this is considered to be necessary by the Unit and such extension shall be notified to the subject person before the lapse of the period referred to in subarticle (2).

(4) The obligation not to execute a transaction suspended by the Unit for the period of time referred to in subarticle (2) or the extended period referred to in subarticle (3) shall prevail over any legal or contractual obligation to which a subject person may be subject.

(5) Where the Unit does not oppose the execution of the transaction as provided in subarticle (1), the subject person concerned may proceed with the execution of the transaction upon the lapse of the period referred to therein and where a notification of opposition has been made to the subject person in accordance with subarticle (1), the subject person concerned may proceed with the execution of the transaction upon the lapse of the period referred to in subarticle (2) or the extended period referred to in subarticle (3), as the case may be, unless in the meantime an attachment order has been served on the subject person.

(6) Where the Unit receives a request from a foreign body, authority or agency referred to in subarticle (1), it shall acknowledge receipt of that request and shall subsequently notify such foreign body, authority or agency of the decision whether the execution of the transaction subject to the request has been opposed or otherwise."

11. Refusal and postponement of co-operation – Article 28 paragraphs 1d, 1e, 8c.

The Convention is considered to add value here as, according to article 28 (i.e.) and article 28 (id), the political offence ground for refusal of judicial international cooperation can never be applied to financing of terrorism (it is the same in respect of the fiscal excuse).

Provision is made in article 28(8c) to prevent refusal of international cooperation by States (which do not recognise self-laundering domestically) on the grounds that, in the internal law of the requesting Party, the subject is the author of both the predicate offence and the ML offence.

Description and analysis

203. In Malta there are no legal provisions indicating *expressis verbis* in which specific cases international cooperation should be refused, except the one of Article 649 paragraph 1. It appears that the magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority, unless these are *contrary to the public policy* or *the internal public law of Malta.*

204. According to the Maltese authorities, this would embrace cases when the request is motivated by other reasons, such *as punishing the offender for his or her political alliances*, where it is deemed that the guarantees of a fair trial and respect for his or her fundamental rights and freedoms are not observed or are likely to be breached through the measures being requested and in any ensuing investigation/prosecution in the requesting state. Situations which would tantamount to the violation of any of the rights enshrined in the UN Declaration on human Rights, European Convention on Human Rights and the Charter of Fundamental Rights of the European Union would undoubtedly all qualify under this heading. This appears to be more related to Article 28 paragraph 1 a) and b).

205. Also, according to the Maltese authorities if the offence is punishable under the law of the requesting state *by a punishment which is not known under Maltese law* or of excessive severity (the principle of proportionality) would most probably also fall within this category, although to date they have never invoked such a provision. The Maltese authorities indicated that in a recent and *ongoing* execution of a request for money laundering it was the defense that made such a plea, but this was contested by the Attorney General and the Court ordered the resumption of the execution and proceeded with the collection of evidence (primarily banking information and banking transaction coupled to determination of trusts and freezing of accounts pertaining thereto). This appears to be more related to Article 28 paragraph 1 c).

206. According to Article 649 paragraph 5A if the request cannot, or cannot fully, be executed in accordance with the formalities, procedures or deadlines indicated by the requesting foreign authority, the requesting authority shall be informed indicating the estimated time within which or the conditions under which execution of the request may be possible.

207. The replies to the questionnaire state that Malta has never refused cooperation on the basis that the offence is a fiscal one. Thus, this issue will never arise in particular if the offence is an offence in its own legal system such as is the case of financing of terrorism.

208. Further on, Act I of 2001 amended the Interpretation Act (Chapter 249 of the Laws of Malta) by the addition, *inter alia*, of the following provision: Section 3 (4)(c): The terms *"crimes against humanity*", *"crimes against international law*" and *"political offence"* shall have the same meaning assigned to them under customary international law, in general, and in international instruments to which Malta may be a party, in particular.

209. In the light of the above mentioned provisions, the Maltese authorities stated that in Malta the fact the request relates to a fiscal offence is not a ground of refusal. It was also argued that self-laundering is a crime in Malta and thus there are no obstacles in affecting legal assistance in such case.

Effective implementation

210. There are no legal references to what is to be considered as general (except the aforementioned one) and/or specific grounds of refusal, neither to what is to be seen as a political offence (from the perspective of the national law). References to the international law and treaties to which Malta is Party to were made.

211. The Maltese authorities considered that cooperation would be granted when requests relate to a fiscal offence where the offence relates to financing of terrorism. Also, the Maltese authorities considered that cooperation would be granted in cases of self-laundering offences and in respect of confiscations based on this offence. However, no data has been provided as to whether any cooperation has been granted in such cases or whether the request was granted partially or subject to conditions.

Recommendation and comments

212. It is recommended to Malta to ensure that they are in position to provide statistical data on the practice of international cooperation in these two areas.

II. OVERALL CONCLUSIONS ON IMPLEMENTATION OF THE CONVENTION

213. Malta has undertaken important actions in order to ensure the compliance of the national legislation with the provisions of the Convention and many of the adopted amendments of the legislation envisaged specifically the implementation of the requirements of the Convention. However, there are some concerns as to how effectively this legislation is implemented and if the Maltese authorities make sufficient use of the powers provided for in the Convention.

214. In relation to the ML offence, the focus appears to be still on self-laundering cases and the authorities are encouraged to further raise the awareness among prosecutors and judges on the latest case law and evidence possibilities for successful autonomous ML prosecutions.

215. The major concern with regard to the corporate criminal liability regime is the absence of any case where a legal person has been proceeded against to a conclusion.. Since 2011, some cases which are at the prosecution phase involve legal persons. The Maltese authorities are advised to extend this practice by addressing the shortcomings that were identified and by providing guidance to the law enforcement and judicial authorities on the practical application of the legal provisions on corporate criminal liability.

216. The effectiveness of the seizure and confiscation regime needs also to be enhanced. The current legislative initiative to increase the maximum validity term of the attachment order up to ninety days appears to address only partially the practical impediments to the investigations and the Maltese authorities are advised to consider amending the legislation in a manner that would allow freezing or seizure at an earlier stage in the police investigations. The existing confiscation regime appears to be underused – the amount of confiscated property is significantly smaller than sums involved which are alleged to have been laundered and frozen property.

217. The Maltese authorities are also advised to consider developing its legislation on the management of frozen and seized assets and a more effective asset recovery strategy for proceeds.

218. Malta has in place the investigative powers and techniques required by the Convention which enable the authorities to obtain the information related to an account and to monitor the accounts. The Maltese authorities are recommended to further raise awareness of the practical possibilities for law enforcement of these powers.

219. As for Financial Intelligence Units (FIUs), the general practice and the rules followed by the Maltese FIU meet the requirements of international co-operation (Article 46).

220. Regarding the postponement of domestic suspicious transactions (Article 14), and in accordance with Article 28 of the Prevention of Money laundering Act (PMLA), the Maltese FIU is allowed to postpone the execution of suspicious transactions, i.e. exercising its authority to postpone or oppose the execution of a suspicious transaction, subsequent to a suspicious transaction report which would have been filed/ submitted by an obliged entity.

221. In order to carry out this power, under the proposed amendments to Article 28 of the PMLA, the FIAU will strengthen its postponement controls, having the authority to exercise this power following a suspicious transaction report; on the basis of information in its possession; and also upon request of a foreign counterpart FIU.

222. Concerning the postponement of transactions on behalf of foreign FIUs (Article 47), currently the Maltese FIU does not have the necessary legal basis to be able to postpone a suspicious transaction subsequent to the request of a foreign counterpart.

223. However, the newly proposed Article 28 has been included in a comprehensive draft bill which amends various parts of the Criminal Code and the PMLA. It will allow the FIAU to oppose the execution of suspicious transactions subsequent to reports by obliged entities as well as on the basis of information in its possession, including upon request of a foreign body, authority or agency which is considered to have functions equivalent or analogous to those of the FIAU. It is relevant to point out that the expected changes on Article 28 of the PMLA are very welcome by the rapporteurs.

224. From the perspective of the normative legal framework as regards international cooperation, the rapporteurs noted the existence of diffused criminal normative provisions (in the Criminal Procedural Code or in special laws - PMLA and DDO and also provisions that refer to other norms). This is due to the legislative approach Malta has. Therefore no further comments are made, since it appears from the answer to the questionnaire and the discussion held in pre-meeting that this approach does not raise to the Maltese authorities - police, prosecutors and judges, any difficulty in application.

225. Bearing in mind the afore-mentioned, the rapporteurs believe that what is really important in the context of evaluation is the interpretation and application of such provisions in practice and mostly the results obtained when cooperating with foreign states. In the context of international cooperation, these results are confirmed also by the relation between the number of requests received and those executed. The statistical data provided by Malta include exclusively the number of requests that have been received without offering details related to the number of those executed.

226. Therefore, Malta is recommended to collect and provide information as regards the relationship between the number of request received and those executed.

III. ANNEXES

ANNEX I

Article 9 of the Convention – Laundering offences

3. Each Party may adopt such legislative and other measures as may be necessary to establish as an offence under its domestic law all or some of the acts referred to in paragraph 1 of this Article, in either or both of the following cases where the offender:

    a) suspected that the property was proceeds,

    b) ought to have assumed that the property was proceeds.

4. Provided that paragraph 1 of this article applies to the categories of predicate offences in the appendix to the Convention, each State or the European Community may, at the time of signature or when depositing its instrument of ratification, acceptance, approval or accession, by a declaration addressed to the Secretary General of the Council of Europe, declare that paragraph 1 of this article applies:

    a) only in so far as the predicate offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year, or for those Parties that have a minimum threshold for offences in their legal system, in so far as the offence is punishable by deprivation of liberty or a detention order for a minimum of more than six months; and/or

    b) only to a list of specified predicate offences; and/or

    c) to a category of serious offences in the national law of the Party.

5. Each Party shall ensure that a prior or simultaneous conviction for the predicate offence is not a prerequisite for a conviction for money laundering.

6. Each Party shall ensure that a conviction for money laundering under this Article is possible where it is proved that the property, the object of paragraph 1.a or b of this article, originated from a predicate offence, without it being necessary to establish precisely which offence.

ANNEX II

Article 10 of the Convention – Corporate liability

1. Each Party shall adopt such legislative and other measures as may be necessary to ensure that legal persons can be held liable for the criminal offences of money laundering established in accordance with this Convention, committed for their benefit by any natural person, acting either individually or as part of an organ of the legal person, who has a leading position within the legal person, based on:

   a) a power of representation of the legal person; or

   b) an authority to take decisions on behalf of the legal person; or

   c) an authority to exercise control within the legal person, as well as for involvement of such a natural person as accessory or instigator in the above-mentioned offences.

2. Apart from the cases already provided for in paragraph 1, each Party shall take the necessary measures to ensure that a legal person can be held liable where the lack of supervision or control by a natural person referred to in paragraph 1 has made possible the commission of the criminal offences mentioned in paragraph 1 for the benefit of that legal person by a natural person under its authority.

ANNEX III

Article 3 of the Convention – Confiscation measures

3. Parties may provide for mandatory confiscation in respect of offences which are subject to the confiscation regime. Parties may in particular include in this provision the offences of money laundering, drug trafficking, trafficking in human beings and any other serious offence.

4. Each Party shall adopt such legislative or other measures as may be necessary to require that, in respect of a serious offence or offences as defined by national law, an offender demonstrates the origin of alleged proceeds or other property liable to confiscation to the extent that such a requirement is consistent with the principles of its domestic law.

ANNEX IV

Declarations deposited by Malta – situation as of March 2014

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 3, paragraph 2, of the Convention, Malta declares that Article 3, paragraph 1, shall apply only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 3

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 9, paragraph 4, of the Convention, Malta declares that Article 9, paragraph 1, shall apply only in so far as the offence is punishable by deprivation of liberty or a detention order for a maximum of more than one year.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 9

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 24, paragraph 3, of the Convention, Malta declares that Article 24, paragraph 2, shall apply subject to Malta's constitutional principles and to the basic concepts of the Maltese legal system.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s): 24

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 35, paragraph 3, of the Convention, the Government of Malta declares that requests and annexed documents should be addressed to it accompanied by a translation into English.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 35

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 42, paragraph 2, of the Convention, the Government of Malta declares that information or evidence provided by it under this Convention may not, without its prior consent, be used or transmitted by the authorities of the requesting Party in investigations or proceedings other than those specified in the request.
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 42

Declaration contained in the instrument of ratification deposited on 30 January 2008 - Or. Engl.

In accordance with Article 33, paragraph 2, of the Convention, Malta declares that the central authority designated in pursuance of paragraph 1 is :

The Office of the Attorney General
Attorney General's Chambers
The Palace
Valletta
Malta
Period covered: 1/5/2008 -
The preceding statement concerns Article(s) : 33

ANNEX V

Attachment 1

Official Use Only

The Egmont Group of Financial Intelligence Units

Request for FIU Information

I. REQUESTOR REPRESENTATIONS

By using this form, the requesting agency agrees that upon receipt of information provided by the disclosing FIU:

- The requesting agency will maintain the confidentiality of any and all information provided to it by the disclosing FIU;
- The requesting agency will not disclose the information outside of its agency without the prior written permission of the disclosing FIU; and
- The requesting agency will limit the use of the information for the purpose(s) stated on this form.

Please Type or Print All Information

II. REQUESTOR INFORMATION

Case No.	xxxxxx/1x	Country/Territory	**Malta**
Agency	**FIAU**	Date	xx/xx/20xx
Authorizing Official	**xxxxxxx**	Title	**xxxxxxx**
Telephone	**+356 2123 1333**	Fax	**+356 2123 1090**

Any clarifications related to this request are to be addressed to Mr. xx xx (Financial Analyst - FIAU) on (00356) 21231333.

III. SUBJECT INFORMATION REQUESTED

Individuals:

1. Name:
   Identification:
   Address:

Companies:

2. Name:
   Registration:
   Address:

Official Use Only

ANNEX VI

Attachment 2

FINANCIAL INTELLIGENCE ANALYSIS UNIT

Postal Address: PO Box [illegible] Valletta VLT 1000
Offices: 67/4, South Street, Valletta VLT 1105

Tel: (+356) 21 231 333
Fax: (+356) 21 231 090
E-mail: info@fiumalta.org
Website: www.fiumalta.org

URGENT (delete if not urgent) - Request for Information from FIU

Date:	x	To the FIU of:	
FIAU Case N°:		To the attention of:	
FIAU Analyst:		Your ref N°:	
N° of pages:	x	N° of attachments:	x

The information provided by the FIAU in this communication shall not, under any circumstances, be disseminated to another party or agency without the FIAU's prior express and written consent, and shall not be used for any administrative, judicial or fiscal purposes.

*Information provided to the FIAU in response to this request will be used for **intelligence purposes only**, will remain confidential within the FIAU, and will only be disseminated with your specific consent.*

I. Details of the persons involved in the case

Natural Persons

1. Name and SURNAME:
   Date of birth:
   Nationality:
   Passport details:
   ID card details:
   Address (1):
   Address (2):

2. Name and SURNAME:
   Date of birth:
   Nationality:
   Passport details:
   ID card details:
   Address (1):
   Address (2):

3. Name and SURNAME:
   Date of birth:

Page 1/3

ANNEX VII

Requests for cooperation and assistance (2011)
Information on the internal status of each FIU is based on the 2011 Egmont Biennial Census

Requests received by FIAU		Jurisdiction	FIU Internal Status	Requests made to other FIUs	
Number	**Replies**			**Number**	**Replies**
		Albania	Administrative	2	2
3	3	Argentina	Administrative		
		Armenia	Administrative	1	1
1	1	Austria	Police	6	4
1	1	Bahrain	Administrative		
7	7	Belgium	Administrative	2	2
		Belize	Administrative	2	2
1	1	Bosnia & Herzegovina	Police		
1	1	Brazil	Administrative	1	1
		British Virgin Islands	Administrative / Police	5	5
1	1	Bulgaria	Administrative	2	2
2	2	Croatia	Administrative	1	1
1	1	Curacao	Administrative		
		Cyprus	Judicial / Police	3	3
		Czech	Administrative	2	2
		Denmark	Judicial / Police	3	3
		Domenican Republic	Administrative / Police	1	
1	1	Egypt	Administrative		
2	2	Finland	Police		
4	4	France	Administrative	2	2
		Georgia	Administrative	1	1
1	1	Germany	Police	9	8
		Gibraltar	Police	2	2
		Greece	Other	1	1
1	1	Guernsey	Police	1	1
		Hong Kong	Police	3	3
		Hungary	Administrative / Police	1	1
		India	Administrative	1	
		Indonesia	Administrative	2	1
2	2	Ireland	Police	1	1
		Isle of Man	Police	1	1
1	1	Italy	Administrative	6	5
4	4	Jersey	Police		
1	1	Kazakhstan	Administrative		
2	2	Kyrgyzstan	-		

		Latvia	Administrative	3	3
		Liechtenstein	Administrative	1	1
5	5	Lithuania	Police		
21	21	Luxembourg	Judicial	2	2
		Mauritius	Administrative	1	1
2	2	Moldova	Administrative / Police		
5	5	Montenegro	Administrative		
		Netherlands	Administrative	4	4
1	1	Norway	Judicial / Police	2	2
		Panama	Administrative	2	1
		Peru	Administrative	1	1
2	2	Poland	Administrative	6	4
		Portugal	Police	5	5
1	1	Romania	Administrative	3	3
		Russia	Administrative	6	3
1	1	Saudi Arabia	Administrative / Police		
		Serbia	Administrative	2	2
1	1	Slovakia	Police	2	1
1	1	Slovenia	Administrative		
2	2	Spain	Administrative	5	3
1	1	Sweden	Police	2	2
1	1	Switzerland	Administrative	5	5
1	1	Syria	-		
		Thailand	Administrative / Police	1	1
		Turkey	Administrative	1	1
2	2	U.A.E	Administrative	1	1
		Ukraine	Administrative	1	1
8	8	United Kingdom	Other	18	17
3	3	USA	Administrative	6	5
2	2	Venezuela	Administrative		
97	**97**	**TOTALS**		**142**	**124**
	6	**Average Working Days to Reply**		**18**	
	37	**COUNTRIES**		**49**	

Requests for cooperation and assistance 2012
Information on the internal status of each FIU is based on the 2011 Egmont Biennial Census

Requests received by the FIAU		**Jurisdiction**	**FIU Internal Status**	**Requests made to other FIUs**	
Number	**Replies**			**Number**	**Replies**
		Albania	Administrative	1	1
		Andorra	Administrative / Police	1	1
1	1	Argentina	Administrative	1	1

3	3	Austria	Police	5	4
		Barbados	Administrative	1	
		Belarus	Administrative	1	1
3	3	Belgium	Administrative	2	2
		Belize	Administrative	1	1
		Bermuda	Administrative	2	2
		British Virgin Islands	Administrative / Police	6	6
3	3	Bulgaria	Administrative	1	1
		Cameroon	Administrative	1	
		Canada	Administrative	5	5
		Cayman Islands	Administrative	1	1
		Croatia	Administrative	2	2
		Curacao	Administrative	1	1
		Cyprus	Judicial / Police	8	8
1	1	Czech Republic	Administrative	4	4
5	5	France	Administrative	2	1
1	1	Germany	Police	5	5
		Gibraltar	Police	3	3
		Hong Kong	Police	5	4
		Hungary	Administrative / Police	1	
		Ireland	Police	2	2
1	1	Israel	Administrative	3	3
5	5	Italy	Administrative	15	8
4	4	Jersey	Police	1	1
1	1	Kazakhstan	Administrative	1	1
		Latvia	Administrative	1	1
		Liechtenstein	Administrative	2	2
2	2	Lithuania	Police	4	4
9	9	Luxembourg	Judicial		
1	1	Malaysia	Administrative		
2	2	Moldova	Administrative / Police		
1	1	Montenegro	Administrative		
1	1	Netherlands	Administrative	5	4
		Nigeria	Administrative	2	2
		Panama	Administrative	4	1
		Peru	Administrative	1	1
1	1	Philippines	Administrative / Police	2	2
2	2	Poland	Administrative	2	2
		Portugal	Police	3	3
1	1	Romania	Administrative	2	2
3	3	Russia	Administrative	1	1
1		San Marino	Administrative	1	
1	1	Senegal	Administrative		
		Serbia	Administrative	2	2
		Seychelles	-	4	3
		Singapore	Police	1	1
2	2	Slovakia	Police	2	1
3	3	Slovenia	Administrative		

2	2	Spain	Administrative	11	10
1	1	Sri Lanka	Administrative / Police		
1	1	Switzerland	Administrative	12	12
1		Tunisia	-	1	
		Turkey	Administrative	2	1
1	1	Turkmenistan	Administrative		
		U.A.E	Administrative	5	5
3	3	Ukraine	Administrative	2	2
7	7	United Kingdom	Other	13	12
		USA	Administrative	11	11
		Venezuela	Administrative	1	1
74	**72**	**TOTALS**		**179**	**155**
	7	**Average Working Days to Reply**		**31**	
	30	**COUNTRIES**		**54**	

Requests for cooperation and assistance (2013 - Until 30.11.2013)
Information on the internal status of each FIU is based on the 2011 Egmont Biennial Census

Requests received from FIUs		**Jurisdiction**	**FIU Internal Status**	**Requests made to FIUs**	
Received	**Replies sent**			**Sent**	**Replies Received**
1	1	Argentina	Administrative	2	2
2	2	Austria	Police	2	2
		Bahamas	Administrative	1	1
4	4	Belgium	Administrative	3	3
		Belize	Administrative	2	1
1	1	Bermuda	Administrative		
1	1	Bosnia & Herzegovina	Police	1	
		Brazil	Administrative	1	1
		British Virgin Islands	Administrative / Police	3	2
		Canada	Administrative	2	2
		Costa Rica	Administrative	1	1
5	5	Croatia	Administrative	2	2
1	1	Cyprus	Judicial / Police	7	7
		Czech	Administrative	5	5
1	1	Denmark	Judicial / Police	1	1
		Estonia	Police	1	1
1	1	Finland	Police		
4	4	France	Administrative		
2	2	Germany	Police	3	3
		Ghana	-	2	1
		Gibraltar	Police	2	1
		Greece	Other	1	1
		Hong Kong	Police	6	5
1	1	Hungary	Administrative / Police		
		Israel	Administrative	2	1
6	6	Italy	Administrative	9	6
4	4	Jersey	Police	1	1

1	1	Latvia	Administrative	5	5
1	1	Lebanon	Administrative		
2	2	Liechtenstein	Administrative	1	1
9	9	Lithuania	Police		
10	10	Luxembourg	Judicial		
		Malaysia	Administrative	1	1
4	4	Moldova	Administrative / Police		
		Monaco	Administrative	1	1
		Netherlands	Administrative	1	1
1	1	New Zealand	Police		
		Nigeria	Administrative	1	
		Norway	Judicial / Police	1	1
		Peru	Administrative	1	1
		Philippines	Administrative / Police	1	1
3	3	Poland	Administrative		
1	1	Portugal	Police	3	3
1	1	Romania	Administrative	1	1
1	1	Russia	Administrative	2	1
2	2	San Marino	Administrative	1	1
		Serbia	Administrative	2	2
2	2	Seychelles	-	3	2
1	1	Slovakia	Police	2	2
1	1	Slovenia	Administrative		
1	1	South Africa	Administrative	1	
2	2	Spain	Administrative	4	4
		Sweden	Police	1	1
1	1	Switzerland	Administrative	6	6
1	1	Syria	-		
		Thailand	Administrative / Police	2	1
		Turkey	Administrative	1	1
		U.A.E	Administrative	8	8
1	1	Ukraine	Administrative	1	1
6	6	United Kingdom	Other	16	13
		USA	Administrative	11	6
86	**86**	**TOTALS**		**138**	**115**
	3	**Average Working Days to Reply**		**25**	
	35	**COUNTRIES**		**49**	

ANNEX VIII

Designated categories of offences in the Appendix to the CETS 198	Offences in domestic legislation and their punishments
a. participation in an organised criminal group and racketeering;	**Criminal Code** **Article 83A.** - imprisonment for a term from **three to seven years**.
b. terrorism, including financing of terrorism;	**Criminal Code** **Articles 328A-328M**, **328A**. - imprisonment from **five years to life**. **328F**. - imprisonment for a term not exceeding **four years** or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment.
c. trafficking in human beings and migration smuggling;	**Criminal Code** **Articles 248A-248G and 337A** **248A. -** imprisonment from **four to twelve years**. **337A**.- from **six months to five years** or to a fine (multa) of twenty-three thousand and two hundred and ninety three euro and seventy-three cents (23,293.73) or to both such fine and imprisonment
d. sexual exploitation, including sexual exploitation of children;	**Criminal Code** **Articles 198-208B** **204.** imprisonment for a term from two to **five years**, with or without solitary confinement **204B**. - imprisonment for a term from two to **nine years**, with or without solitary confinement. **204C**.- imprisonment for a term not exceeding **five years**, with or without solitary confinement...... **204D**.- imprisonment for a term from three to **ten years**, with or without solitary confinement.
e. illicit trafficking in narcotic drugs and psychotropic substances;	**Article 120A of the MKPO, Chapter 31 and article 22 of DDO, Chapter 101**

f. illicit arms trafficking;	**Arms Act** **Article 5(2) and 51(3) of the Arms Act (Cap. 480 of the Laws of Malta) and 51. (1)** **"….** Any person who contravenes article 3 shall be guilty of an offence and shall be liable on conviction: (a) if the conviction relates to an arm proper, to imprisonment from **three months to ten years**;..... (2) Any person who contravenes article 5(1) shall be guilty of an offence and shall on conviction be liable to imprisonment for a term of not less than **three months and not exceeding five years**: ..... (3) Any person who contravenes or fails to comply with article 5(2), article 14(1), or article 19 shall be liable on conviction to a term of imprisonment of not less than **six months and not exceeding five years**."
g. illicit trafficking in stolen and other goods;	**Cultural Heritage Act** **Article 53. (1) -** a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (€1,164.69) and not exceeding one hundred and sixteen thousand and four hundred and sixty-eight euro and sixty-seven cents (€116,468.67), or to imprisonment for a term not exceeding **six years**, or to both such fine and imprisonment **Criminal Code** **Article 334. -** imprisonment for a term from **five months to three years**
h. corruption and bribery;	Criminal Code Articles 112-121E - imprisonment for a term from **six months to three years;** - imprisonment for a term from **one year to eight years.**

i. fraud;	**Criminal Code** **Articles 293- 310 -** imprisonment for a term from **three to eighteen months**
j. counterfeiting currency;	**Central Bank of Malta Act (Cap. 204 of the Laws of Malta)** **Art 45 to 53 and in particular 45. (1)** imprisonment for a term of not less than **two years** and not exceeding nine years
k. counterfeiting and piracy of products;	**Criminal Code** **298B. (1)** imprisonment for a term **not exceeding one year** or to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to both such fine and imprisonment. This must be read in conjunction with **310(1)(a) and (b)** which applies to all offences under the subtitle similar to fraud and misappropriation.
l. environmental crime;	**Environment and Development Planning Act, Cap.504 Laws of Malta - Article 94** ***and in particular*** **Crimes Against the Environment Act., Cap 522 Laws of Malta** **Article 5 of Chap 522** provides for various punishments depending on whether death or bodily harm are caused as a consequence of the environmental crime perpetrated. In all other cases **article 5(3)** assumes relevance: - the punishment shall be that of **imprisonment for a term from eight months to seven years** or a fine (multa) of not less than twelve thousand euro (€12,000) and not exceeding two million and five hundred thousand euro (€2,500,000), or such imprisonment and fine (multa). -

	Under Art 94 of Chapter 504 if the offence persists the maximum punishment is that of **three years imprisonment.**
m. murder, grievous bodily injury;	**Articles 211-222A of the Criminal Code and in particular articles 211, 216 and 218** **-** imprisonment **for life.** **-** imprisonment for a term from **three months to three years** **-** imprisonment for a term from **five months to four years** **-** imprisonment for a term from **nine months to nine years -**
n. kidnapping, illegal restraint and hostage-taking;	**Criminal Code** **Article 86**. - imprisonment for a term from **seven months to two years**:
o. robbery or theft;	**Articles 261-283 of the Criminal Code**
p. smuggling	**Customs Ordinance** **Art 60 to 64** and in particular **62. "……**shall for each such offence be liable to a fine (multa) equivalent to three times the amount of duty payable on the goods or five times the amount of the endangered duty, whichever is the lesser, so however that in each case it will not be less than six hundred euro (€600), such that one-third of such amount shall be considered as a civil debt owed and payable to the Department of Customs, or to such fine together with imprisonment for a term not exceeding **two years**, and the offender may be either detained or proceeded against by summons, in the same manner and form, and subject to all other provisions laid down in the Criminal Code**"**
q. extortion	**Criminal Code** **Article 113**. - imprisonment for a term from **thirteen months to three years**

r. forgery	**Criminal Code** **Articles 167 - 188** Article 167. (1) - imprisonment for a term from **thirteen months to four years**, with or without solitary confinement.
s. piracy; and	**Criminal Code** **Article 328N.** "…Any person guilty of piracy under this article shall be liable: (a) where the offence consists in any of the acts referred to in subarticle (1)(a) and (b) when accompanied with the loss of life of any person, to the punishment of **imprisonment for life**; (b) where the offence consists in any of the acts referred to in (1)(a) and (b) when not accompanied with the loss of life of any person, to the punishment **of imprisonment not exceeding thirty years**; (c) where the offence consists in any act referred to in subarticle (1)(c), to the punishment of imprisonment for a term not exceeding **eight years;**"
t. insider trading and market manipulation	**Prevention of Financial Markets Abuse Act (Cap. 476 of the Laws of Malta)** **…………………** **"**A person found guilty of an offence under the provisions of subarticles (2) to (4) or under the provisions of articles 6, 8, 14, 15 or 16 shall be liable on conviction to a fine (multa) of not less than two thousand and five hundred euro (€2,500) and not exceeding nine hundred forty thousand euro (€940,000) or up to three times the profit made or the loss avoided by virtue of the offence, whichever is the greater, or to imprisonment for a term not exceeding **seven years** or to both such fine and imprisonment**."**