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EUROPEAN COMMITTEE ON CRIME PROBLEMS (CDPC)

COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

Written progress report submitted to MONEYVAL by Malta [1]

[1] As adopted by MONEYVAL at its 28th Plenary Meeting (Strasbourg, 8-12 December 2008). For further information on the examination and adoption of this report, please refer to the Meeting report (ref. MONEYVAL (2008) 40 at http://www.coe.int/moneyval

1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field

The AML/CFT regime in Malta has undergone a major overhaul since the last evaluation. The Prevention of Money Laundering and Funding of Terrorism Regulations of 2003 were radically amended by Legal Notice 42 of 2006 with the aim to further align and harmonise the regulations with the FATF 40 as revised in June 2003. It should be noted that these amendments also served to introduce measures which were in discussion and in preparation during the Third Round Mutual Evaluation on site visit in November 2005 and which, consequently, the MONEYVAL Committee of Experts eventually recommended in the 2005 MER. Subsequently the amended 2003 Regulations were repealed and a new set of regulations was introduced in July 2008, transposing the European Union legislation under Directive 2005/60/EC (the Third Directive) and Directive 2006/70/EC (the Implementation Directive). The new regulations further broadened the scope of the AML/CFT regime in Malta and continued to implement those MONEYVAL recommendations which had until then not been addressed.

One of the most significant changes to the AML/CFT regime by virtue of the 2006 amendments was the introduction of the obligation to report knowledge or suspicion of transactions that could be related to the funding of terrorism,. Another important development was the adoption of the risk-based approach also introduced by virtue of the 2008 Regulations. In fact the 2008 Regulations include, *inter alia,* provisions catering for simplified and enhanced customer due diligence measures and provisions for exemptions from certain customer due diligence measures where financial activity is conducted on an occasional or very limited basis, amongst others.

Consequently, the role of the FIAU has also been broadened considerably by law. Its responsibilities have been extended to cover the financing of terrorism whilst the spectrum of persons who fall within its remit has been widened. In order to further ensure that subject persons operate in compliance with all the preventive measures prescribed by the AML/CFT legislation the FIAU has now set up a compliance department. The Department will work in collaboration with the other supervisory authorities as appropriate within the current memoranda of cooperation on compliance monitoring issues.

From a statistical point of view the number of STRs has been more or less constant for the past three years. However, it is worth mentioning that there have been two convictions of money laundering and one conviction on tipping off since the 29th March 2007.

Moreover, the 2008 Regulations now place a mandatory obligation on subject persons and the relevant authorities to collect, maintain and compile appropriate statistics and to make such statistics available to the FIAU. The obligation to collect, maintain and

compile statistics is also applicable to the FIAU itself in the course of its work.

This Progress Report confirms that the Maltese authorities have given serious attention to the MONEYVAL recommendations and have taken immediate measures to ensure that the AML/CFT regime in Malta be further harmonised with the recognised international standards and practices. This has been done through significant legislative amendments, ongoing development and increased awareness in this field. In this respect the FIAU has continued to discuss with the industry the implementation of the new Regulations through the work of the Joint Committee on the Prevention of Money Laundering and the Financing of Terrorism.

The Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 and the Prevention of Money Laundering Act, *Cap. 373* are enclosed herewith for ease of reference. They shall be referred to throughout the questionnaire as "the 2008 Regulations" and "the Act" respectively.

NOTE: The following words or phrases shall have the same meaning as defined in Regulation 2 of the 2008 Regulations:

"relevant activity"

"relevant financial business"

"subject person"

2. Key recommendations

Please indicate improvements which have been made in respect of the FATF Key Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

Recommendation 1 (Money Laundering offence)	
Rating: Largely Compliant	
Recommendation of the MONEYVAL Report	*More emphasis should be placed on securing final convictions on money laundering.*
Measures taken to implement the Recommendation of the Report	The scope of the definition of 'money laundering' in article 2 of the Act has been widened to also cover the mere *suspicion* further to *knowledge* that property is derived directly or indirectly from criminal activity. This amendment transposes article 9.1.c of the 2005 Council of Europe Convention and it is hoped that it will increase the possibility of securing convictions.
Recommendation of the MONEYVAL Report	*A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue).*
Measures taken to implement the Recommendation of the Report	Investigators, prosecutors and judges are showing increasing willingness to draw such inferences. This is evident from the rise of prosecutions initiated. More importantly, as indicated in the introductory part of this Report, since the on site visit in 2005 there have been two convictions for money laundering and one on tipping off
Recommendation of the MONEYVAL Report	*More priority should be considered to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences.*
Measures taken to implement the Recommendation of the Report	Irrespective of the profit generated and of the country where the predicate offence has been committed, money laundering cases are thoroughly investigated and prosecuted. In terms of law, the definition of 'criminal activity' means any activity, whenever or wherever carried out, which under the law of Malta means any criminal offence.
(Other) changes since the last evaluation	

Recommendation 5 (Customer due diligence) **I. Regarding financial institutions**	
Rating: Largely Compliant	
Recommendation of the MONEYVAL Report	*The Regulations' reference to trust principals and beneficiaries could lend itself to an interpretation that it is an option to identify either the trust beneficiary or the settlor (not both).*
Measures taken to implement the Recommendation of the Report	Regulation 7(3)(e) of the 2008 Regulations now specifically states that the applicant for business must disclose the identity of the beneficial owners, his principal, and the trust settlor and produce the relevant authenticated identification documentation before undertaking any business. Moreover, the disclosure procedures and obligations remain applicable to any eventual changes in beneficial ownership or principal.
Recommendation of the	*For life and other investment linked insurance, the beneficiary under the policy is identified but not*

MONEYVAL Report	*verified.*
Measures taken to implement the Recommendation of the Report	In the definition of 'beneficial owner' under Regulation 2(1)(e) of the 2008 Regulations, in the case of long term insurance business the beneficial owner shall be construed to be the beneficiary under the policy. Regulation 8(1) consequently requires the verification of the identity of the beneficial owner as appropriate. However, Regulation 8(3) of the 2008 Regulations states that in relation to life insurance, subject persons are required to verify the identity of the beneficiary under the policy albeit the verification may be completed after the business relationship has been established. This is in accordance with the relevant provisions of the EU Third Directive and the FATF 40.
Recommendation of the MONEYVAL Report	*The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000).*
Measures taken to implement the Recommendation of the Report	Although the European Union Regulation 1781/2006 of 15 November 2006 on information on the payer accompanying transfer of funds applies *de facto* as domestic legislation for wire transfers, yet Regulation 7(11) reiterates this obligation for financial institutions to comply with the EU Directive and Regulation 7(12) imposes administrative penalties for non-compliance. Moreover, with respect to occasional transactions that involve a money transfer or remittance, the definition of 'Case 3' (single large transaction) under Regulation 2 (1) sets the threshold at €1,000. In addition, Regulation 4 of the 2008 Regulations further requires that no subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless the subject person maintains *inter alia* customer due diligence measures. Finally, Regulation 7(5) requires the application of customer due diligence measures in all Cases 1 – 4 as defined in Regulations 2.
Recommendation of the MONEYVAL Report	*There is no requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date.*
Measures taken to implement the Recommendation of the Report	Regulation 7(1)(d) states that as part of the CDD measures the subject person shall conduct ongoing monitoring of the business relationship. Regulation 7(2) then defines this process as including: (*a*) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and (*b*) ensuring that the documents, data or information held by the subject person are kept up to date. Moreover, Regulation 7(6) and Regulation 7(7) require the ongoing or repeated customer due diligence process to ensure that the information held is kept up to date.
Recommendation of the MONEYVAL Report	*With the exception of non-face to face customers, there is no requirement in the non-bank sector for enhanced due diligence of further risk customers, business relationships or transactions.*
Measures taken to implement the Recommendation of the Report	As part of the concept of the risk-based approach to customer due diligence procedures, the 2008 Regulations contain a comprehensive provision under Regulation 11 relating to enhanced customer due diligence measures that must be applied by all subject persons, and therefore including the non-bank sector, in situations that, by their nature, can present a higher risk of money laundering or funding of terrorism. Regulation 11 requires the application of enhanced customer due diligence measures where the applicant for business is not physically present for identification purposes (non face-to-face); where cross-border correspondent banking relationships are established; and where transactions are undertaken or relationships are established with politically exposed persons. Regulation 11 also requires subject persons to pay special attention to new technologies and products/transactions that favour anonymity and not to enter into or continue correspondent banking relationships with a shell

	bank.
Recommendation of the MONEYVAL Report	*No specific requirement to understand the purpose and intended nature of the business relationship.*
Measures taken to implement the Recommendation of the Report	As part of the customer due diligence measures, a subject person must obtain information on the purpose and intended nature of the business relationship, such that the subject person is able to establish the business and risk profile of the customer. This is laid out in Regulation 7(1)(c) of the 2008 Regulations.
(Other) changes since the last evaluation	
Recommendation 5 (Customer due diligence) **II. Regarding DNFBP[2]**	
Recommendation of the MONEYVAL Report	*The changes recommended for R.5 should be applied to DNFBP.*
Measures taken to implement the Recommendation of the Report	The 2008 Regulations do not particularly distinguish between the financial sector (relevant financial business) and DNFBPs (relevant activity) for the purposes of the application of the obligations under the Regulations. Indeed the term 'subject person' is defined as any legal or natural person carrying out 'relevant financial business' or 'relevant activity' as defined – the latter comprising all DNFBPs under the FATF 40. Throughout the Regulations, then, subject persons are consequently all bound by the same obligations concerning customer due diligence measures. There are however some additional provisions relating to Casino license holders.
Recommendation of the MONEYVAL Report	*All persons providing company services need to be covered by Maltese legislation*
Measures taken to implement the Recommendation of the Report	Regulation 2 of the 2008 Regulations gives a definition of "Trust and company service providers" which are considered to be subject persons under the 2008 Regulations: any natural or legal person who, by way of business, provides any of the following services to third parties: a) forming companies or other legal persons; b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; c) providing a registered office, business address and other related services for a company, a partnership or any other legal person or arrangement; d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement; e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Additionally since, as explained to the Plenary during the MER discussion in September 2007, in Malta such activities are often provided by the legal and the accountancy professions, persons providing trust and company services are covered in the definition of 'relevant activity' in relation to:

[2] i.e. part of Recommendation 12

	(*a*) auditors, external accountants and tax advisors when acting as provided for in paragraph (c) below; (*c*) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the - (i) organisation of contributions necessary for the creation, operation or management of companies; (ii) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider; (*d*) trust and company service providers not already covered under paragraphs (*a*), (*c*), (*e*) and (*f*); (*e*) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act; (*f*) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act.
(Other) changes since the last evaluation	

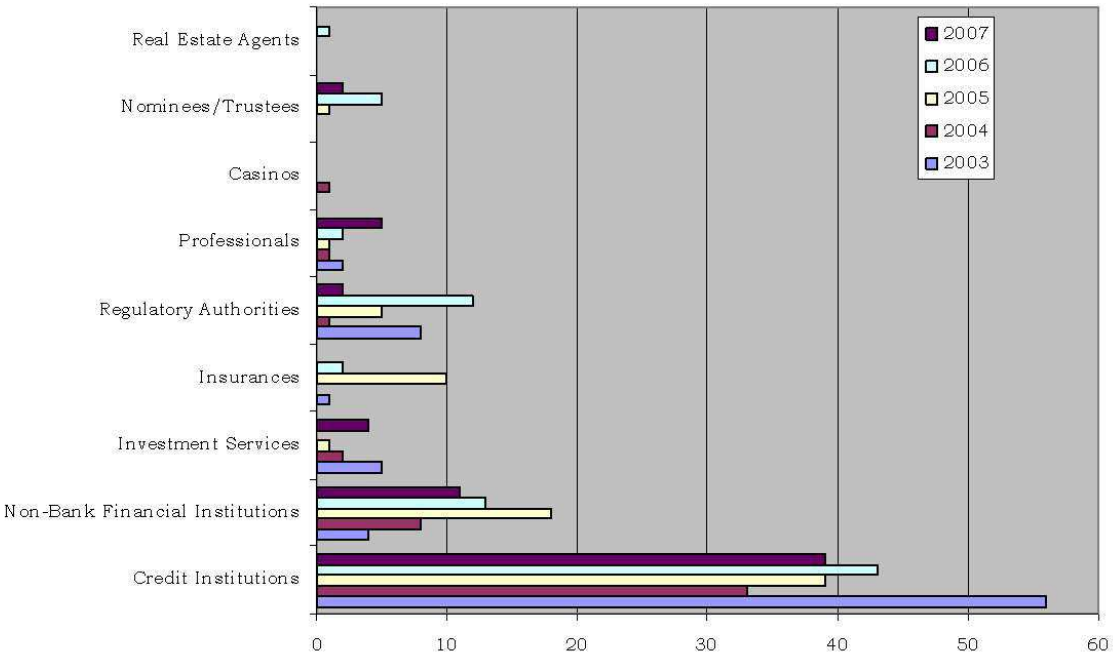
Recommendation 10 (Record keeping) **I. Regarding Financial Institutions**	
Rating: Compliant	
Recommendation of the MONEYVAL Report	*No recommendation*
Measures taken to implement the Recommendation of the Report	
(Other) changes since the last evaluation	
Recommendation 10 (Record keeping) II. Regarding DNFBP[3]	
Recommendation of the MONEYVAL Report	*No recommendation*
Measures taken to implement the Recommendation of the Report	
(Other) changes since the last evaluation	

[3] i.e. part of Recommendation 12

Recommendation 13 (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures taken to implement the Recommendation of the Report	Reporting procedures and obligations are exhaustively covered by regulation 15 of the 2008 Regulations. More specifically, Regulation 15(6) clarifies and strengthens the reporting of attempted suspicious transactions. *Inter alia* a subject person is obliged to file a report when it knows or suspects that money laundering or the funding of terrorism has been, is being or may be committed or attempted.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism*[4].
Measures taken to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
(Other) changes since the last evaluation	
Recommendation 13 (Suspicious transaction reporting) II. Regarding DNFBP[5]	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures taken to implement the Recommendation of the Report	Reporting procedures and obligations are exhaustively covered by regulation 15 of the 2008 Regulations. More specifically, Regulation 15(6) clarifies and strengthens the reporting of attempted suspicious transactions. *Inter alia* a subject person is obliged to file a report when it knows or suspects that money laundering or the funding of terrorism has been, is being or may be committed or attempted.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism.*
Measures taken to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
Recommendation of the MONEYVAL Report	*While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).*
Measures taken to implement the Recommendation of the Report	As held by the Malta Delegation in the course of the discussions of the Plenary on the adoption of the MER in September 2007, it is generally the situation in most evaluated countries that the number of suspicious reports filed by DNFBPs in relation to those filed by the financial sector is always lower, although to different degrees. This is understandable considering the dominance of the financial sector

[4] Reporting of transactions suspected to be related to the financing of terrorism was provided for under the February 2006 revisions of the Prevention of ML Regulations and was in place by the time of the adoption of the 3rd evaluation report. All references to this issue in this progress report should be read in the light of this footnote.

[5] i.e. part of recommendation 16.

	in all jurisdictions. Hence this cannot be attributed as an effectiveness problem to any one particular jurisdiction. Although this is generally still the case it is worth noting that reports filed by DNFBPs have gradually increased as evidenced by the chart attached hereunder. *STRs filed by Subject Persons for the years 2003-2007* 
Changes since the last evaluation	

Special Recommendation II (Criminalisation of terrorist financing)	
Rating: Largely Compliant	
Recommendation of the MONEYVAL Report	*Clarify that Article 328 B offences cover contributions used for any purpose ((including a legitimate activity), by a terrorist group.*
Measures taken to implement the Recommendation of the Report	This issue is being re-addressed through proposed amendments to the relevant laws.
Recommendation of the MONEYVAL Report	*Clarify if provision or collection of funds can be done directly and indirectly.*
Measures taken to implement the Recommendation of the Report	Vide above.
Recommendation of the MONEYVAL Report	*Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences.*
Measures taken to implement the Recommendation of the Report	Since 2007 the FIAU has received four suspicious transaction reports related to the financing of terrorism, three of which have been passed on to the police for further investigation following the assessment by the FIAU.

(Other) changes since the last evaluation	

Special Recommendation IV (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: Non Compliant	
Recommendation of the MONEYVAL Report	*Mandatory obligation to report suspicious transactions of FT is not in place*
Measures taken to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
(Other) changes since the last evaluation	

Special Recommendation IV (Suspicious transaction reporting) II. Regarding DNFBP	
Recommendation of the MONEYVAL Report	*Mandatory obligation to report suspicious transactions of FT is not in place*
Measures taken to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
(Other) changes since the last evaluation	

3. Other Recommendations

In the last report the following FATF recommendations were rated as "partially compliant" (PC) or "non compliant" (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

Recommendation 6	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*Malta should introduce enforceable means concerning the establishment of business relationships with PEPs*
Measures taken to implement the Recommendation of the Report	The concept of PEPs was introduced into Maltese legislation through the 2006 amendments to the 2003 Regulations, immediately following the completion of the Third Round evaluation on-site visit in November 2005. The 2008 Regulations have broadened the concept of PEPs by adopting the more extensive definition of PEPs in the FATF 40 and the EU Third Directive under Regulation 2 and Regulations 11(6) and (7). More specifically, Regulation 11(6) deals with the undertaking of transactions or establishment of a business relationship by a subject person with politically exposed persons. This regulation imposes enhanced measures to be adopted by subject persons in undertaking transactions or establishing business relationships with PEPs. Enhanced measures

	include: the approval of senior management for the establishment of such a relationship or the undertaking of transactions; the maintenance of suitable measures and internal procedures to ascertain the source of wealth and funds that are involved in these business relationships or transactions; and the conducting of enhanced ongoing monitoring of the business relationship. Regulation 11(8) then states that where a person has ceased to be entrusted with a prominent public function for a period of at least twelve months such person shall no longer be considered as a politically exposed person**.**
(Other) changes since the last evaluation	

Recommendation 7	
Rating: Non-Compliant	
Recommendation of the MONEYVAL Report	*No law, regulation or enforceable guidance on cross-border correspondent relationships.*
Measures taken to implement the Recommendation of the Report	It must be noted that although, in the opinion of the Maltese authorities, the requirements of Recommendation 7 were already partially covered through the Guidance Notes (oem), the 2006 amendments to the 2003 Regulations following the on-site visit strengthened these obligations through the then Regulation 5A. However the Maltese authorities have given due consideration to the MONEYVAL recommendations in this respect. Under the 2008 Regulations therefore, cross-border correspondent relationships with respondent institutions from a country other than a Member State of the Community have been further strengthened and are now regulated by Regulation 11(3). A set of particular measures must be adopted by the subject person carrying out relevant financial business to ensure that money laundering and funding of terrorism are avoided. Subject persons must have knowledge of and understand the business activities and reputation of the respondent institution; assess the adequacy and effectiveness of the internal controls for the prevention of money laundering and the funding of terrorism; obtain the prior approval of senior management for the establishment of new correspondent banking relationships; document their respective responsibilities for the prevention of money laundering and the funding of terrorism; and with respect to payable-through accounts be satisfied that the respondent credit institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and that it is able to provide relevant customer due diligence data to that subject person upon request.
(Other) changes since the last evaluation	

Recommendation 16	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures taken to implement the Recommendation of the Report	See reply to Recommendation 13 above.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism.*

Measures taken to implement the Recommendation of the Report	See reply to Recommendation 13 above.
Recommendation of the MONEYVAL Report	*Trust Service Providers not being a nominee company or licensed nominee should be expressly covered.*
Measures taken to implement the Recommendation of the Report	Regulation 2 of the Revised Regulations gives a definition of "Trust and company service providers": any natural or legal person who, by way of business, provides any of the following services to third parties: a) forming companies or other legal persons; b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; c) providing a registered office, business address and other related services for a company, a partnership or any other legal person or arrangement; d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement; e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Additionally since, as explained to the Plenary during the MER discussion in September 2007, in Malta such activities are often provided by the legal and the accountancy professions, persons providing trust and company services are covered in the definition of 'relevant activity' in relation to: (*a*) auditors, external accountants and tax advisors when acting as provided for in paragraph (c) below; (*c*) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the - (i) organisation of contributions necessary for the creation, operation or management of companies; (ii) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider; (*d*) trust and company service providers not already covered under paragraphs (*a*), (*c*), (*e*) and (*f*); (*e*) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act; (*f*) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act.
Recommendation of the MONEYVAL Report	*While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).*
Measures taken to implement the Recommendation of the Report	As held by the Malta Delegation in the course of the discussions of the Plenary on the adoption of the MER in September 2007, it is generally the situation in most evaluated countries that the number of suspicious reports filed by DNFBPs in relation to those filed by the financial sector is always lower, although to different degrees. This is understandable considering the dominance of the financial sector in all jurisdictions. Although this is generally still the case it is worth noting that reports filed by DNFBPs have gradually increased as evidenced by the chart attached under the reply to

	Recommendation 13.
(Other) changes since the last evaluation	

Recommendation 18	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*Malta should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking with shell banks.*
Measures taken to implement the Recommendation of the Report	Although as claimed by the Malta Delegation at the time of the Plenary discussion, in this context banks in Malta were already prohibited through the relevant provisions of the Guidance Notes (oem), the Maltese Authorities have taken on board the MONEYVAL recommendations and strengthened this requirement through the specific legislative provisions in the 2008 Regulations. As such, Regulation 11(4) now states that subject persons carrying out relevant financial business under paragraph (*a*) of the definition in Regulation 2 shall not enter into, or continue, a correspondent banking relationship with a shell bank.
Recommendation of the MONEYVAL Report	*Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.*
Measures taken to implement the Recommendation of the Report	Regulation 11(4)*(b*) states that subject persons carrying out relevant financial business under paragraph (*a*) of the definition in Regulation 2 shall take appropriate measures to ensure that they do not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.
(Other) changes since the last evaluation	The 2008 Regulations now contain a definition of a shell bank: "shell bank" means a credit institution or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group**.**

Recommendation 21	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.*
Measures taken to implement the Recommendation of the Report	The 2008 Regulations have retained the concept of 'reputable jurisdiction' but have strengthened the application of the concept throughout the Regulations as appropriate. Regulation 15(2) specifically requires subject persons to pay special attention to business relationships and transactions with persons, companies and undertakings, including financial institutions and DNFBPs, from a jurisdiction that does not meet the established criteria of a reputable jurisdiction as defined by the Regulations. Moreover Regulation 15(3) provides for measures that can be taken by the authorities where a jurisdiction continues not to apply or to insufficiently apply adequate AML/CFT measures. Additionally subject persons are prohibited from: a) applying simplified due diligence measures to all business relationships and transactions from a non reputable jurisdiction (Regulation 10(7)) b) relying on persons and institutions from a non reputable jurisdiction for the performance of customer due diligence requirements (Regulation 12(11))

	c) applying the provisions of disclosure with persons and institutions from a non reputable jurisdiction (Regulation 16 (4))
(Other) changes since the last evaluation	

Recommendation 22	
Rating: Non-Compliant	
Recommendation of the MONEYVAL Report	*No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Maltese requirements and the FATF Recommendations to the extent that host country laws and regulations permits.*
Measures taken to implement the Recommendation of the Report	Regulation 6 of the 2008 Regulations requires financial institutions with overseas branches or majority owned subsidiaries to communicate to such entities their internal AML/CFT procedures and to apply to them such AML/CFT measures that, as a minimum, are equivalent to Maltese requirements.
Recommendation of the MONEYVAL Report	*There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations.*
Measures taken to implement the Recommendation of the Report	Regulation 6 (1) states that subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction. This regulation is meant to further support the policy of the banking regulator not to approve the establishment of branches or subsidiaries in jurisdictions that do not or insufficiently apply the FATF -40. The Maltese Authorities would like to recall that, in terms of the Banking Act and other financial services legislation, financial institutions cannot establish an overseas branch or subsidiary unless so authorised by the regulator (the MFSA) whose policy for such authorisations includes the considerations of the AML/CFT situation and legislative provisions in the jurisdiction of establishment.
Recommendation of the MONEYVAL Report	*Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.*
Measures taken to implement the Recommendation of the Report	Regulation 6 (2)(b) requires subject persons to apply measures that, as a minimum, are equivalent to those under the 2008 Regulations regarding customer due diligence and record keeping. In the event that such application is not possible the subject person shall immediately notify the FIAU and take additional measures to effectively handle the risk of money laundering or the funding of terrorism. Should the subject person be unable to take additional measures, the FIAU in collaboration with supervisory authorities may order the closure of such branches or subsidiaries.
(Other) changes since the last evaluation	

Recommendation 24	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*More resources needed for monitoring and ensuring compliance by DNFBPs other than casinos.*
Measures taken to implement the Recommendation of the Report	The FIAU has established its own Compliance Department to develop its compliance operations. Currently the Department comprises one compliance officer who will continue to operate in collaboration with the other supervisory authorities with whom the FIAU has entered into MoUs. This notwithstanding, according to the Development Plan of the FAIU, the number of officers should be increased by two to a total of three officers by the year 2010. To date the FIAU has managed to

	maintain a steady ongoing supervision programme in the financial sector through its agreement with the MFSA. It is worth noting that in accordance with the 2008 Regulations transposing the EU Third AML Directive, the FIAU can apply a risk based approach in monitoring DNFBPs. To this effect, the FIAU will eventually establish its internal risk matrix in order to fulfil this obligation effectively.
(Other) changes since the last evaluation	

Recommendation 25	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*CFT issues are not addressed in sector specific guidelines.*
Measures taken to implement the Recommendation of the Report	In general, this is gradually no longer the case. Through its Legal and Compliance Departments the FIAU is working with the industry to continue to develop guidelines based on the 2008 Regulations. Vide for instance 'Guidance Notes on the Prevention of Money Laundering and Funding of Terrorism' issued by the institute of financial services practitioners in October 2007.
Recommendation of the MONEYVAL Report	*The provision of feedback is not fully in line with the FATF Best Practices Guidelines in providing feedback.*
Measures taken to implement the Recommendation of the Report	Regulation 14(4) of the 2008 Regulations states that the FIAU shall provide subject persons and supervisory authorities with timely feedback on the effectiveness of the suspicious transaction reports, on other information it receives from subject persons and the effectiveness of the statistical data gathered by the FIAU. The FIAU is further bound by the Act to provide feedback on STRs as may be requested by reporting entities. It is worth noting that earlier this year Malta was assessed on its feedback procedures by the EU. The results of the assessment were positive.
Recommendation of the MONEYVAL Report	*No sector specific guidelines for DNFBP*
Measures taken to implement the Recommendation of the Report	As explained above, these are currently being drafted.
(Other) changes since the last evaluation	

SR.VII	
Rating: Partially Compliant	
Recommendation of the MONEYVAL Report	*The general identification limit of MTL 5000 (Euro 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000).*
Measures taken to implement the Recommendation of the Report	Although the European Union Regulation 1781/2006 of 15 November 2006 on information on the payer accompanying transfer of funds is directly applicable as part of domestic legislation for wire transfers, yet Regulation 7(11) reiterates this obligation for financial institutions to comply with the EU Directive with Regulation 7(12) imposing administrative penalties for non-compliance. Moreover, with respect to occasional transactions that involve a money transfer or remittance, the definition of

	'Case 3' (single large transaction) under Regulation 2 (1) sets the threshold at €1,000. Moreover, Regulation 4 of the 2008 Regulations further requires that no subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless the subject persons maintains *inter alia* customer due diligence measures. Finally, Regulation 7(5) requires the application of customer due diligence measures in all Cases 1 – 4 as defined in Regulations 2.
Recommendation of the MONEYVAL Report	*No "full" originator information required to accompany cross-border wire transfers.*
Measures taken to implement the Recommendation of the Report	EU Regulation 1781/2006 is directly applicable as part of domestic legislation in Malta as an EU Member State. This notwithstanding, Regulation 7(11) of the 2008 Regulations states that subject persons who carry out a financial activity under 'relevant financial business' that involves the transfer of funds both domestically and cross-border shall comply with the provisions of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds, as may be in force from time to time. In this case article 5 of Regulation No 1781/2006 is directly applicable.
Recommendation of the MONEYVAL Report	*No measures taken to ensure enhanced scrutiny of and monitor for transfers which do not contain complete originator information.*
Measures taken to implement the Recommendation of the Report	Articles 8, 9 and 10 of Regulation No 1781/2006 are directly applicable in this case. Additionally Regulation 7(12) of the 2008 Regulations states that a subject person who contravenes the provisions of this regulation or of Regulation No 1781/2006 shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing.
Recommendation of the MONEYVAL Report	*No guidance on batching.*
Measures taken to implement the Recommendation of the Report	Articles 7 and 8 of Regulation No. 1781/2006 are directly applicable in this case.
(Other) changes since the last evaluation	

SR.VIII	
Rating: Non- Compliant	
Recommendation of the MONEYVAL Report	*No special review of the risks in the NPO sector undertaken.*
Measures taken to implement the Recommendation of the Report	The non-profit organisation sector is now regulated by the Voluntary Organisations Act 2007 and the Second Schedule of the Civil Code introduced in 2007. The FIAU has made recommendations to the Office of the Attorney General to enhance the harmonisation of the Voluntary Organisations Act with Special Recommendation VIII. The recommendations are currently under consideration by the Office of the Attorney General.
Recommendation of the MONEYVAL Report	*No general guidance to financial institutions as to the risks (in the light of Best Practice Paper for SR VIII).*
Measures taken to implement the Recommendation of the Report	Guidelines are currently being drafted.

Recommendation of the MONEYVAL Report	*Insufficient legal regulation of NPO sector.*
Measures taken to implement the Recommendation of the Report	As stated above the non-profit organisation sector is now regulated by Voluntary Organisations Act 2007 and the Second Schedule of the Civil Code introduced in 2007.
Recommendation of the MONEYVAL Report	*No specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations.*
Measures taken to implement the Recommendation of the Report	Provisions in this regard are under consideration as part of the proposals of the FIAU to amend the Voluntary Organisations Acts.
(Other) changes since the last evaluation	

4. Specific Questions

Has a general power across the financial sector been introduced to supervise the reporting of unusual business operations involving funds that may be linked or related to terrorism and the financing of terrorism? Have sanctioning powers been introduced in the financial sector for failing to report financing of terrorism transactions?
The FIAU is the entity which has the power to receive suspicious reports relating to the funding of terrorism. This power emanates from Regulation 15 of the 2008 Regulations. Regulation 15 (15) imposes an administrative penalty on those who fail to disclose and report a suspicion of funding of terrorism. Moreover the FIAU remains by law the authority responsible to supervise subject persons under the 2008 Regulations, which now cover reporting of transactions suspected to involve the funding of terrorism.
Have there been any changes to the domestic legal regime for freezing assets under SR.III of EU internals since the adoption of the 3rd evaluation report? Have any such orders been made in respect of EU internals since the adoption of the 3rd evaluation report?
There have been no significant changes in the domestic legal regime for freezing assets.
Have sanctions been imposed (whether administrative or criminal) specifically for AML/CFT infringements, at the instigation of financial sector supervisors, since the adoption of the 3rd report? If so, please indicate the main types of AML/CFT infringement detected by financial sector supervisors since the adoption of the 3rd report.[NB It is not necessary for these purposes to provide full detailed statistics, but an overview]
Since the adoption of the 3rd Report in September 2007, in the course of its supervisory work, the MFSA has detected a small number of AML/CFT related infringements by licence holders. These included minor deficiencies in written AML/CFT procedures, minor shortcomings in aspects of customer acceptance policies and in CDD information / documentation, and occasionally shortcomings in training obligations. The infringements detected were not serious enough to warrant the imposition of fines but rather the issue of a warning or a reprimand. In all cases the MFSA requested the licence holder concerned to rectify the shortcoming and to comply within an established time period and verified compliance through a follow up on-site visit.

5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC) [6]

Implementation / Application of the provisions in the Third Directive and the Implementation Directive	
Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	The European Union Third Directive and the Implementation Directive have been fully implemented by virtue of the Prevention of Money Laundering and Funding of Terrorism Regulations of July 2008

Beneficial Owner	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3rd Directive[7] (please also provide the legal text with your reply)	The legal definition of 'beneficial owner' in Regulation 2 of the 2008 Regulation is fully aligned with the definition given in the 3rd Directive. In addition to the provisions laid out in the definition of the 3rd Directive, Regulation 2 states that in the case of long term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy – this is in line with the FATF 40.

Risk-Based Approach	
Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.	In terms of Regulation 3, the FIAU may determine that subject persons who carry on relevant financial business (including therefore financial institutions) on an occasional or very limited basis and where there is little risk of money laundering or funding of terrorism shall not be regarded as subject persons and therefore do not fall within the scope of the 2008 Regulations. Sub-Regulations (2) to (5) of Regulation 3 lay down the criteria on which the FIAU shall make such determination. Regulation 7 establishes the customer due diligence criteria, with Regulation 7(8) providing for subject persons to determine the extent of the application of customer due diligence requirements on a risk sensitivity basis depending on the type of customer, business relationship, product or transaction. The law further requires that subject persons must have internal procedures in place to apply the risk based approach to the satisfaction of the supervisory authority – the FIAU. In this context therefore, subject persons may apply simplified customer due diligence as far as it is permitted by the criteria laid down in Regulation 10 of the 2008 Regulations. Additionally, as far as applicable, subject persons must apply enhanced customer due diligence measures in situations in accordance with Regulation 11 of the 2008 Regulations.

Politically Exposed Persons	
Please indicate whether criteria for identifying PEPs in accordance with	The definition of "politically exposed persons" completely reflects the definition in the EU Third Directive and the Implementation Directive.

[6] *For relevant legal texts from the EU standards see Appendix II*

[7] Please see Article 3(6) of the 3rd Directive reproduced in Appendix II

the provisions in the Third Directive and the Implementation Directive[8] are provided for in your domestic legislation (please also provide the legal text with your reply).	Definition under Regulation 2: "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials; Regulation 11(7) states For the purposes of the definition of 'politically exposed persons' - (*a*) the term 'natural persons who are or have been entrusted with prominent public functions' shall include the following: (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries; (ii) Members of Parliament; (iii) members of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances; (iv) members of courts of auditors, Audit Committees or of the boards of central banks; (v) ambassadors, *charges d'affaires* and other high ranking officers in the armed forces; (vi) members of the administrative, management or boards of State-owned corporations, and where applicable, for the purposes of subparagraphs (i) to (v), shall include positions held at the Community or international level; (*b*) the term 'immediate family members' shall include the following: (i) the spouse, or any partner recognised by national law as equivalent to the spouse; (ii) the children and their spouses or partners; and (iii) the parents; (*c*) the term 'persons known to be close associates' shall include the following: (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations with that politically exposed person; (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.

"Tipping off"	
Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.	Officials or employees of the FIAU (article 33 of the Act) and subject persons, supervisory authorities or any official or employee of a subject person or a supervisory authority (Regulation 16 of the 2008 Regulations) are prohibited from disclosing to the person concerned or to a third party, that an investigation is being or may be carried out, or that information has been or may be transmitted to the Financial Intelligence Analysis Unit. Article 4(2) of the Act prohibits any person from disclosing that an investigation is taking place or

[8] Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	makes any other disclosures likely to prejudice such investigation where an investigation order has been applied for by the Attorney General.
With respect to the prohibition of "tipping off" please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.	In transposing the relevant articles under Section 2 of Chapter III of the EU Third Directive, Regulation 16(2) provides that disclosures made under the following circumstances shall not constitute a breach of that subregulation: (*a*) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law; (*b*) disclosures by the reporting officer of a subject person who undertakes relevant financial business to the reporting officer of another person or persons undertaking equivalent activities and who form part of the same group of companies of the former subject person, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction; (*c*) disclosures by the reporting officer of a subject person who undertakes activities under paragraph (*a*) or paragraph (*c*) of the definition of 'relevant activity' to the reporting officer of another person or persons undertaking equivalent activities, who perform their professional activities whether as employees or not, but within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction; (*d*) disclosures between the same professional category of subject persons referred to in paragraph (*b*) and paragraph (*c*) in cases related to the same customer and the same transaction that involves two or more institutions or persons, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction, provided that such subject persons are subject to equivalent obligations as regards professional secrecy and personal data protection and, provided further that the information exchanged shall only be used for the purposes of the prevention of money laundering or the funding of terrorism. (3) The fact that a subject person as referred to in subregulation (2)(*c*) is seeking to dissuade a client from engaging in an illegal activity shall not constitute a disclosure in breach of subregulation (1). (4) Where the FIAU determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2 of the 2008 Regulations, or where the FIAU is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions of subregulation (2) with persons and institutions from that jurisdiction. Moreover, Article 34 (1) of the Act states that the FIAU, and its officers, employees and agents, whether still in the service of the FIAU or not, shall not disclose any information relating to the affairs of the FIAU or of any person, physical or legal, which they have acquired in the performance of their duties or the exercise of their functions under this Act except: (*a*) when authorised to do so under any of the provisions of the Act; (*b*) for the purpose of the performance of their duties or the exercise of their functions under the Act; (*c*) when specifically and expressly required to do so under a provision of any law. Article 34 (2) states further that the FIAU may disclose any document or information referred to in subarticle (1) to an organization outside Malta which in the opinion of the FIAU has functions similar to those of the FIAU and which has similar duties of secrecy and confidentiality as those of the FIAU or to a supervisory authority in Malta or to a supervisory authority outside Malta which in the opinion

	of the FIAU has duties similar to those of a supervisory authority in Malta.

"Corporate liability"	
Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.	Regulation 5 (1) states that where an offence against the provisions of Regulation 4 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be 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. Article 3(4) of the Act states: Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of 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 more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (€1,164,686.70).
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	Regulation 5(2) states that without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporate, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him by a person referred to in subregulation (1), such body or association shall be liable to an administrative penalty of not less than one thousand and two hundred euro (€1,200) and not more than five thousand euro (€5,000). Regulation 5(3) establishes the application of this administrative penalty either as a one time penalty or on a daily cumulative basis not exceeding €50,000 in aggregate.

DNFBPs	
Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	In accordance with the definition of 'relevant activity (DNFBPs) in the 2008 Regulations, the following shall be considered to be subject persons: natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked.

6. Statistics

a. Please complete - to the extent possible - the following tables:

***Note**: The following statistics do not include investigations triggered by STRs which resulted in prosecutions for offences other than money laundering or terrorist financing offences.*

2005

	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	27	44	3	3	-	-	2	-	2	-	-	-
FT												

2006												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	38	51	4	9	-	-	12	279,525	12	279,525	-	-
FT												

2007												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	32	43	6	9	1	1	8	759,942	8	759,942	1	-
FT	1	2										

2008												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	42	54	2	3	2	2	5	985,816	5	318,716	-	-
FT	1	2										

b. STR/CTR

Explanatory note:
The statistics under this section should provide an overview of the work of the FIU.
The list of entities under the heading "*monitoring entities*" is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.

The information requested under the heading "*Judicial proceedings*" refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.
"C*ases opened*" refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term "cases open" is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

2005															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial banks *Credit Institutions*		39	-												
Insurance companies		10	-												
Notaries		-	-												
Currency exchange *Financial Institutions*		18	-												
Broker companies securities' registrars *Investment firms*		-	-	62		28		6	7	-	-	-	-	-	-
Lawyers		-	-												
Accountants/auditors		1	-												
Company service providers		-	-												
Nominees and Trustees		1	-												
Casinos		-	-												
Regulatory Authorities		6	-												
Total		**75**	**-**												

2006																
Statistical Information on reports received by the FIU								**Judicial proceedings**								
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**				
								ML		**FT**		**ML**		**FT**		
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	
Commercial banks *Credit Institutions*		43	-													
Insurance companies		2	-													
Notaries		-	-													
Currency exchange *Financial Institutions*		13	-													
Broker companies Securities' registrars *Investment firms*		-	-	72		24		11	13	-	-	-	-	-	-	
Real estate agents		1	-													
Accountants/auditors		2	-													
Company service providers		-	-													
Nominees and Trustees		5	-													
Casinos		-	-													
Regulatory Authorities		12	-													
Total		**78**	**-**													

2007																
Statistical Information on reports received by the FIU								**Judicial proceedings**								
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**				
								ML		**FT**		**ML**		**FT**		
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	
Commercial banks *Credit Institutions*		38	1	52	3	24	3	2	2	-	-	1	1	-	-	
Insurance companies		-	-													
Notaries		-	-													
Currency exchange *Financial Institutions*		9	2													

Broker companies securities' registrars *Investment firms*		4	-												
Lawyers		1	-												
Accountants/auditors		4	-												
Company service providers		-	-												
Nominees and Trustees		2	-												
Casinos		-	-												
Regulatory Authorities		2	-												
Total		**60**	**3**												

2008															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial banks		39	1												
Insurance companies		-	-												
Notaries		-	-												
Currency exchange		13	-												
Broker companies		-	-												
Securities' registrars		2	-	56	1	40	-	2	2	-	-	2	2	-	-
Lawyers		1	-												
Accountants/auditors		-	-												
Company service providers		-	-												
Nominees & Trustees		2	-												
Casinos (Betting Companies)		2	-												
Total		**59**	**1**												

APPENDIX I - Recommended Action Plan to Improve the AML / CFT System

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2)	• More emphasis should be placed on securing final convictions on money laundering. • A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue). • The evaluators advise to set out in legislation or guidance that knowledge (the intentional element) can be inferred from objective factual circumstances. • More priority should be considered to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences. • To provide for the confiscation of assets of a legal entity at least where it is shown to have benefited from money laundering.
Criminalisation of Terrorist Financing (SR.II)	• Clarify that Article 328 B offences cover contributions used for any purpose ((including a legitimate activity),by a terrorist group. • Clarify if provision or collection of funds can be done directly and indirectly. • Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Practice on third party confiscation should be developed. • Consider prolongation of the 30 days attachment order to deal with a translational dimension where e.g. the suspect is within Malta, particularly for money laundering offences dealing with foreign predicates. • More statistics on provisional measures and confiscation is needed.
Freezing of funds used for terrorist financing (SR.III)	• Clarify that domestic action in relation to European Union internals and on behalf of other jurisdictions have been taken. • Guidance and communication mechanisms with the non-financial sector and DNBF need to be developed. • Development of a clear and publicly known

	procedure for de-listing and unfreezing is needed.
The Financial Intelligence Unit and its functions (R.26, 30 and 32)	
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)	• More emphasis should be placed on Police generated money laundering cases by proactive financial investigation in major proceeds-generating cases. • More officers should be trained in modern financial investigation. • Focused money laundering training should be provided. • An increase in the resources of the Money Laundering Unit should be a priority. • More trained financial investigators are required either in the Money Laundering Investigation Unit or separately for major enquiries. • Special training or educational programmes provided for judges and courts concerning money laundering and terrorist financing offences should be provided. • Statistics be kept about the number of special investigative techniques used in money laundering investigations.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or financing of terrorism	
Financial institution secrecy or confidentiality (R.4)	
Customer due diligence, including enhanced or reduced measures (R.5, R.7)	• The requirements under Regulation 7 (5) (b) make reference to the identification of the "trust beneficiaries or of his principal, as the case may be". Clarification is needed to ensure that identification of both settlor and beneficiary is required. • For life and other investment linked insurance, the beneficiary under the policy should be verified. • Specific requirement should be provided in the Regulations for financial institutions to obtain information on the purpose and intended nature of the business relationship. • The Maltese authorities should introduce requirement in the Regulations for ongoing scrutiny

	of transactions or requirement to ensure the CDD-process is kept up to date. • Enhanced due diligence for higher risk customers, business relationships or transactions should be introduced. Non-face to face customers are already covered by the regulation. • It is recommended that Malta implements legislation to deal with cross-border correspondent banking relationships.
Politically exposed persons(R.6)	• The Maltese AML/CFT system should introduce enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
New technologies and non-face to face business(R.8)	
Third parties and introducers (R.9)	
Record keeping and wire transfer rules (R.10 and SR.VII)	• The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers. Maltese authorities should introduce in Law or Regulation a limit which is in line with the Interpretive Note to SR VII. • "Full" originator information (name, address and account number)should be required to accompany cross-border wire transfers. • Malta should take measures to ensure that financial institutions conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information. • Guidance on batching should be issued.
Monitoring of transactions and relationships (R.11 and 21)	• There should be a specific requirement to set forth the findings of financial institutions on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at last 5 years. • There should be a specific requirement on the financial institutions to examine the background and purpose of transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, and set out their findings in writing and to make them available for the competent authorities.
Suspicious transaction reports and other reporting (R.13 and 14, 19, 25 and SR.IV and SR.IX)	• The AML law or Regulation should clearly provide for attempted suspicious transactions to be reported. • The reporting obligation should also cover

	financing of terrorism. • The issue to empower the customs to stop the person and restrain currency etc. until the Police arrive should be addressed. • To consider whether the Central Bank gateway for the FIU to Customs data is adequate in practice.
Internal controls, compliance, audit and foreign branches (R.15 and 22)	• Malta should implement an explicit obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Maltese requirements and FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard has to be applied in the event that the AML/CFT requirements of the home and host country differ.
The supervisory and oversight system – competent authorities and SROs Roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)	• Sanctioning powers should be introduced for failing to report financing of terrorism transactions. • A general power across the financial sector to supervise reporting of unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be enacted.
Shell banks (R.18)	• Malta should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking with shell banks. • Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
Financial institutions – market entry and ownership/control (R.23)	
Ongoing supervision and monitoring (R23, 29)	• Regulatory and supervisory measures on CFT need to be provided.
AML/CFT Guidelines (R.25)	• Sector specific guidance CFT needs to be provided. • The provision of feedback should be fully in line with the FATF Best Practice Guidelines on providing feedback.
Money or value transfer services (SR.VI)	• See the changes recommended under R5 and SR VII.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• The changes recommended for Recommendation 5, 6 and 11 for financial institutions should be applied also to DNFBP.

	• All persons providing company services need to be covered by Maltese legislation.
Monitoring of transactions and relationships (R.12 and 16)	• Trust Service Providers not being a nominee company or licensed need to be covered.
(R.13)	• Requirements under Recommendation 13 should apply to DNFBP, subject to the qualifications in Recommendation 16.
Regulation, supervision and monitoring (R.17, 24-25)	• Sanctioning powers should be introduced also for DNFBP for failing to report financing of terrorism transactions. • It is recommended that more resources are needed for monitoring and ensuring compliance by DNFBPs other than casinos.. • Sector specific guidance needs to be provided.
Other designated non-financial businesses and professions (R.20)	• The examiners recommend that consideration needs also to be given to extending coverage to those DNFBP that are at risk of being misused for terrorist financing as well as money laundering. • Equally the DNFBP coverage should be kept under review to ensure that all non-financial businesses and professions that are at any given time at risk of being used for ML are regularly being considered for coverage in the PMLR.
3. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	
6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	
The Conventions and UN Special Resolutions (R.35 and SR.I)	• Confiscation third party provisions need developing and there are reservations in respect of the thirty day attachment orders in enquiries with a transnational dimension. • The broad preventative measures set out in the Palermo Convention are generally covered but greater specificity on the concept of beneficial owner would improve compliance with A.7 of that Convention.

	• The evaluators look forward to the early lifting of Maltese reservations to the Strasbourg Convention which are being reviewed for withdrawal. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed. • Preventive obligations under A.18 TF Convention need fully implementation (e.g. the implementation of SR.VII in the context of international wire transfers).
Mutual Legal Assistance (R.32, 36-38, SR.V)	
Extradition (R.32, 37 and 39, and SR.V)	
Other forms of co-operation (R.40 and SR.V)	

APPENDIX II

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.

None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.