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First Evaluation Round

Evaluation Report on Malta

Adopted by GRECO
at its 12th Plenary Meeting
(Strasbourg, 9-13 December 2002)

I. INTRODUCTION

1. Malta was the twenty-sixth GRECO member to be examined in the First Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was made up of Ms Isabelle VAN HEERS, Public prosecutor, performing the surveillance of the Federal Police, Belgium (expert on Criminal Justice matters), Mr Kazimir ÅBERG, Head of the Director-General's Office, Economic Crimes' Bureau, Division for International Affairs, Sweden (expert on general policy matters), and Mr William A. KEEFER, Assistant Commissioner, Office of Internal Affairs, United States Customs Service, USA (expert on law enforcement matters). This GET, accompanied by two members of the Secretariat, visited Malta from 18 to 21 March 2002. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire [Greco Eval I (2002) 4E].
2. The members of the GET greatly appreciated the possibility of meeting representatives from the various Maltese administrative and policy-making levels and wished to thank the Maltese authorities and, in particular, the Office of the Attorney General for having made the arrangements of the visit, as well as for their kind hospitality.
3. The GET met with officials from the following Maltese Governmental organisations/bodies: Permanent Commission Against Corruption; Public Service Commission; Internal Audit and Investigation Board; Head of the Public Service; Public Accounts Committee - House of Representatives; Attorney General; Ombudsman; Commissioner of Police; Security Services; Customs; Director General of the Department of Contracts; National Audit Office; Department of Local Councils; Commission for the Administration of Justice. Moreover, the GET met with representatives of the Chamber of Commerce and a representative of the press. The list of persons met by the GET appears at Appendix I.
4. In accordance with Article 10.3 of its Statute, GRECO agreed at its 2nd Plenary meeting (December 1999) that the 1st Evaluation round - which started on 1st January 2000 - would be based on the following provisions of Resolution (97) 24:
 - Guiding Principle 3 (hereafter "GPC 3": authorities in charge of preventing, investigating, prosecuting and adjudicating corruption offences: legal status, powers, means for gathering evidence, independence and autonomy);
 - Guiding Principle 7 (hereafter "GPC 7": specialised persons or bodies dealing with corruption, means at their disposal);
 - Guiding Principle 6 (hereafter, "GPC 6": immunities from investigation, prosecution or adjudication of corruption).
5. The principal objective of this report is to evaluate the measures adopted by the Maltese authorities in order to comply with the requirements deriving from GPCs 3, 6 and 7 and, wherever possible, their effectiveness. The report will first describe the situation of corruption in Malta, the general anti-corruption policy, the institutions and authorities in charge of combating it -their functioning, structures, powers, expertise, means and specialisation- and the system of immunities preventing the prosecution of certain persons for acts of corruption. The second part contains a critical analysis of the situation described previously assessing, in particular, whether the system in place in Malta is fully compatible with the undertakings resulting from GPCs 3, 6 and 7. Finally, the report includes a list of recommendations to Malta in order for this country to improve its level of compliance with the GPCs under consideration.

II. GENERAL DESCRIPTION OF THE SITUATION

6. The Republic of Malta consists of Malta (246 square km), Gozo (67) and Comino (3), three islands situated in the Central Mediterranean, 100 km from Sicily and 290 km from North Africa. Malta has about 390,000 inhabitants (89% in urban areas) with a density of 1,234 inhabitants per km². In the year 2000, the GDP per capita amounted at 11.900 in PPS (Purchasing Power Standards), i.e. 53% of European Union's average. Malta became independent from British colonial rule in 1964. The Constitution, adopted on 21 September 1964, was substantially amended in 1974 to bring into effect a Republican form of Government. Malta joined GRECO on 11 May 2001.

a. **The phenomenon of corruption and its perception in Malta**

i. *General approach*

7. Referring to the extent of corruption in Malta, the authorities reported that in the last years, only three cases of alleged bribery were detected and brought to court, all three in 1998. They involved the manipulation of exam results, the falsification of police traffic accident reports and the misconduct of a sportsman.¹ Conviction was secured only in the second of these three cases. It is the Maltese authorities' view that corruption is "not widespread" in the country. This seems to be supported by empirical evidence from official records and shared by many of the officials interviewed by the GET.

8. The GET was repeatedly told that "in Malta everybody knows everybody and corruption is difficult to hide". Public claims of corruption and injustice are generally considered to be politically or economically motivated. In fact, most investigations had concluded that public allegations of corruption were unfounded. On the other hand, some persons interviewed by the GET during the visit expressed the view that Maltese society was indeed infected by corruption to a greater extent than officially admitted.² In their opinion, other forms of white-collar criminality - such as insurance fraud and tax evasion - are widespread.³

9. The PCAC and the Police communicated some figures on allegations of corruption that were investigated by them. According to those figures, it appears the number of investigations is much higher than the number of cases finally brought to court, and that investigations lasted a long time before a decision was reached (10 years in a number of cases before the PCAC). No NGOs or other civil society associations are directly involved in the fight against corruption. Malta is not included in the Transparency International's Indexes.

10. Traditionally, the State has played an important role in the Maltese economy. A process of privatisation was recently begun in several crucial areas.

11. Although the presence of some foreign-based criminal groups on the Maltese territory making use of corruption to avoid law-enforcement was not completely excluded, the Maltese authorities underlined that there was no evidence of such a state of affairs. The most typical form of

¹ There is a specific Act on prevention of corruption of "players" of 1976 [CAP 263: Chapter 263 of the Laws of Malta]. According to newspapers a TV sports presenter was recently suspended over an investigative programme on football corruption.

² *Times of Malta* of 28 April 2002; *Malta Today* of 21st April 2002; *Malta Today* of 24 March 2002; *Times of Malta* of 12 March 2002; *The Independent* of 5 August 2000 and *The Independent* of 12 September 2000.

³ See *The Malta Independent* of 27 August 2000. One in three vehicle theft in Malta is linked to an insurance fraud scheme.

organised crime in Malta is that of groups of persons temporarily acting together to carry out a specific criminal offence and sometimes resorting to corruption (mostly in the private sector) to reach their objectives.

ii. Offences, sanctions and jurisdiction

12. At the time of the visit, Maltese law criminalized the unlawful exaction by public officials or by any person employed by or in the Government; extortion committed by threats, or abuse of authority; active and passive bribery of a public official, including bribery of judges, members of the House of Representatives, persons serving in statutory bodies or agencies and jurors. It also criminalized the holding of private interest in adjudications and issuing of orders; embezzlement and malicious violation of official duties.
13. Generally these offences are punishable with imprisonment of a maximum of three years.⁴ The period of limitation for crimes varies from two years⁵ to twenty years, depending on the maximum period of imprisonment laid down for the offence.
14. During the visit, the Maltese authorities informed the GET that a number of amendments to the Criminal Code were pending before Parliament with a view to implementing the European Criminal Law Convention on Corruption.⁶
15. At the time of the visit, the establishment, management or participation in a criminal organisation was not a criminal offence in Malta. Conspiracy was laid down as an offence only with respect to a limited number of criminal offences, excluding corruption.⁷ Corporate criminal liability was not known to the Maltese criminal law. Corruption committed in an organised manner was not a separate offence nor did it amount to an aggravating circumstance, although Maltese law allowed the Courts to take this factor into account when determining the level of punishment. Accounting offences could, in appropriate circumstances, fall under the definitions of counterfeit or forgery.
16. Money laundering has been a separate criminal offence since 1994. The elements of the offence result from articles 2 and 3 of the Prevention of Money Laundering Act [CAP 373]. All offences of corruption are predicate offences of the money laundering offence.
17. The Maltese legal system abides by an extended territoriality principle, according to which Maltese courts have jurisdiction over any person committing an offence on the territory of Malta, in its territorial waters or airspace, on board any ship, vessel or aircraft belonging to Malta. Although the Criminal Code provides for a limited application of the personal principle of jurisdiction, at the time of the visit, the Maltese Courts had no jurisdiction over corruption committed outside Malta by Maltese nationals.⁸

⁴ See Articles 112 to 127 in Sub-Title IV of the Criminal Code [CAP 9]

⁵ By the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine or to punishments established for contraventions

⁶ The GET was subsequently informed that the new Act amending the Criminal Code (Act No III of 2002) was adopted and published on 9 April 2002. Most of its provisions entered into force on 1 May 2002 whereas some of its Articles will come into force shortly (see the main changes in Appendix II).

⁷ However, the Act No III introduces into the Criminal Code new provisions with regard to conspiracy, corruption committed in an organised manner and corporate criminal liability.

⁸ However, the Act No III introduces into the Criminal Code a new provision which lays down jurisdiction on the basis of nationality for offences of corruption committed abroad.

iii. International co-operation

18. Malta has signed but not yet ratified the Council of Europe Criminal Law Convention on Corruption. It has not yet signed the Civil Law Convention on Corruption but implementing legislation has already been drafted with a view to its ratification.⁹
19. The Maltese authorities reported that there is no need for a treaty to allow Malta to extend assistance in criminal matters on the basis of reciprocity - since such assistance can be given even without a treaty. Requests for the hearing of witnesses abroad is admissible evidence in judicial proceedings in Malta, but there are no other specific legal provisions on other kinds of legal assistance requests which will be complied with as long as they are not prohibited by law.¹⁰ In so far as assistance to secure coercive measures is concerned, double criminality is usually required. Therefore, in principle, there are no material, political or other factors which hinder mutual legal assistance by Malta in corruption cases. However, at the time of the visit, legal rules on confidentiality and professional secrecy could be an obstacle to investigations, except through existing money laundering legislation).¹¹ In the last five years, Malta has not received any requests for assistance nor made requests for such assistance in respect of corruption matters. Maltese law allows the extradition of Maltese nationals.

b. Bodies and institutions responsible for the fight against corruption

b1. Anti-Corruption Law Enforcement Bodies

i. The Malta Police Force

20. Founded in 1814, the Malta Police Force (hereafter referred to as the "MPF" and also referred to in the law as the "Executive Police") is the main law enforcement authority in Malta, vested with general law enforcement powers. It is the duty of the MPF to preserve public order and peace, to prevent, detect and investigate offences, to collect evidence and to bring the offenders before justice.¹² It is a component of the Ministry for Home Affairs and is headed by a Commissioner of Police who is assisted by one Deputy Commissioner and seven Assistant Commissioners. Malta is divided into 2 regions and 11 districts. Each district, headed by a superintendent, divided in divisions, which are headed by inspectors.¹³ There are 1,800 police officers¹⁴, recruited "as may from time to time be approved by the Prime Minister". They can only be removed with his

⁹ A Bill to amend the civil code was published in 9 April 2002 following this purpose and has now become Law.

¹⁰ Specific provision has been made for assistance in the tracing, seizing, freezing, and confiscation of assets in connection with money laundering investigations and amendments being introduced by the Act No III extends this assistance with respect to all criminal offences liable to a punishment in excess of one year imprisonment. Greater power is also vested in magistrates to execute letters of request for assistance in criminal matters upon an application by the Attorney General.

¹¹ The Act No III also addresses this issue and extends the same possibilities of assistance now applicable to money laundering investigations to the assistance with respect to all investigations of all offences liable to a punishment exceeding one year's imprisonment. Malta adopted its Law on Data Protection in December 2001 [CAP 440].

¹² The objectives of the Malta Police Force mainly stem out from the Criminal Code (Sections 346 to 366 of Chapter 9 of the Laws of Malta) and the Malta Police Ordinance (Chapter 164 of the Laws of Malta)

¹³ See the Malta Police Force Organisation Chart: <http://www.mha.gov.mt/ministry/departments/police/chart.jpg>, (June 2001)

¹⁴ Approximately 1 to 200 inhabitants. There are of an average age of 36 years and an average length of service of 13.4 years. Less than 200 are female officers. Salaries of police officers vary from 331.667 Lm for a young constable to 882.583 Lm per month for the Deputy Commissioner (1 Lm=2.5 Euro). Constable (external) can become a Maltese citizen, 18 to 30 years old, who has a 3 'O' level and a clean conduct certificate; for the post of sergeant (internal), the applicant needs at least 3 years of service and should not have committed any serious disciplinary offences. The post of inspector is accessible to external candidates of 21 to 35 years old holding a university degree, and to police sergeants who have a 5 'O' level.

consent. The GET was informed that training relies upon experience and courses at the Police Academy.

21. The Economic Crime Unit is the MPF unit mainly concerned with the investigation and detection of corruption offences, which are liable to be prosecuted *ex officio* (no need of complaint by injured party). The Unit was set up in 1987 and investigates a range of offences of fraud, counterfeiting, copyright violations, smuggling, corruption and computer crime. It is staffed with 28 officers. The MPF initiates all prosecutions and the Police Commissioner is responsible for prosecution before the Courts of magistrates (as the Attorney General only prosecutes before the superior Courts).
22. Police officers are subject to disciplinary rules and submitted, in this respect, to the jurisdiction of the Public Service Commission (see below). They are also bound by a Code of Ethics published in 1994 and applicable to all public officials. The Police Commissioner is empowered, under the Malta Police Ordinance, to deal summarily with minor disciplinary offences. Complaints filed by the public against a police officer, even if made anonymously, and concerning minor affairs are investigated by an Internal Affairs Unit, consisting of 5 officers and led by a superintendent.¹⁵ Article 7 of the first schedule of the MPF Ordinance defines "corrupt practices" as disciplinary offences. Liability for the disciplinary offence does not affect criminal liability for any criminal offence of corruption. Statistics provided to the GET indicated that, in 2001, the Internal Affairs Unit investigated 66 complaints. Of those, 13 resulted in disciplinary and 4 in judicial proceedings.¹⁶ Although the GET was not able to obtain precise numbers of police officers charged with corruption offences, it was informed that there have been a total of 5 bribery prosecutions in Malta since 1998, and 6 "unlawful exaction" cases.¹⁷ Allegations of serious corruption offences committed by police officers may be referred to by the Police Commissioner to the Economic Crime Unit. In such a case, criminal proceedings are instituted and disciplinary ones, if any, are suspended.
23. A Bill amending the MPF Ordinance is under preparation¹⁸. It will have a strong impact on the MPF's structure and procedure. A civil Police Board will monitor the functioning of the Police, including its Internal Affairs Unit. A new witness protection programme will be set up, enabling to receive testimony from remote locations with a concealed identity. New procedures, such as regular meetings with Local Councils will be required. Charging someone "with an offence which is manifestly unfounded" will become a disciplinary offence. This provision concerns cases where a police officer vexatiously charges a person before a court with a criminal offence when there were manifestly no grounds for such a prosecution. Therefore, the Bill will overhaul the MPF Ordinance, with a view to establishing a comprehensive framework for effective and accountable policing.

¹⁵ The announcement in 1999 to establish a monitoring unit within the Police force came as good news. Some expressed the view that "having to wait for the Public Service Commission to take disciplinary action in internal Police affairs is simply not acceptable". A case in point was a Police sergeant mentioned in a murder affair who faced the PSC 19 years after the facts had happen. See *The Independent* of 29th March 1999: <http://www.doi.gov.mt/EN/commentaries/1999/03/ind29.asp>

¹⁶ In 1999, 170 complaints were investigated 25 of which resulted in disciplinary action, 6 resulted in court action while in 112 cases no sufficient evidence was found to support the complaint. In 2000, of 48 cases where investigations were concluded 6 resulted in disciplinary action, 3 resulted in court action, 3 resulted in a warning, while, in 32 cases the evidence was insufficient. In 2001, in 49 cases over 66, evidence was insufficient.

¹⁷ In the new Bill to amend the Police Ordinance, it is envisaged to establish a Police Board which, among others, will inquire into and report on any matter regarding the conduct of the Force or any of its members, monitor the conduct of internal Police disciplinary proceedings and the workings of the Internal Affairs Unit. A member of this Board might only be removed from office by a Resolution of the House of Representatives on the ground of inability to discharge the functions of his office.

¹⁸ The relevant Bill has been enacted into law but most of its provisions are not yet in force.

ii. *The Security Service*

24. Article 3 of the Security Service Act, provides that the main role of the Security Service is to protect and preserve the national security of Malta. However, the Security Service is also charged with "the prevention or detection of serious crimes," for example exceeding three year's imprisonment or "resulting in substantial financial gain."¹⁹ The Security Service has no powers of arrest. However, it is the only body with the authority to conduct wiretaps and their use.
25. The Security Service was re-organised in January 2000 as a separate body from the Police. It is of a modest size, staffed with police, customs, Armed Forces of Malta, officials and civil servants. Its Head is appointed by the Prime Minister. A Security Committee, which includes the Prime Minister, the Minister responsible for the service, the Minister of Foreign Affairs and the Leader of the Opposition, is in charge of examining the expenditure, administration and policy of the Security Service. The Head of the Security Service must ensure "that the Service does not take any action to further the interests of any political party".²⁰
26. A Commissioner investigates complaints against the Security Service. S/He is appointed by the Prime Minister from among current or former Superior Court judges or Attorneys General.²¹ However no complaints have been received against the Security Service to date and therefore no such investigations have been performed. The Attorney General is vested with particular functions in relation to the Security Service: when there is no Commissioner (Art. 12 (1) second paragraph), as regards the disclosure of messages (Art 16), and the prosecution for offences under the Act (Article 17).

iii. *Department of Customs*

27. The Maltese Customs is made up of about 650 persons. Some officers have executive and arrest powers²² within the "customs area", at ports of entry. Together with the Immigration Police and the Armed Forces, Customs is responsible for border security.
28. Unlike the Police, Customs have no prosecution function or Internal Affairs Unit. If any allegations are made or there is a suspicion that someone from the service is corrupt, the investigation is carried out by the anti-fraud unit or the unit within which this offence seems to have been committed, either alone or with the help of other bodies, such as the police. Criminal investigations are conducted by the Police, whereas disciplinary (as distinct from criminal) action is part of the human resource section. A Code of Conduct and Ethics for Customs Employees entered into force in 2001 dealing *inter alia* with conflicts of interest, acceptance of gifts/advantages etc. There is, however, no regular or specific staff training on dealing with corruption cases. At the time of the GET visit, four Customs guards had been charged with corruption.
29. Malta Freeport was established by legislation in 1988²³ to develop the port of Marsaxlokk into a commercially viable international hub port. It has proven to be a major maritime trans-shipment centre in the Mediterranean with two container terminals. The Malta Freeport Corporation is the

¹⁹ See Article 2 (3) of the Security Service Act [CAP 391]

²⁰ See Article 4 (2) b of the Act [CAP 391]

²¹ See Articles 12, 13 and Schedule 1 of the Act [CAP 391]

²² The Customs Ordinance [CAP 37] provides, however, that the President can authorise any Customs Officer to exercise "such functions as ... are vested in the Executive Police."

²³ See Malta Freeport's Act [CAP 334] of 20 April 1990

Authority for Malta's Freeport operational activities. According to Freeport's website, the goal of the Authority is to "guarantee clients minimum bureaucracy in all its activities to enhance their business operations."

iv. Local Wardens at local self-government level

30. The Private Guards and Local Wardens Act established a uniform service for Local Councils. Local wardens are authorized to enforce local by-laws (see below) and can stop - but not detain - individuals to enforce local ordinances, including the "control and regulation of access and movement by pedestrians and vehicles."

b2. The Attorney General's Office

31. The Attorney General (AG) is the principal law officer and the legal adviser of the Republic. According to Article 91 of the Constitution, he is appointed by the President upon advice of the Prime Minister. He may not be removed from his office except by the President, upon request of the House of Representatives supported by a two-third majority of its members, on the ground of proven inability to perform his functions or proved misbehaviour. The AG is assisted by a Deputy and his Office is composed of six lawyers, including one legal procurator. The AG encourages the participation of his staff in international *fora*, but they are not especially trained. The Office's budget is negotiated with the Minister for Justice. The AG is free to decide how to handle cases and is not subject to directives or policy guidelines laid down by the Minister of Justice or any other authority.
32. The AG acts as Public Prosecutor in the highest courts of the criminal jurisdiction. He also exercises functions in connection with pre-trial investigations and gives advice to the Police concerning investigations. According to the Constitution, in the exercise of his powers linked to criminal proceedings or conferred on him by law to be exercised in his individual judgement, the AG shall not be subject to the direction or control of any other person or authority. In criminal proceedings, although he is not legally obliged, the AG would normally inform the Minister of Justice about important decisions in sensitive cases. Whenever the Attorney General decides not to proceed in a particular case (*holle prosequi*) s/he is bound to submit a report on his/her decision to the President of the Republic, usually sending a copy to the Minister of Justice. Moreover, as a matter of administrative practice, s/he also submits an annual report of his/her department's activities to the Minister of Justice.

b3. Judiciary (judges and magistrates)

33. According to Chapter VIII of the Constitution of Malta, the Judiciary is composed of judges and magistrates who sit either in the superior (judges) or in the inferior (magistrates) Courts. The jurisdictions in the criminal field are the following: Courts of magistrates, Criminal Court, Court of Criminal Appeal, Constitutional Court. There are 17 judges and 16 magistrates. A Commission for the Administration of Justice was established in 1994 in order to supervise the work of the Judiciary (Article 101A of the Constitution).²⁴

²⁴ There are some other specialised tribunals in Malta with very specific tasks (i.e. the Tribunal on Injustices). During the visit, the GET was also informed of the establishment of 10 Local Tribunals by the Commissioners for Justice Act, with jurisdiction over a variety of minor, non-criminal, offences reported by "local wardens" (see above), including traffic offences, illegal waste disposal, truancy and planning permission violations. Neither the Tribunal of Injustices nor the Local Tribunals have, in principle, any role in preventing or fighting corruption.

i. Courts

34. According to Articles 96 to 100 of the Constitution, judges and magistrates are appointed by the President upon the advice of the Prime Minister. To qualify as a magistrate the person must have served for 7 years as an advocate in Malta. To qualify as a judge, 12 years as an advocate or as a magistrate, or partly as a magistrate and partly as an advocate, are required. Judges and magistrates may not be removed from office, except by the President upon request by the House of Representatives supported by a two-third majority of its members on the grounds of proved disability or proven misbehaviour (same as AG). There is no other procedure regulating the appointment of judges and magistrates and there is no specialised school or training for them. They do, however, periodically attend seminars organised by and for the judiciary. The GET was informed that this method of appointment had been criticised, *inter alia* by some representatives of political parties, who argued judges and magistrates should be appointed following specialised exams under the supervision of the Commission for Administration of Justice.
35. The average salary is 13.000 Lm per year for a magistrate and 16.000 Lm for a judge. Their salaries are published every year in the Official Gazette. One part of the salary is constitutionally protected and forms part of the Consolidated Fund. Another substantial part of the salary (a third of the take home pay) is composed of allowances.²⁵
36. Magistrates are competent to carry out pre-trial investigations in respect of criminal offences liable to punishment of imprisonment exceeding six months. They also carry out pre-trial investigations with respect to offences subject to trial on indictment in order to determine whether there is sufficient ground to commit the person charged for a trial on indictment before the Criminal Court. The Court of magistrates is also a court of criminal judicature, dealing without a jury with cases resulting in pecuniary punishments or in imprisonment not exceeding six months. The Criminal Court consists of a judge sitting with a 9-member jury. It adjudicates, in principle, cases punishable with more than six months imprisonment. However, offences punishable with less than ten years imprisonment may be tried by the Court of magistrates if both the AG and the person charged give their consent for summary proceedings (see below). Decisions of juries require a qualified majority (6 out of 9). An appeal may be lodged before the Court of Criminal Appeal.

ii. Commission for the Administration of Justice

37. The Commission was established by the Act No IX of 8 April 1994 amending the Constitution. According to Article 2, it is composed of the President of the Republic and 9 other members: the Chief Justice, the Attorney General, two members elected for 4 years by the judges, two members elected by the magistrates for 4 years, 1 member appointed by the Prime Minister (at present a retired judge), 1 member appointed by the leader of the Opposition (at present a senior legal lawyer) and one by the President of the Chamber of Advocates. The members of the Commission can be removed by the President only for inability to discharge their functions or for misbehaviour (Art. 10). The Commission appoints its Secretary.
38. The members of the Commission are completely independent in the exercise of their function, namely: (a) supervision of the work of the courts and recommendations to the Minister of Justice

²⁵ The Association of Judges and Magistrates of Malta informed the GET about their claims to the Government concerning in particular, the part of the take home pay of the members of the Judiciary and of the Attorney which is paid in the form of allowances and which is not safeguarded by the Constitution. According to the Maltese authorities, these allowances can not be withheld or reduced by the Government..

to increase their efficient functioning or draw the attention of judges and magistrates on any matter that may not lead to an efficient and proper functioning of the court, any conduct that could affect the trust conferred to their functions, or any failure to abide by a code of ethics; (b) advise the Minister of Justice on the organisation of the administration of justice and transmission to him of an annual report on the Commission's activities; (c) advise the Prime Minister (at his request) on appointments in the judiciary; (d) elaboration of codes of ethics for the judiciary; (e) elaboration, on the advice of the Committee for Advocates and Legal Procurators (established by the Act No XI of 1994 and composed of practising lawyers, including a representative of the AG), of a code of ethics for Advocates and Legal Procurators and the exercise of discipline over them.

39. Members of the Commission or of the AG' Office, judges and magistrates are subject to ordinary criminal proceedings. Any citizen can file a report with the Police against a member of the Judiciary. However, only Members of Parliament (i.e. neither the Commission nor the AG) are empowered to bring a motion in Parliament against a member of the Judiciary. The House of Representatives can only start to debate the motion if the Commission finds that the facts adduced against the judge or magistrate are *prima facie* proved. Where the Commission does not find that there is *prima facie* evidence to justify removal it may draw the judge's or magistrate's attention to any default on his part. Very often the Commission asks the Chief Justice to informally speak to the judge or magistrate (e.g. in the case of a member of the judiciary who used inappropriate language in court). Up to the time of the GET's visit the Commission was only asked to report on two motions for removal. In one case the Commission found that there was sufficient *prima facie* evidence for removal (the motion in the House of Representatives did not, however, obtain the required two-thirds majority) and in the other no *prima facie* evidence was found. A motion for removal by Parliament is a separate and independent procedure from a criminal prosecution, which is carried out in the ordinary manner and does not need to be authorised by any body. The GET was told that no judge or magistrate had been charged or convicted for corruption for at least the last 180 years.²⁶

b4. Criminal investigation and prosecution of corruption

40. Criminal proceedings are always instituted by the Police regardless of whether the case will be tried through summary proceedings, i.e. before the Court of magistrates or indicted before the Criminal Court. Before instituting any criminal proceedings, the Police may seek the AG's advice, which is not binding although, in practice, it is always followed.²⁷ If the police refuse to take criminal proceedings the AG, as well as any other citizen, may challenge the Commissioner of Police before a Magistrate so that the latter can order the Commissioner to institute criminal proceedings.
41. There is no obligation for the Police to prosecute every criminal offence. In this sense, the Maltese system is, in principle, discretionary. If the Police decide not to institute criminal proceedings and the case involves a serious criminal offence (as opposed to a misdemeanour), the person having reported or complained to the Police is entitled to apply to the Court of magistrates. If, after a hearing, the Court considers that there is a *prima facie* case, it will order the Commissioner of Police to investigate.

²⁶ At the time of drafting this report, the GET was informed that criminal procedures are pending before the Court against two judges, including the former Chief Justice, accused with corruption, which allegations have been the cause of great public concern.

²⁷ The GET was informed of a case where the AG did not agree with the strategy of the Police and appeared before the Court of magistrates on its own. The Court accepted that it was legitimate for the AG to appear in the court.

42. The Maltese criminal procedure distinguishes between offences liable to pecuniary punishments or to punishments of less than six months' imprisonment and offences liable to the punishment of imprisonment exceeding six months. With respect to the former it is for the Police to investigate and institute criminal proceedings before the Court of magistrates. The latter, after summarily hearing the evidence, will deliver its judgement. Only the person sentenced and AG, upon the request of the Police, may appeal. The grounds of appeal are limited on points of law.
43. If the offence is punishable with more than six months imprisonment, the Police will carry out preliminary inquiries and ask a magistrate to open a file as soon as evidence needs to be preserved or secured. The AG's advice may be sought both by the Police and the Investigating magistrate. Once the investigation is closed, the magistrate will report his/her findings to the AG, who may require further investigations. If a suspect is identified, he/she will be charged before the Court of magistrates in a court of criminal inquiry. In this capacity, the Court of magistrates will collect all the evidence supporting the charges in the presence of the suspect, assisted by a legal counsel, and will decide whether or not there is a *prima facie* basis for indictment. If the decision is negative, the Court will discharge the person and transmit the record to the AG who may, with the agreement of a judge, re-arrest the person discharged and either continue with the inquiry or file an indictment in the Criminal Court. If the Magistrates Court considers that there are grounds for indictment, it will transmit the record to the AG - who may require the collection of additional evidence - for indictment. Where the offence is punishable with more than six months but less than ten years imprisonment, the AG may refer the case back to the Court of magistrates to decide the case summarily provided the accused does not object. This will avoid a trial by jury, generally considered expensive and lengthy. Otherwise, the case is tried before the Criminal Court. In practice, most cases are tried by the Court of magistrates unless they have a high profile.

Specific powers of the AG

44. According to Article 433 of the Criminal Code, the AG may, before or after filing an indictment, issue a *nolle prosequi*, bringing proceedings to an end. The AG must report his reasons to the President of Malta²⁸ there is no appeal against this decision. Where a person charged has been discharged for want of presentation of an indictment, that person shall remain liable to new proceedings whenever fresh evidence becomes available. Notwithstanding the lack of filing of an indictment or the withdrawal thereof, any interested person may file a civil suit against the person discharged to have him declared responsible for the commission of a criminal offence and to have him ordered to pay damages arising from the offence.
45. Article 19 of the PCAC Act confers on the AG the power to issue a certificate in writing exempting any person mentioned therein from criminal proceedings, provided that this person gives evidence before the PCAC or the Courts, according to the law on corruption connected offences. Such a certificate may be granted on the request of the PCAC or whenever the advisability to do so is brought to the attention of the AG.

b5. Sources of information

i. Special investigation techniques

46. According to the Maltese authorities, bugging, telephone tapping, interceptions of communications, electronic surveillance are legally admitted investigative techniques in

²⁸ The AG reported that he published once in the press a report detailing the reasons why he had taken such a decision.

corruption cases, whenever a warrant is issued by the Minister of Home Affairs on request from the Head of the Security Service under the Security Service Act. To obtain wire-tapping, the Commissioner of Police files a request with the Head of the Security Service who will decide on further transmission to the Minister. The Minister will issue a warrant authorising the Security Service to perform the interception. Information thus gathered is transmitted to the Commissioner of Police to further the investigations or secure the evidence.

47. Until recently, the Police was empowered to conduct searches without a judicial warrant.²⁹ Undercover operations are deemed not feasible in view of Malta's size. The use of an agent or public officer to present a person with a concrete opportunity to commit an offence s/he had already decided to commit constitutes an acceptable investigative technique. However, it is prohibited for the agent or officer to incite a person to commit an offence he would not have committed otherwise (provocation). Controlled deliveries of any kind are not prohibited and can be carried out by the Police without any special authorisation. However, specific legislation was introduced in order to provide a sound legal basis to use this technique in response to international solicitations in drug-trafficking and money laundering cases. Consideration is being given to the extension of this legislation to corruption cases. At the time of the visit, the Maltese authorities considered that banking secrecy could prove an obstacle to Police investigations but not for judicial ones with regard to offences other than money laundering.

ii. Witnesses co-operation and sentence-bargaining

48. Witnesses who agree to co-operate with the Police and the judiciary in corruption cases may be granted a conditional pardon by the President for their participation in the offence. After conviction, their sentence may also be commuted by the President either in full or partially, if appropriate.
49. At the time of the GET's visit, the new amendments to the Criminal Code containing provisions on sentence-bargaining was not yet in force. The new legislation will introduce the notion of agreed sentences where the prosecution and the accused agree on the sentence to be imposed, subject to the Court's approval.

b6. Access to official documents

i. The public, the media, the Parliament

50. There is no general rule on the access to official documents or freedom of information. However, access to information held by local and State authorities may be obtained either directly from the authorities concerned or through elected representatives in Parliament. Access may be refused on grounds of confidentiality or secrecy. Moreover, Article 47 of the Press Act requires the Government to establish procedures to enable representatives of the press to obtain the information necessary to fulfil their tasks, with the exception of information which could prejudice pending legal proceedings, received by Government in confidence, affecting an overriding public or private interest warranting protection, concerning national security or public safety, or placing a disproportionate burden on public administration. It is unlawful for the Government to issue general instructions to newspapers or licensed broadcasting services to refrain passing information or holding a particular view.

²⁹ This has been changed by virtue of the new Act No III.

ii. *The Ombudsman*

51. The Ombudsman (whose missions are described further on in this report) has access to all official documents. To restrict such access, the Prime Minister would have to issue a written and signed statement that it would be prejudicial to the national interest.³⁰

b7. Witness Protection

52. The Maltese Authorities reported that the Police provide protection to victims, collaborators of justice, witnesses, judges and prosecutors whenever their safety was at risk. The GET noted, however, that at the time of the visit, there was no witness protection programme and that this issue was not governed by any law or regulation.
53. However, the GET was told that in August 2001 a public consultation process was launched through the publication of a White Paper proposing a Bill to introduce in the Police Ordinance an entire new Title IV entitled "Protection of Witnesses and Victims". This would provide the legal basis for the formal setting-up of a witness protection programme. In principle, witnesses are to be heard *viva voce*. A witness' statement, whether against or in favour of the person charged or accused, if taken on oath in the course of an inquiry (committal proceedings), is admissible as evidence provided that the witness is also brought before the Court to be examined *viva voce* unless he/she is dead, absent from Malta or cannot be found. Evidence is audio recorded and can also be recorded by audio-visual equipment should the presiding magistrate or judge so require. But the latter option has never been used. It is not possible for anonymous witnesses to give evidence.³¹

b8. The Permanent Commission Against Corruption (PCAC)

54. As far back as 1988, when the Permanent Commission Against Corruption Act [CAP 326] was adopted, Malta established a specific body to fight corruption, the PCAC. The PCAC is a specialised body dealing exclusively with the investigation of allegations of corruption. It is composed of a Chairman and two other members appointed by the President on the advice of the Prime Minister, given after consultation of the Leader of the Opposition.³² They can only be removed from office for inability to discharge their functions or misbehaviour. The current

³⁰ According to Art. 20 of the law on the Ombudsman, the Ombudsman has by law access to all information, documents and files whether or not the person is an officer, employee, or member of any department, organisation or local council, and whether or not such document, papers, or things are in the custody or under the control of any department, organisation or local council. The only exemptions from disclosure in relation to the Ombudsman are when the Prime Minister certifies that the giving of any information or the answering of any question or the production of any thing, paper or other document: a) affects the security or defence of Malta or relations or dealings between the Government of Malta and any other Government or any international organisation of States or Government; or b) is likely to damage seriously the national economy; or c) involves the disclosure of the deliberations or proceedings of Cabinet or any committee of Cabinet; or d) prejudices the investigation or detection of offences. By express provision of law, however, the rule of law which authorises or requires the withholding of any document, thing, or paper, or the refusal to answer any question, on the ground that the disclosure of same or the answering of the question would be injurious to the public interest does not apply in respect of any investigation by or proceedings before the Ombudsman.

³¹ The amendments to the Police Ordinance mentioned in this paragraph have now been enacted but are not yet in force; it is envisaged that they will be brought into force shortly.

³² See Article 3 (2) of the PCAC Act: „The Chairman must be a person who holds, or has held, the office of a judge in Malta; or holds or has held, the office of a magistrate in Malta, and has held that office and practised as an advocate in Malta for a period of not less than twelve years in the aggregate; or has practised as an advocate in Malta for a period of not less than twelve years. A person is disqualified from being a member if he is or was a Minister, Parliamentary Secretary, a member of the House of Representatives, a member of a local government authority, or if he is a public officer other than a public officer who is qualified to be appointed chairman“.

members were appointed in November 1998 for a fixed term of 5 years. The PCAC staff consists of a Secretary appointed by the Prime Minister, a full-time clerk, one part-time clerk and a messenger. According to Article 13 (2) of the Act, "PCAC shall (...) have other staff as the Prime Minister may deem necessary and appoint or designate (...)". Its budget for 2002 amounts to Lm 30,000 (75,000 Euro).

55. In the exercise of its functions, the PCAC is not subject to the direction or control of any other person or authority (Art. 3 (8)). It *i.a.* considers alleged or suspected corrupt practices; investigates any allegation or suspicion of corruption, if sufficient grounds justify such investigations, and makes a report on the findings; investigates the conduct of any public officer³³, which in its opinion may be corrupt or may be connected with or may be conducive to corrupt practices.³⁴ Therefore, the PCAC's role is to investigate only those "corrupt practices", in the public sector, which amount to a specific criminal offence of corruption according to Article 6 of the Act.³⁵ For instance, it has no competence to investigate an embezzlement case.³⁶ Furthermore, PCAC shall examine the practices and procedures of Governmental departments, local government authorities and statutory bodies in order to facilitate the discovery of any corrupt practices and to recommend the revision of methods of work or procedures which may be conducive to corrupt practices. So far, this has happened only once.
56. The PCAC may open an investigation on its own initiative or upon an allegation subscribed on oath by any person. The PCAC does not charge, convict or acquit. It reaches a conclusion based on the basis of investigations and accordingly adopts a report, which is addressed to the Minister of Justice. It also adopts an annual report which is sent to the President of Malta. It can also send other reports to the President. Reports may be kept confidential. Investigations are conducted in camera and witnesses are heard on oath assisted, if they so wish, by a counsel. The PCAC cannot force a person to appear before it but can request the Police to take action against a witness for failing to appear before the Commission or for refusing to divulge information. A witness (who can be the target of the investigation) cannot be forced to self-incrimination and is entitled to the same privileges as a witness in court. The PCAC can hear as a witness any Minister, including the Minister of Justice, to whom it sends its report. The PCAC has the right to access any file of the Government or Administration.
57. In the course of its investigations the PCAC may request the assistance of the Police who may use their police powers to assist the Commission. The Police may in turn ask the advice of the AG in respect of such assistance. As mentioned above, the AG may issue a certificate in writing exempting any person mentioned therein from criminal proceedings, provided that the person gives evidence of all the facts known to him/her relating to any corrupt practice before the PCAC and/or any court.³⁷ Such a certificate has been issued only once.
58. The PCAC does not have funds in its budget for the appointment of experts but may request the Prime Minister to appoint a person or designate a public officer to assist it in a consultative capacity in its investigations or may ask the ministry for special funds if this is required.

³³ According to Article 2 „public officer“ means the holder of any public office or a person appointed to act in any such office as well as a person who held such a position within a period of twelve years before the Permanent Commission against Corruption Act entered into force (1988).

³⁴ See Art. 4 of the PCAC Act (Chapter 326)

³⁵ Corrupt practices are defined by a reference to Articles 112-118, 120, 121, 124-126 and 138 of the Criminal Code

³⁶ The GET noted that PCAC will not have competence in dealing with corruption cases in the private sector following the extension of the corruption offences in the legislation.

³⁷ Art 19 of the PCAC Act (Chapter 326)

59. From December 1988 till December 2001, 323 cases were investigated by the Commission. Of these 270 had been concluded by December 2001, of which 110 were decided during the last three years. A case could encompass more than one allegation. In one case twelve different allegations concerning the same Ministry were investigated. The GET was told that a majority of the Commission's investigations were linked to planning permissions and government contracts.
60. The PCAC works under its own time limits, which are longer than the statutory limitations prescribed by the Criminal Code. The PCAC investigations may be conducted even if the prosecution is time-barred.

b9. Other bodies and institutions

i. The Ombudsman

61. The Ombudsman, set up in 1995, is an independent and apolitical institution enjoying the confidence of the public. It receives about five complaints a day and reports only to the House of Representatives. It does not investigate complaints pending before a court or tribunal nor those raised before a higher authority. During the visit, the Ombudsman indicated that he is not empowered to deal with cases concerning human rights and corruption and on the execution of Court decisions, as these matters are dealt with by other bodies.³⁸ The Ombudsman has no powers to enforce decisions, but since 1995, the Ombudsman's opinion has not been followed by the authority concerned in 12 cases only.
62. In cases of a significant breach of duty or misconduct, the Ombudsman is required to refer the matter to the appropriate authority, including the Police. Since 1995, the Ombudsman has dealt only with four or five corruption-related cases. It was also reported that many complaints were made against the judiciary, for which the competent body is the Commission of Administration of Justice. The Ombudsman nevertheless deals with complaints against court employees. He also faced several complaints with regard to the execution of judicial decisions and has criticised the Planning Authority, i.e. for not demolishing illegal buildings.

ii. The Public Service and the Public Service Commission

63. The Public Service Commission (PSC), in its present form, was established by the Constitution in 1964. It supervises procedures for the appointment and promotion of "public officers" (around 35,000 people – i.e. about 9% of the population - not counting employees in public enterprises). The 5 members of the PSC are appointed for a term of not more than 5 years by the President, on the advice of the Prime Minister, given after consultation with the leader of the Opposition. They may only be removed for inability to discharge their functions or for misbehaviour. Once the recruitment/promotion procedure is completed, the PSC sends to the Prime Minister a recommendation to appoint the most suitable candidate to the post. These recommendations are binding except in the case of Heads of Department or Permanent Secretaries where the PSC only delivers an advice at the Prime Minister's request.³⁹ The PSC is also the appeals body for

³⁸ According to the Maltese Authorities, in the exercise of his function to determine complaints by persons claiming to be suffering an injustice because of maladministration, the Ombudsman has jurisdiction over acts which appear to be contrary to law. As the European Convention on Human Rights is part of Maltese law, any breach of fundamental rights is contrary to the law and the Convention provisions are applicable by the Ombudsman in the determination of complaints.

³⁹ The Constitution distinguishes recommendations and advises. The PM is not bound by an advice of the commission (e.g. a head of department and permanent secretaries only). There is a senior appointment advisory committee to advise the PM with the most appropriate person to be appointed to the highest rank. The PM may also seek in practice the advice of the commission, which may not confirm the suggestion of the board.

disciplinary sanctions in "grave or serious" cases, including those punishable by dismissal, according to the New Discipline Regulation of 1999. Article 115 of the Constitution provides that whether the PSC has validly performed any function vested in it by or under the Constitution "shall not be inquired into by any Court". The Courts, however, have decided that decisions of the PSC are subject to judicial review where the PSC has acted *ultra vires* or where its decisions have been taken in violation of fundamental human rights. Should any member of the PSC act corruptly, moreover, he would not enjoy any immunity.

64. A vast reform of the public services was launched 10 years ago, which included *inter alia* important measures specifically related to the fight against corruption, such as: computerised issuing of certain documents such as passports; reducing the number of and re-adjusting salary scales (the difference between the lowest and highest salaries is 1 to 4); decentralisation involving more public officers in the decision-making process; awareness-increasing programmes on codes of ethics. The Code of Ethics for Employees in the Public Service was published in 1994, with a view, *inter alia*, of avoiding a potential or actual conflict of interests and preventing acceptance of undue gifts or benefits. Public officials are obliged to declare their assets only when conflicts of interest arise. The Staff Development Organisation in the Office of the Prime Minister provides training to public officials on ethical issues although not specifically about corruption. In case of improper conduct, the Head of service is required to take disciplinary proceedings against the public official. If the conduct in question could amount to a criminal offence, the file will be transmitted to the AG for decision as to whether or not criminal proceedings should be instituted. Public officials are bound by the Code of Ethics and the Public Service Management Code to report to their superiors cases of improper conduct which they become aware of in the exercise of their functions. Officials in a supervisory position are obliged to report any corrupt practices of their subordinates of which they become aware. Public officials who fail in their duty to report expose themselves to disciplinary proceedings.

iii. *The Director of Contracts and the General and Special Contracts Committees*

65. The Public Service (Procurement) Regulations of 1996 provide that the procurement of all equipment, stores, works and services by the Government or any other body to which the regulations apply shall be made after a call for tenders in accordance with the same regulations. The call for tenders procedure may be dispensed with in certain specified circumstances depending on the value involved.⁴⁰
66. The Minister of Finance may, in writing, dispense with any of the provisions in the regulation. Furthermore, the Minister may, in writing, validate any act done in violation of a regulation or procedure prescribed therein, or direct, in writing, that no procurement be carried out otherwise than in accordance with the regulation.⁴¹
67. The Director of Contracts is responsible for the Department of Contracts and generally for the administration of the procurement procedures. His tasks are: a) to ensure that tender conditions and specifications do not give an undue advantage or disadvantage to any particular supplier; b) to ensure that calls for tenders are adequately advertised and that sufficient time is allowed for the submission of tenders; c) to ensure that complaints regarding the award of contracts made by interested persons are duly dealt with.

⁴⁰ The regulations will be amended to fit the EU requirements. The amendments will probably enter into force late 2002. The GET was informed that the amended regulation also will be applicable to the Local Councils.

⁴¹ However, the Maltese Authorities reported that the discretionary power of the Minister in this respect will no longer remain in new regulations to be published shortly.

68. A General Contracts Committee assists the Director of Contracts in the execution of his duties in accordance with the Regulations. The General Contracts Committee shall: (a) advise on all matters relating to public contracts as well as on public procurement of materials, works and services; (b) evaluate tenders submitted, as well as reports and recommendations made by the respective departments and public organisations, ensuring that the best value for money at the lowest possible cost is obtained; (c) report any irregularities that may be brought to notice or that may be detected in the tendering process and make recommendations thereon to the Minister concerned; (d) deal with matters which, according to the contract, have to be referred to the committee, and (e) hear and determine disputes arising from public contracts, formally investigate complaints concerning public contracts and procurements and make recommendations. The members of the General Contracts Committee are appointed by the Prime Minister for no more than three years, subject to re-appointment. They may be removed by the Prime Minister only if there is a clear case of misbehaviour or inability to perform their function, or where circumstances exist which would disqualify the member.
69. The Director of Contracts shall be, *ex officio*, the Chairman of the Committee. He may call a public session of the Committee, call witnesses, administer oaths and engage non-Committee members to assist the Committee in the investigations. The Director may, at his discretion, accept or reject the recommendations of the majority of members of the Contract Committee for the acceptance or rejection of any tender. The Director may refer the matter for decision to the Minister of Finance⁴² if he disagrees with any recommendation of the majority of the members or if any recommendation of the committee differs from that submitted by the department or other body for whom the procurement is to be made. The Prime Minister may determine that the adjudication of tenders for the award of any particular contract requires special expertise, skills or other input and for that reason appoint a Special Contracts Committee for the award of that contract.
70. Since 1996, the Committee has dealt with 85 cases. Out of these cases only one has been taken to court. The Director's decision as such cannot be appealed. The plaintiff can only obtain compensation for damages if the case has not been dealt with in accordance with the law.
- iv. The Public Accounts Committee of the House of Representatives (PAC)*
71. The PAC was established in 1996 and is composed of seven members of the House of Representatives, four from the Government side and three from the Opposition. The Chairman of the PAC is nominated by the Leader of the Opposition. One of the members of the PAC is currently the Minister of Justice. The PAC has the power to examine any reports made by the Auditor General and may hold hearings on its contents which are normally public. Furthermore, the PAC has the right to request the Auditor General to submit memoranda on any matter and even carry out investigations. Decisions are taken by anonymous vote. The PAC may report and make its own recommendations on the audit findings or investigations to the House. If PAC suspects a criminal offence, the findings will be reported to the AG and the Commissioner of Police for further investigations.

⁴² The new Public Contracts Regulations, 2002 will still allow the Director of Contracts to refer some matters to the Minister of Finance for a decision but any such decision by the Minister will be subject to appeal. In turn, the new Public Contracts Appeal Board shall ensure full autonomy in the determination of such complaints.

v. *The National Audit Office (NAO)*

72. The NAO was established in 1997 and is composed of the Auditor General, who is the head of the Office, a Deputy Auditor General, two Assistant Auditors General and other audit and support staff. The Auditor General and the Deputy are officers of the House of Representatives and are appointed for a period of five years (renewable for another five years) by the President, in accordance with a Resolution of the House of Representatives supported by a two-third majority. The mandatory and primary objective of the NAO is to provide independent information, assurance and advice to the House of Representatives on the way Treasury, Government departments and certain non-central government entities (including Local Councils) account for and use of taxpayers money. Another objective is to establish whether public money has been expended economically, efficiently and effectively. For that purpose, the Auditor General has access to all books, records, returns and other documents relating to the accounts in the entities audited. The Auditor General has also the power to administer oaths which may be used in cases of suspected serious irregularities. The GET was told that it is standard practice within NAO to request its auditees to report to the Police suspicions of criminal offences.

vi. *The Internal Audit and Investigations Directorate (IAID) and the Internal Audit and Investigations Board (IAIB)*

73. The public Internal Audit and Financial Investigations function is independent but established within Government to examine and evaluate its own activities and provide it with necessary internal financial investigative services, separate from criminal investigations. The IAIB, which is chaired by the Secretary to Cabinet of the Office of Prime Minister's, determines public internal audit and financial investigation policies and provides direction to the IAID. If the IAID becomes aware of a corruption offence, it informs the head of the relevant department/agency. If no action is taken, the IAID refers the case to the IAIB. In case of inaction by the latter or in emergency situations, the case is referred to the Police. The IAID cannot itself conduct any criminal enquiries, only administrative (financial) investigations. However, it supports the Police with all the relevant information available on the IAID databases. The GET was informed that IAID intends to set up an intergovernmental committee against mismanagement and fraud of public funds (including funds of supranational bodies managed by the Government), with representatives i.a. of the Customs Department, the AG's Office and the Police.⁴³

vii. *Local Councils*

74. Local-self government was introduced in Malta in 1993. There are currently 68 Local Councils. Their functions comprise *i.a.* the issue of recommendations to any competent authority for or in relation to any planning or building scheme and the issue of guidelines to be followed in the upkeep, restoration, design or alteration of the facade of any building and the establishment, upkeep and maintenance of children's playgrounds, public gardens and sport and cultural or other leisure centres. Where a Council offers for tender any work, goods or services related to its functions or the transfer of any land, it shall give notice of its intention through publication in the Gazette. The Council shall also make available to any interested person, copies of all tenders submitted and accompanying documents at a reasonable price, appoint a date and place when it will hear submissions from any interested person on all or any of the tenders submitted, publish its decisions together with the reasons thereof and provide any interested person with a copy thereof at a reasonable price.

⁴³ After the on site visit the GET was informed that the said co-ordinating committee was set up in May of this year and that it has met several times already.

75. The Auditor General shall appoint persons to audit the accounts of a Local Council subject to such conditions as he may deem fit. These local government auditors shall have access to all books, records, returns and other documents relating to the accounts of Local Councils and may require any person holding or accountable for any such books or documents to appear before them at the audit. They shall submit their reports to the Auditor General. Any person who, in connection with an election to a Local Council, commits the offence of personation, treating, undue influence or bribery or aids, abets, counsels or procures the commission of the offence of personation, and any candidate who knowingly makes the declaration on election expenses falsely shall be guilty of a corrupt practice and shall be liable to a fine or to imprisonment. The President shall, upon the advice of the Prime Minister, dissolve a Council upon *i.a.* a report of the Auditor General for persistent breach of financial responsibilities.
76. In the locality within the jurisdiction of a Local Council, law and order are enforced, apart from by the police, also by local wardens in respect of *i.a.* litter, traffic and Planning Authority (i.e. building construction) offences (see also above) which are handled by ten local tribunals. The tribunal's verdict can be appealed to a Magistrates Court. The Local Councils may also issue some permits. There is a Code of Discipline for local wardens.

viii. The Media

77. The Maltese Constitution provides for freedom of the press. Several Maltese-language newspapers and a few English-language papers are published. To promote their political views, the two main political parties own newspapers, television, and radio stations. There are six TV stations and 19 radio stations. The GET found that most ministries and public bodies have websites and all the relevant legislation was available online at the Ministry's of Justice website⁴⁴ in English. Equally, several press articles dealing with corruption cases were online at the time of the visit.⁴⁵

c. Immunities from investigation, prosecution and adjudication for corruption offences

78. In Malta, only the President and the Members of the House of Representatives enjoy some limited forms of immunity. According to Article 5, par.1 of the Criminal Code, no criminal action shall be instituted against the President in respect of acts done in the exercise of the functions of his office. The GET was not informed about any case in which a current or former President was the target of allegations or investigations of corruption or was called as a witness to testify, in a case of corruption, before a Court or the PCAC. As regards members of the House of Representatives, Article 2 of the House of Representatives (Privileges and Powers) Ordinance provides that no civil or criminal proceedings may be instituted against a member "for words spoken before, or written in a report to the House or to a Committee thereof whether a Committee of the whole House or a Select Committee, or by reason of any matter or thing brought by him therein by petition, bill, resolution, motion or otherwise". However, members of the House of Representatives do not enjoy any immunity for acts of corruption. Moreover, Maltese law does not provide for any special privileges of jurisdiction, constituting an exception to general law.
79. There has never been a case of suspicion of a Maltese diplomat acting corruptly in the country in which he benefits from diplomatic immunity. While no special procedures for the lifting of immunity exist, the Maltese authorities stressed that such immunity in such cases may be lifted.

⁴⁴ <http://www.justice.magnet.mt/dir2-laws/toppage.asp>

⁴⁵ *Malta Today* of 3 March 2002; *Malta Today* of 17 March 2002 and *Malta Today* of 31 March 2002.

In any case when immunity is not lifted the diplomat concerned can be prosecuted in Malta on the basis of Article 5(1)(f) of the Criminal Code, which provides that a criminal action may be prosecuted in Malta, according to the laws thereof, against any person who (i) commits any offence in premises or in a building outside Malta having diplomatic immunity due to the fact that it is being used as an embassy, a residence or for such other purposes connected with the diplomatic service of Malta or (ii) commits an offence in a place outside Malta when such person enjoys diplomatic immunity by virtue of such service.

III. ANALYSIS

a. **The phenomenon of corruption and the general anti-corruption policy**

80. The GET noted that Malta - a tiny, densely populated group of islands with a rich and colourful history - is more or less a "closed" society, with strong links between its inhabitants. This can cause special problems when it comes to dealing with corruption efficiently. Indeed, corruption is normally a crime without any specifically identified victim. It might be particularly difficult in a "closed" society to bring corrupt practices to the authorities' knowledge. These factors also complicated the GET's ability to assess the level of corruption in Malta. The GET noticed that press articles and representatives of political parties - maybe also because of the strong polarisation of the Maltese society - expressed the opinion that Malta suffers from corruption, a serious phenomenon which is not dealt with by appropriate means and as a priority matter. The way to deal with the problem is to raise the awareness among the inhabitants about the negative results of corruption such as higher prices on products and services. The GET was also aware that a privatisation process had just started in Malta. Such a process often raises a risk of corrupt practices. It makes it even more important to raise the awareness among the public. The GET therefore **recommended that the authorities raise the awareness among the population about the negative effects of corruption, and encourage them to co-operate with the law enforcement authorities in the investigation and detection of these crimes.**

Legislation and Regulations

81. The GET recognised the efforts made by the Maltese Government in the fight against corruption and noted that the new Act No III of 2002 amending the Criminal Code broadens the bribery statute. Although the criminalisation of corruption and the level of sanctions are issues which are not directly the object of GRECO's first evaluation round, the GET considered that they could not be fully dissociated from the overall purpose of this report and deemed it necessary to make some remarks in their respect. The GET welcomed the fact that the new legislation has included separate conspiracy and racketeering (association) offences, as this will provide new tools for Police and prosecutors to attack corruption.⁴⁶ It noted that corruption offences, principally grouped under the "Abuse of Public Authority" sub-title of the Criminal Code, provide for fines, imprisonment and "interdiction," a term which denotes disqualification from public service.
82. However, it is the sense of the GET that the penalties for these offences remain quite modest, in most cases less than a maximum punishment of three years. Accordingly, because none of the corruption offences (even the new money laundering offence) have a minimum punishment of three years imprisonment, they do not necessarily constitute "serious crimes" under the Security Service Act for which a wiretap could be authorised. Moreover, it is the GET's view that current legislation does not treat corruption offences consistently. A public official accepting a large bribe to hasten the granting of a license would be sentenced to a maximum of 13 months imprisonment

⁴⁶ See also the footnotes in the beginning of this report.

and would not be permanently barred (“interdicted”) from public office. By contrast, if the same official embezzled any amount of public money, he would be sentenced to a minimum of two years imprisonment and to “perpetual general interdiction.” Moreover, the money laundering statute significantly increases sanctions for bribery and other “corrupt practices”. As a result, corruption coupled with money laundering can be punished with as much as fourteen years imprisonment. The GET can only point out that acceptance of a bribe would lead to no more than 13 months imprisonment whereas “retaining” the money “without reasonable excuse” would become a money laundering offence and lead to 14 years imprisonment. The GET *observed thus that the Maltese authorities may wish to consider better harmonising the punishment of corruption offences, perhaps by increasing the severity of punishment to reflect greater societal condemnation of corrupt activity. They may also wish to increase the limitation period with regard to corruption offences.*

b. Bodies and institutions involved in the fight against corruption

b1. Anti-Corruption Law Enforcement in Malta

83. Maltese anti-corruption efforts are principally directed by the Police Force and are generally well regarded by the citizens of Malta. The GET was told that the Police does not receive instructions from the Minister, who may be interested in knowing the details of a certain case. Should the Minister wish to give individual directions to the Police, apart from general and organisational ones, s/he must do so in writing and the Police is not obliged to obey.
84. With regard to allegations of corruption against a member of the Police Force, the Internal Affairs Unit of the Malta Police now hands over all criminal investigations on serious crimes to another Police unit. *The GET observed that appropriate priority should be given to the investigation of police corruption. To that end, co-operation between the Internal Affairs Unit and the Police units should be strengthened and streamlined with a view to making the investigation of alleged internal corruption more timely, consistent and focused and assisting the new Police Board exercise effectively its oversight powers.*
85. The GET also noted that the Police anti-corruption efforts appear not to have fully embraced proactive approaches. The Police receive no specialised training for its duties in prosecuting and investigating corruption cases, although Maltese criminal laws are increasingly complex. The GET **recommended to strengthen the training of the Police in investigative skills, putting emphasis in specialised and regular training in the field of corruption.**
86. A second unique aspect of police procedure at the time of the visit was that the Police could enter a residence to conduct a search or effect an arrest with a mere written authorisation from a superior officer above the rank of Inspector, without a judicial warrant. New amendments to the Code, that still have to enter into force, require judicial warrant in most instances for entry, search and seizure.⁴⁷ This is still not the case with regard to telephone tapping.
87. The GET expressed concern about a third aspect of Maltese police procedure, which could clearly affect corruption investigations and prosecutions, as well as the effective operational independence of the Police : the fact that the Police have no authority to engage in electronic interception of communications (“wiretapping”). The authority for that investigative technique is vested with the Security Service, whose principal aim is to preserve Malta’s national security. According to the latter, the Police request wiretaps frequently. According to the Maltese

⁴⁷ See Art. 355 E “Sub-title III – Powers of entry, search and seizure under warrant”.

authorities, recorded interceptions obtained by the Security Service have been produced as evidence in court in two cases to date. While it is understandable that the Security Service should be consulted, it is difficult to accept that this service should be sole judge of whether a telephone line should be tapped, especially as it is the only service entitled to use this method. It is also free to decide what information to pass on to the Police. The GET was informed that, although the Security Services could refuse to initiate the procedure and the Minister has theoretically the power to reject the request of the Police, in practice requests of electronic surveillance have so far never been refused by the Minister. By law, the security services cannot be used for political purposes. In a small country, however, suspicion of abuse can arise easier. Whoever decides to issue a warrant of wiretapping, it has to be done with adequate procedural safeguards. Although legal provision is made for a Commissioner to deal with possible complaints (see paragraph 26 above), the GET considered somewhat worrying that the Maltese process is entirely internal and the decision to intercept communications is made by a political appointee. Since demographic limitations practically exclude undercover operations, wiretapping would be an invaluable investigative technique in corruption investigations and prosecutions. The inability of the Police to utilise and control this powerful tool should be addressed by Parliament. Therefore the GET **recommended that the Maltese authorities consider legislation giving Police the authority to seek and obtain wiretaps in the investigation of at least serious corruption offences, empowering the judicial authority to authorise wiretap, and making wiretap evidence admissible in court, in the light of the case law of the European Court of Human Rights. Moreover, it should be made clear to all authorities involved in the investigation of corruption that wiretap evidence is, under certain conditions, admissible evidence in court.**

88. The GET noted finally that by virtue of Article 535 of the Criminal Code the Police are generally prohibited from acting on anonymous reports or information "except in the case of a flagrant offence or where the report or information refers to some fact of a permanent nature". Whether this statute has any practical effect on the Police work remained unclear to the GET. The Maltese Authorities told the GET that, in practise, the Police do not find any difficulty of that sort. The GET *observed, however, that such expression of legislative distaste for anonymous tips could actively discourage the reporting of corrupt activity within a small community.*
89. The GET was of the opinion that the establishment of the Malta Freeport in 1989 posed a significant challenge to the ability of the Department of Customs to detect and prevent smuggling and corrupt activity within the Freeport. Customs had no operational presence within the Freeport and obtained only limited information about the contents of more than one million cargo containers that transited the Freeport each year. The GET has been advised that the passive role of Customs at the Freeport is now changing, with new cutting-edge detection technology and an active and formalized Customs presence within the Freeport. **The GET recommended that the oversight of the Department of Customs at the Freeport continue to be enhanced, thereby discouraging corruption and other potential criminal activity within the Freeport.**
90. The GET was made aware of the fact that licenses, at present issued by the Police, will be, in the near future, issued through a decentralised procedure by six or seven authorities. In fact, some licences are already issued by the Local Councils, such as those authorising public assembly. The GET was informed that there has, so far, never been any complaints about any corrupt practice by the Local Councils when issuing licenses. The GET **recommended to ensure an appropriate oversight of the exercise of licensing powers of the Local Councils.**

91. The GET noted that the 70 local wardens, although licensed by the Commissioner of Police and subject to prosecution for bribery, are employed by private companies. They are subject to the supervision of the Local Council concerned and subject to that of the Department of Local Councils. In fact Local Councils investigate all reports filed against wardens and where necessary refer the case to the Police. Moreover, the Maltese authorities continue to address the issue by - initially a Code of Discipline adopted by the employing agency and by - direct and regular consultations with warden agencies through a "Local Enforcement System Management Committee" chaired by the Local Councils Association. Although wardens do not collect money or exercise other traditional police powers, the transfer to private bodies of certain police functions, such as that issuing citations, creates, in GET's view, some potential for corruption and the need for careful governmental oversight, including in corruption matters. Therefore, **the GET recommended that the local wardens undergo regular training with regard to corrupt practices.**

b2. Operation of the criminal justice system

i. Careers, training and discipline of the AG and the Judiciary

92. The GET noted that the AG, judges and magistrates are appointed and dismissed by political bodies, following a procedure that could risk or be suspected of being politicised. The GET was also informed that the Prime Minister has so far never requested the opinion of the Commission for the Administration of Justice before advising the President on appointments in the judiciary. There is no preliminary selection procedure. Therefore, **the GET recommended the Maltese authorities use the Commission for the Administration of Justice in its advisory capacity on appointments to the posts concerned in the Judiciary, thus contributing to the objectivity of appointments.**

93. Once appointed, members of the AG's Office and of the judiciary undergo no special training in economical and financial matters. They learn on the job, as they go along, specialising in fields of particular interest to them. They are under no obligation to follow a particular in-service training programme, even if training seminars and programmes are available. Finally, they are subject to no appraisal and managerial posts are not fixed-term posts. The GET also **recommended to offer specialised training for members of the Judiciary and the AG's Office in economic and financial matters and to introduce a particular in-service training programme, including for the fight against corruption.**

94. Judges and magistrates are subject to disciplinary rules, which are applied by the "Commission for the Administration of Justice". This Commission has never had to rule in a case of presumed or proven corruption. Its members confirmed that in the event of a conviction for corruption they would recommend dismissal. However, the Commission's decisions are not published. As the Commission's decisions are not published, a plaintiff could legitimately think that his claim has not been considered and recognised. Furthermore publication may also serve an educational purpose and facilitate the development of more precise standards among judges. Therefore the **GET recommended that, in cases of corruption, where the Commission for the Administration of Justice recommends dismissal, the decision be made known to the public, and in cases where the Commission does not recommend dismissal, the complainant is made aware of this decision; it also recommended that the Commission makes appropriate changes to the Code of Ethics for the judiciary when the cases before it so warrant.**

ii. *Public perception of the criminal justice system*

95. The GET was repeatedly made aware that the perception exists of the slowness of procedures before the criminal courts, even when the defendant is in custody. The public does not seem to think judges are particularly corrupt, but their image is tarnished by the slow pace at which justice is dispensed. There was not enough time to examine the problem of the slow workings of the criminal justice system, much less to identify the causes. *The GET observed that the Maltese Authorities could examine the possibility to carry out an audit of the criminal courts in order to identify malfunctions and propose means of speeding up the decision-making process. This would also help to avoid suspicions of corruption and bolster confidence in the judicial system.*

iii. *Procedure*

96. The GET noted that the prosecution system is in principle discretionary in Malta. It was explained above that the AG may issue a certificate in writing exempting any person mentioned therein from any criminal proceedings on condition that such person gives evidence according to law of all facts known to him relating to any corrupt practice before the PCAC and/or any court. **The GET recommended that when granting a certificate exempting a person from criminal proceedings, as provided for by law, such decision should be motivated, given in written form, be included in the file and, to the extent possible, submitted to public scrutiny.**
97. The GET recalled that it is for the Police to present and prosecute corruption related cases before the Court of Magistrates. The GET expressed concern about the situation that could arise if the suspects were police officers themselves. The GET considered there would be at least a temptation to try to avoid submitting such cases to the courts. In any case, it would not be easy to be part of the accusing and of the accused side. It is true that procedures exist to compel the Police to prosecute, but they have to be set in motion by a third party, which requires positive action which can take some time or be against the interest of that party. Similar problems would arise when a member of the judiciary is suspected of corruption. **The GET recommended that as a general rule, cases of corruption committed by certain categories of persons, such as police officers or members of the judiciary, should be in the exclusive competence of the Criminal Court.**

b3. **Other bodies and institutions**

98. The GET noted that there is no body to co-ordinate the activities of the bodies involved in the research, investigation and fight against corruption, in particular of the Police, the PCAC and the Security Services. Therefore, **the GET recommended that the Maltese authorities consider the opportunity to establish a system of co-ordination between existing institutions responsible for the fight against corruption.**

i. *The Permanent Commission Against Corruption (PCAC)*

99. Malta established a specific body to fight corruption. Any witness who does not co-operate with the PCAC can be given a fine or convicted to imprisonment up to three months. The PCAC itself, however, does not have any tools to compel a person who refuses to co-operate. The Prime Minister may, whenever the PCAC so requests, appoint a person or designate a public officer to assist it, in a consultative capacity, in the conduct of its investigations. Besides, the Commission shall, at the earliest opportunity, make a report of the results of every investigation to the Minister of Justice. It is up to the Minister to decide if the Commission's report should be made public or

not and it is also the Minister who decides if the report should be handed over to the AG or the Police for further investigation. The GET was told that so far no cases that have been investigated by the Commission have been brought to court. The GET was of the opinion that the Commission lacks means and that the efficiency of its work needs to be enhanced. The GET **recommended that the PCAC: i) be empowered to make use of means of compulsion; ii) be given the possibility to appoint, on its own capacity, persons with special knowledge when it is necessary to assist the PCAC in its investigations; iii) publish the results of its investigations on its own, without prejudice to pending Court proceedings; and iv) be empowered to present its reports before Parliament.**

ii. The Director of Contracts and the General and Special Contracts Committees

100. The Minister of Finance may, in writing, exempt any public tender from the application of the provisions in the (Procurement) Regulation. Furthermore, the Minister may, in writing, validate any act in breach of the regulation or any procedure prescribed therein or, in writing, direct that any procurement be carried out otherwise than in accordance with the regulation. Moreover, the Prime Minister may determine that the adjudication of tenders for the award of any particular contract requires special expertise, skills or other input and for that reason appoint a Special Contracts Committee for the award of that contract. The GET was told that neither the Minister of Finance nor the Prime Minister had ever made use of these possibilities. The GET, finally, noticed that the Director of Contracts and the Contracts Committees are closely linked to the Prime Minister and the Minister of Finance and that they, according to the Public Service (Procurement) Regulations, have several possibilities to intervene in the process. Therefore, the **GET recommended the introduction of a more independent procedure/authority when it comes to dealing with public procurements and tenders.**

iii. The Media and Access to official documents

101. The GET is of the opinion that transparency is a very important tool to discover and fight corrupt practices. Therefore, the GET **recommended the Maltese authorities inform/train the public and public officials about the conditions required to obtain access to documents and files held by the local and state authorities.**

c. Immunities

102. According to the Constitution, only the President of Malta enjoys inviolability in the exercise of his office. The Maltese authorities did not report any case involving a President or a former President in a corruption case, as a target of public or private investigation or as a witness. MPs immunities is related to their freedom of expression and diplomatic immunities would not prevent Malta from instituting proceedings against them if they were charged with corruption offences. In the light of the information received by the GET, immunity does not appear to be an obstacle for the investigation of corruption offences.

IV. CONCLUSIONS

103. Tiny, densely populated countries, with strong links between its inhabitants, can cause special problems when it comes to bring corrupt practices to the authorities' knowledge. According to the figures communicated to the GET, only very few cases of alleged corruption lead to criminal convictions. The GET acknowledged Malta's efforts to establish a specialised body dealing with allegations of corruption investigated in confidence aiming at protecting better the complainant

from harassment and the person fingered out from unjust accusations. At the same time, this body could possibly achieve more significant results if it was given sufficient additional tools. The Police operational independence and efficiency may be improved, in particular with enhanced co-operation between internal Affairs and investigative units dealing with corruption cases, with focused training on investigative skills and with direct access to wiretapping. Appropriate oversight and training of Customs, Local Councils and local wardens seems necessary. Members of the judiciary would also benefit from more training in corruption matters, and some aspects of the operation of the Commission for the Administration of Justice would need more consideration. The power of granting a certificate exempting a person from criminal proceedings should be further precised. The GET was confident that new measures adopted after the visit or under preparation will increase the efficiency of the Maltese authorities response to corruption.

104. In view of the above, GRECO addressed the following recommendations to Malta:

- i. that the authorities raise the awareness among the population about the negative effects of corruption, and encourage them to co-operate with the law-enforcement authorities in the investigation and detection of these crimes;
- ii. to strengthen the training of the Police investigative skills, putting emphasis in specialised and regular training in the field of corruption;
- iii. that the Maltese authorities consider legislation giving Police the authority to seek and obtain wiretaps in the investigation of at least serious corruption offences, empowering the judicial authority to authorise wiretap, and making wiretap evidence admissible in court, in the light of the case law of the European Court of Human Rights. Moreover, it should be made clear to all authorities involved in the investigation of corruption that wiretap evidence is, under certain conditions, admissible evidence in court;
- iv. that the oversight of the Department of Customs at the Freeport continue to be enhanced, thereby discouraging corruption and other potential criminal activity within the Freeport;
- v. to ensure an appropriate oversight of the exercise of licensing powers of the Local Councils;
- vi. that the local wardens undergo regular training with regard to corrupt practices;
- vii. to use the Commission for the Administration of Justice in its advisory capacity on appointments to the posts concerned in the Judiciary, thus contributing to the objectivity of appointments;
- viii. to offer specialised training for members of the Judiciary and the AG's Office in economic and financial matters and to introduce a particular in-service training programme, including for the fight against corruption;
- ix. that, in cases of corruption, where the Commission for the Administration of Justice recommends dismissal, the decision be made known to the public, and in cases where the Commission does not recommend dismissal, the complainant is made aware of this decision; it also recommended that the Commission makes appropriate changes to the Code of Ethics for the judiciary when the cases before it so warrant;

- x. that when granting a certificate exempting a person from criminal proceedings, as provided for by law, such decision should be motivated, given in written form, be included in the file and, to the extent possible submitted to public scrutiny;
 - xi. that as a general rule, cases of corruption committed by certain categories of persons, such as police officers or members of the judiciary, should be in the exclusive competence of the Criminal Court;
 - xii. that the Maltese authorities consider the opportunity to establish a system of co-ordination between existing institutions responsible for the fight against corruption;
 - xiii. that the PCAC: i) be empowered to make use of means of compulsion; ii) be given the possibility to appoint, on its own capacity, persons with special knowledge when it is necessary to assist the PCAC in its investigations; iii) publish the results of its investigations on its own, without prejudice to pending Court proceedings; and iv) be empowered to present its reports before Parliament;
 - xiv. the introduction of a more independent procedure/authority when it comes to dealing with public procurements and tenders;
 - xv. that the Maltese authorities inform/train the public and public officials about the conditions required to obtain access to documents and files held by the local and state authorities.
105. Moreover, GRECO invites the authorities of the Republic of Malta to take account of the observations made by the experts in the analytical part of this report.
106. Finally, in conformity with article 30.2 of the Rules of Procedure, GRECO invites the authorities of the Republic of Malta to present a report on the implementation of the above-mentioned recommendations before 30 June 2004.

APPENDIX I

List of institutions and representatives met by the GET

Office of the Attorney General (AG)	Dr Anthony BORG BARTHET, Attorney General Dr Silvio CAMILLERI, Deputy Attorney General Dr Donatella FRENDO DIMECH, Office of the Attorney General
Permanent Commission Against Corruption (PCAC)	Judge (retired) Albert MANCHE', Chairman of the PCAC Colonel (retired) John HARRISON, Member Dr Raymond ZAMMIT, Member, Practicing lawyer Mr Anthony PACE, PCAC's Secretary
Security Service	Mr Herbert AGIUS, Acting Head of the Security Services Mr Geoffrey SCICLUNA,
The Public Service Commission	Mr. Joe CURMI, Chairman Mr. Richard SALIBA, Secretary to the Commission
Police	Mr John RIZZO, Commissioner of Police Mr Michael CASSAR, Assistant Commissioner of Police, Drugs, Vice, Economic Crime, Money Laundering C.I.D Mr Pierre CALLEJA – Superintendent, CID Dr Antoine CASHA – Superintendent – Prosecution Unit
Ombudsman	Mr Joseph SAMMUT, Ombudsman
Director of Contracts Committees	Mr Joseph SPITERI, Director General, Department of Contracts Mr Joseph M. MELI, Assistant Director, Department of Contracts
Public Accounts Committee of the House of Representatives	Mr Leo BRINCAT, Chairman, Member of the HR Dr Austin GATT, Minister of Justice, Member of the HR Mr Victor GALEA PACE, Member of the HR Mr John GATT Permanent Secretary of the Ministry of Justice Ms Anna BRINCAT Secretary of the PAC
National Audit Office	Mr. Joseph GALEA, Auditor General Mr. Brian VELLA, Personal Assistant to the Auditor General Mr. John BURLO, Audit Manager (financial audit) Mr. Carmel TONNA, Assistant Auditor General (value for money audit)
The Internal Audit	Alfred FIORINI LOWELL, Secretary to Cabinet of the Office of Prime and Investigations Board Minister's. Pierre PACE, Director IAID Natalino FENECH, Senior Manager, IAID George GAFA', Manager, IAID Renzo FARRUGIA, Internal Auditor, IAID
Head of Public Service	Joseph R. GRIMA, Head of the Public Service - Prime Minister's Office
Customs House	Joseph S. BUTTIGIEG, Director (operations), Customs Department Carmel V. PORTELLI, Head Investigations, Customs Department
The Malta Chamber of Commerce	Mr Reginald FAVA, President Mr Kevin BORG, Deputy Director General and National Affairs Executive
Local Councils Department	Mr Victor RIZZO, Director
Commission for the Administration of Justice	Mr Justice Joseph David CAMILLERI, Sitting in the Court of Appeal Dr Anthony BORG BARTHET, Attorney General Dr Silvio MELI, Magistrate, President Commission for Fair Trading Mr Justice Victor CARUANA COLOMBO (Retired judge) Dr Deborah FARRUGIA – Secretary
The Malta Press Club	Mr Malcolm J NAUDI, Chairman. Deputy Editor of the Sunday Times of Malta

APPENDIX II

Main changes introduced the new Act amending the Criminal Code (Act No III of 2002) was adopted and published on 9 April 2002

The new Act extends the application of provisions on unlawful exaction and on bribery in the private sector (Art. 28.3). Moreover, it extends the provisions of the sub-title dealing with offences of corruption involving:

- a) a public officer or servant of any foreign State; or
- b) any officer or servant, or any other contracted employee, of any international or supranational organisation or body of which Malta is a member, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; or
- c) any member of a parliamentary assembly of any international or supranational organisation of which Malta is a member; or
- d) any holder of judicial office or any official of any international court whose jurisdiction is accepted by Malta; or
- e) any member, officer or servant of a Local Council (Art 28.4).

The Act introduces into the Criminal Code the two new offences of "trading in influence" and "accounting offences" (Art 29). It extends the jurisdiction of the Maltese courts beyond the general grounds of jurisdiction listed in the Criminal Code before, providing thus that over the crimes already listed in the code the Maltese courts, in addition to the general grounds for the exercise of jurisdiction, shall also have jurisdiction where:

- a) only part of the action giving execution to the offence took place in Malta; or
- b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or
- c) the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council.

In addition, it provides for corporate criminal liability where the offence is committed by a person who is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence was committed for the benefit, in part or in whole, of that body corporate (Art 20.4). It adds a new provision, whereby in addition to the penalty to which a body corporate may become liable, the court shall order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate.

It establishes conspiracy as an offence with respect to all crimes which carry a punishment of imprisonment (Title IV bis). It also makes it a crime for any person to promote, constitute, organise or finance an association of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more (Art. 20). Equally a crime becomes the fact of a person who belongs to such an association with an increase of punishment where the number of persons in the association is ten or more (Art. 20.3).