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First Evaluation Round

Compliance Report on Malta

Adopted by GRECO
at its 23rd Plenary Meeting
(Strasbourg, 17-20 May 2005)

I. INTRODUCTION

1. GRECO adopted the First Round Evaluation Report on Malta at its 12th Plenary Meeting (9-13 December 2002). This Report (Greco Eval I Rep (2002) 8E) was made public by GRECO, following authorisation by the authorities of Malta, on 24 January 2003.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of Malta submitted their Situation Report (RS-Report) on the measures taken to follow the recommendations on 14 March 2005.
3. At its 13th Plenary Meeting (24-28 March 2003), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Cyprus and Luxembourg to provide Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS on behalf of Cyprus and Mr Jean BOUR on behalf of Luxembourg. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The RC-Report was adopted by GRECO, following examination and debate pursuant to Rule 31.7 of the Rules of Procedure, at its 23rd Plenary Meeting (Strasbourg, 17-20 May 2005).
5. Under Article 15 para. 6 of the GRECO Statute and Rule 30.2 of the Rules of Procedure, the objective of the RC-Report is to assess the measures taken by the authorities of Malta and, wherever possible, their effectiveness in order to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

6. It was recalled that GRECO in its Evaluation Report addressed 15 recommendations to Malta. Compliance with these recommendations is dealt with below.

Recommendation i.

7. *GRECO recommended that the authorities raise the awareness among the population about the negative effects of corruption, and encourage them to co-operate with law enforcement authorities in the investigation and detection of these crimes.*
8. The authorities of Malta have reported that the fight against corruption is high on the agenda of the media and of the public authorities, to the extent that extensive publicity is continuously given to the slightest suspicion of corruption. The authorities of Malta have provided several articles, which investigate allegations of corruption offences. It was reported that on one occasion the publication of an article provoked the resignation of a government Minister, although no specific criminal conduct was proved in his regard. The authorities of Malta have further provided several examples of parliamentary enquiries into alleged corruption offences, which were widely publicised. Both the media and the parliamentary inquiries, according to the authorities, put a special emphasis on the negative aspects of corruption.
9. GRECO took note of the fact that all cases potentially relating to corruption offences receive extensive media coverage. GRECO particularly welcomed the fact that parliamentary inquiries are conducted into alleged corruption offences, thereby raising *inter alia* the awareness among the population about the negative effects of corruption.

10. GRECO concludes that recommendation i has been dealt with in a satisfactory manner.

Recommendation ii.

11. *GRECO recommended to strengthen the training of the Police investigative skills, putting emphasis on specialised and regular training in the field of corruption.*
12. The authorities of Malta have reported that the general training in investigative skills is currently provided to members of the police force, which is equally applicable to the investigation of corruption offences. Moreover, a specific focus has been put on corruption issues within the context of policing and ethics. Thus, the Police Department has prepared a Code of Ethics, which *inter alia* covers issues relating to corruption. Comprehensive in-service courses, addressing corruption within the context of policing and ethics, are regularly held at the Police Academy. The Code of Ethics, once it has been officially published, will be incorporated into these courses. Furthermore, members of the police on a regular basis attend seminars and workshops organised abroad on corruption-related issues such as preventing corruption through integrity and transparency standards in public administration, police ethics and corruption, etc.
13. In order to more efficiently investigate any allegations of corruption within the Police corps, a Complaints Handling Policy was adopted providing for less complex cases of alleged corruption to be investigated by the Internal Affairs Unit and for more complex cases requiring in-depth and extensive investigation - by one of the specialised units within the Police Department, depending on the nature of the offence. The authorities of Malta have claimed that this procedure is operating smoothly. They expressed hope that additional skills and experience in investigating corruption offences will be acquired as a result of the introduction of this new complaints handling procedure.
14. GRECO took note of the steps taken by the authorities of Malta towards strengthening the Police officers' investigative skills, namely the introduction of in-service training on corruption issues by the Police Academy, more consistent investigation of corruption offences within the Police corps and the preparation of the Code of Ethics for the Police.
15. GRECO concludes that recommendation ii has been dealt with in a satisfactory manner.

Recommendation iii.

16. *GRECO 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.*
17. The authorities of Malta have underlined that the Police have the authority to seek and to obtain wiretaps by applying to the Security Service, which has the necessary technical means to carry out and to monitor interceptions. It has also been reported that the present recommendation has been given due consideration by the authorities of Malta, namely the Attorney General, the Commissioner of the Police, the Head of the Security Service and the competent Minister for

Justice and Home Affairs (responsible for the Courts and the Police).¹ The aforementioned authorities considered that in the context of Malta, which is a small island with a very small community, not bigger than the population of a small city in Europe, where financial and human resources have to be assigned with parsimony and avoiding duplication, it was not deemed opportune to give the Police the same authority as the Security Service to carry out wiretapping, as such duplication was regarded to be excessive. Moreover, in such a context, the avoidance of possible leakages of information on any ongoing wiretaps was considered vital. Therefore, entrusting the authorisation process to an entity such as the Security Service with a culture of respecting confidentiality and secrecy rather than to the Court administration which is prone to disclosures and leakages of information due to its essentially “publicity” culture, was seen as the best alternative if such investigations were to bear fruit.

18. As to the admissibility of wiretap evidence in court, it was stated that there has not yet been any single instance when such evidence has been rejected by the court and that wiretap evidence, when available, has continued to be submitted and accepted as evidence.
19. GRECO took note of the information provided by the authorities of Malta. GRECO accepted that, given its unique circumstances, the best option for Malta would be for the Police to seek and obtain wiretaps by applying to the Security Service. GRECO also understood that entrusting this process to the Security Service had an additional guarantee against unauthorised disclosures that might undermine the entire procedure.
20. GRECO concludes that recommendation iii has been dealt with in a satisfactory manner.

Recommendation iv.

21. *GRECO 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.*
22. The authorities of Malta have reported that the presence of the Customs Department at Malta Freeport has increased substantially over the last few years after the Vehicle and Cargo Inspection System (VACIS) became operational in the summer of 2003. VACIS is essentially a scanning machine consisting of a truck mounted gamma-ray imaging system capable of inspecting both stationary and moving vehicles from either side. This very sophisticated system enables the detection of drugs and other contraband, and employees of the Customs Department have undergone specialised training in operating VACIS.
23. The statistics provided by the authorities of Malta confirmed the increased presence and the effectiveness of the Customs Department in meeting the objectives set.
24. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

25. *GRECO recommended to ensure an appropriate oversight of the exercise of licensing powers of the Local Councils.*

¹ Moreover, this issue was debated at length in the House of Representatives during the adoption of the relevant legislation which is currently in force.

26. The authorities of Malta have reported that Local Councils do not have any power to grant licences but rather only the power to grant authorisation with respect to a limited number of activities as specifically provided for by law (such as the installation of automatic vending machines, the deposit of building material, deposit or use of cranes or other machinery, placement of tables, chairs, stalls or kiosks, free licenses and permits, occasional entertainment). These powers have been delegated to Local Councils since 1 June 2002. All other licenses are still issued by the respective competent authority, whereas Local Councils (in view of the Government's policy to have local governments act as a one-stop-shop facility for a number of wide ranging services) are responsible for collecting payments for the renewal of such licences. The revenue serves as a source of additional operational funding for each local council.
27. Should any individual feel aggrieved by a Local Council's refusal to grant authorisation for the carrying out of a specific activity, the individual has the right of appeal as provided for in Article 12 of Legal Notice 119 of 2002. Local Councils are subject to audit controls by the National Audit Office, the Internal Audit and Investigations Directorate and also by the local government auditors appointed under Subsidiary Legislation 363.01.
28. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

29. *GRECO recommended that the local wardens undergo regular training with regard to corrupt practices.*
30. The authorities of Malta have reported that the entities responsible for training of local wardens – the Employment and Training Corporation and the Training Academy of the Guard and Warden Service - have commenced providing local wardens with direct and indirect training with regard to corrupt practices. Training is a continuing process, and local wardens undergo such training on an annual basis. As far as the Employment and Training Corporation is concerned, it tackles the issue of corruption in three of its training modules specifically tailored for local wardens. The other training institution, whose students are currently providing their services to the majority of Joint Committees of Local Councils, is also in the process of providing its respective employees with specific training on corruption.
31. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation vi has been implemented satisfactorily.

Recommendation vii.

32. *GRECO recommended 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.*
33. The authorities of Malta have reported that the Commission for the Administration of Justice was consulted on the appointment of two judges. In particular, the Prime Minister had informed the President of the Commission of his intention to advise the President of Malta to appoint a specific Magistrate and a specific lawyer to the office of judge and requested the Commission's advice on the proposed appointments in terms of article 101A (11) (c) of the Constitution. After examining

the *curriculum vitae* of the candidates and other information, the Commission found no objection to the appointment of one of the candidates but raised questions with regard to the appointment of the other. The person against whom no objection was raised was appointed judge. The other nominee did not take up this position.

34. GRECO took note of the information provided by the authorities of Malta. Recalling that there is no preliminary selection procedure envisaged for either judges or magistrates, GRECO expresses the hope that the Commission for the Administration of Justice will from now on fulfil its advisory function on a regular basis.
35. GRECO concludes that recommendation vii has been implemented satisfactorily.

Recommendation viii.

36. *GRECO recommended to offer specialised training for members of the Judiciary and the Attorney General's Office in economic and financial matters and to introduce a particular in-service training programme, including for the fight against corruption.*
37. The authorities of Malta have reported that legal officers currently employed by the Attorney General's Office have undergone some training provided by EU institutions in economic and financial matters, including on the fight against corruption (four seminars/workshops organised in 2001-2002). Two lawyers have obtained a postgraduate degree in Financial Services at the University of Malta. Furthermore, in-service training in economic and financial matters is being provided on an on-going basis to younger officers working under the supervision of senior legal officers already experienced in this area of investigations. Other forms of in-service training are not deemed feasible taking into account the number of legal officers, numbering from two to three, working on corruption issues. However, as the Attorney General's Office is currently in the process of being converted into a Government Agency, it is only after this has been achieved that additional legal staff may be recruited and further opportunities for training could be provided.
38. As far as members of the Judiciary are concerned, the authorities of Malta have reported the setting up of a Judicial Studies Committee. It was accepted, however, that the Committee has yet to give a more focused attention to training in economic and financial crime.
39. GRECO took note of the information provided by the authorities of Malta, in particular concerning the participation of legal officers from the Attorney General's Office in training provided by EU institutions. GRECO recalled, however, that the objective of the recommendation was specifically to introduce in-service training in economic and financial matters, including the fight against corruption. With regard to the Attorney General's Office, GRECO understood that the provision of specialised training was dependent upon completion of the reform. As far as the Judicial Studies Committee was concerned, GRECO has not received sufficient information on the type of training provided by this body.
40. GRECO concludes that recommendation viii has been partly implemented.

Recommendation ix.

41. *GRECO 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.

42. The authorities of Malta have clarified that “dismissal” here is to be understood as a reference to the power of the Commission for the Administration of Justice to recommend to the House of Representatives the removal of a judge. The opinion held within the Commission itself is that the content of the recommendation was not excluded by law but that the occasion has not yet arisen where the Commission needed to consider the issue, since no case of corruption of a judge has come before it to date. An example was provided where in the case of allegations of corruption against two judges, both resigned before their cases were brought before the Commission.
43. With respect to the second part of the recommendation, the authorities of Malta have reported that the Code of Ethics for Members of the Judiciary was amended in May 2004, in line with the above recommendation. Furthermore, pursuant to Rule 29 of the Code, guidelines drawn up by the Chief Justice were set out and approved in June 2004. The objective of these guidelines is to clarify how the rules in the Code may apply to concrete cases and to ensure, as far as possible, uniformity in the implementation of the said rules.
44. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation ix has been implemented satisfactorily.

Recommendation x.

45. *GRECO 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.*
46. The authorities of Malta have reported that, when a certificate exempting a person from criminal proceedings is issued, a report is drawn up and the decision of the Attorney General is always motivated, given in written form and included in the file. Since the adoption of GRECO’s First Round Evaluation Report there have been no cases where the Attorney General has exempted a person from criminal proceedings under the Commission for the Prevention of Corruption Act.² With regard to the reasons for *nolle prosequi* being subjected to public scrutiny, the Attorney General has, upon a Parliamentary enquiry and although not obliged to do so, publicly given the reasons which led to the granting of a *nolle prosequi* in all cases where this was granted within the last 10 years (seven in number).
47. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation x has been implemented satisfactorily.

Recommendation xi.

48. *GRECO 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.*
49. The authorities of Malta have reported that serious cases of corruption committed by police officers or members of the judiciary are, in practice, decided upon by the Criminal Court. The authorities have further stated that the above recommendation has been taken into account by

² as provided for in Article 19, Chapter 326 of the Laws of Malta

the Attorney General when deciding how corruption cases involving certain categories of public officers such as members of the police corps and the judiciary are to be dealt with. In fact, in the only cases involving allegations of corruption against two judges, a bill of indictment has been filed and the case will be heard by the Criminal Court.

50. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation xi has been implemented satisfactorily.

Recommendation xii.

51. *GRECO recommended that the Maltese authorities consider the opportunity to establish a system of co-ordination between existing institutions responsible for the fight against corruption.*
52. The authorities of Malta have reported that the main institutions responsible for the fight against corruption are the Police and the Security Service who closely co-ordinate their operations in cases involving corruption. Moreover, a Public Service Management Committee has been set up as a co-ordination body to ensure *inter alia* cross-departmental and cross-agency objectives and to achieve the necessary co-operation on corruption issues. The Committee consists of all public service Permanent Secretaries, supervising various government departments and government agencies.
53. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation xii has been implemented satisfactorily.

Recommendation xiii.

54. *GRECO recommended that the Permanent Commission against Corruption (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.*
55. The authorities of Malta have reported that, since 2001, all the reports on the results of the investigations conducted by the Commission and sent to the Minister of Justice have been published and tabled in Parliament, bar one. In the single case where the results of the investigation were not published, the Commission did not find sufficient evidence to determine the alleged case of corruption and it was considered that the prejudice which would be caused to the individual concerned outweighed any benefit that could be derived from the tabling of the report. The Attorney General's Office is in the process of drafting amendments to the law to give further effect, as far as is possible, to this recommendation.
56. GRECO took note of the information provided by the authorities of Malta. It welcomed the fact that the above recommendation has resulted in the preparation of amendments to the existing legislation to give it further effect. Nevertheless, GRECO was not convinced that the outcome of this initiative could be considered as definitive and will be awaiting further feedback from the authorities of Malta on this issue.
57. GRECO concludes that recommendation xiii has been partly implemented.

Recommendation xiv.

58. *GRECO recommended the introduction of a more independent procedure/authority when it comes to dealing with public procurements and tenders.*
59. The authorities of Malta have reported that the procedure regulating public procurement has, as a result of both GRECO's First Round Evaluation Report and also due to other exigencies, been extensively revisited. Subsidiary Legislation 174.02 was amended by Legal Notices 98 of 2002 and 387 of 2003.
60. As a result of the aforementioned changes, the General Contracts Committee has now as its Chairperson (*ex officio*) the Director of contracts and a minimum of 4 and a maximum of 10 members. Members may be disqualified from the Committee if they are either members of Parliament or have financial or other interests likely to prejudice the discharge of their functions. All members are appointed by the Prime Minister. When specialised expertise is required to conduct a tender in a particular field, a Special Contracts Committee may be set up by the Prime Minister to ensure the successful tender.
61. All meetings of the Committee are open to the public during the opening of bids. The Director of Contracts is legally bound to give publicity (after the actual opening of bids) to the tenders submitted by presenting a list of tenders received and the respective prices submitted.
62. The decision of the Committee prior to the award of the contract is made public, as a result of Subsidiary Legislation 174.04 at either the office of the Department of Contracts or at those of the Contracting Authority.
63. This legislation also sets up the Public Contracts Appeals Board, which is composed of members chosen for this purpose by the Prime Minister who are appointed for 3 years with a possibility of renewal. A member of the Appeals Board may not be removed during the period covered by his appointment, except for proved misbehaviour or proved inability to perform his/her function. The sessions of the Board are open to the public. The complainant and the interested party have a right to attend and to be accompanied by any professional they deem appropriate to defend their interests. The Chairperson must ensure that all parties are given the opportunity to make their case. All decisions of the Board are binding on the Director of Contracts and the Head of the Contracting Authority. Decisions are to be published, and should any bidder submitting a complaint not be satisfied with the final decision taken by the Board, he may refer the matter to the Courts of Justice.
64. GRECO took note of the information provided by the authorities of Malta and concludes that the recommendation has been implemented satisfactorily.

Recommendation xv.

65. *GRECO recommended 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.*
66. The authorities of Malta have reported that public officials receive indirect training regarding the conditions required to obtain access to documents when being informed of individual rights under the Data Protection Act. This training is received upon their enrolment with the Public Service,

during the induction programme prior to taking up a post within the Public Service. This training is provided by the Staff Development Organisation (i.e. the Public Service entity, falling under the responsibility of the Prime Minister's Office that is responsible for the training of public officials). Furthermore, a half-day course is currently organised and run by the Staff Development Organisation and the Operations and Programme Implementation Directorate on the same matter.

67. The public may obtain any information it requires on rights of access to documents and files held by local and state authorities and on applicable conditions by accessing the website on the government webpage "servizz.gov". This site allows the public to request any general or personal information from any public body. The public also has access to the Data Protection Commissioner's website www.dataprotection.gov.mt where information on access to data may be obtained.
68. GRECO took note of the information provided by the authorities of Malta and concludes that recommendation xv has been implemented satisfactorily.

III. CONCLUSIONS

69. **In view of the above, GRECO concludes that Malta has implemented satisfactorily or dealt with in a satisfactory manner the vast majority of the recommendations contained in the First Round Evaluation Report.** Recommendations iv, v, vi, vii, ix, x, xi, xii, xiv and xv have been implemented satisfactorily and recommendations i, ii and iii have been dealt with in a satisfactory manner. Recommendations viii and xiii have been partly implemented.
70. GRECO invites the Head of the delegation of Malta to submit additional information regarding the implementation of recommendations viii and xiii by 30 November 2006.