

Strasbourg, 1 July 2005

**Public**  
**Greco Eval II Rep (2004) 14E**

## **Second Evaluation Round**

### **Evaluation Report on Malta**

Adopted by GRECO  
at its 24<sup>th</sup> Plenary Meeting  
(Strasbourg, 27 June - 1 July 2005)

## I. INTRODUCTION

1. Malta was the 21<sup>st</sup> GRECO Member to be examined in the 2<sup>nd</sup> Evaluation round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Ardian DVORANI, Judge, Supreme Court (Albania); Mr Jim O'FARRELL, Principal Officer, Department of Finance (Ireland); and Mr Philippos KOMODROMOS, Legal Officer, Counsel of the Republic, Attorney General's Office, Law Office of the Republic of Cyprus (Cyprus). This GET, accompanied by a member of the Council of Europe Secretariat, visited Malta from 10 to 14 January 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (document Greco Eval II (2004) 11E) as well as copies of relevant legislation and other documentation.
  2. The GET met with officials from the following governmental organisations: Office of the Attorney General, Office of the Chief Justice, Police Corps, Permanent Commission Against Corruption, National Audit Office, Local Councils Department, Ministry of Health, Office of the Ombudsman, Ministry of Finance (Inland Revenue Department, VAT Department and the Department of Customs), Malta Environment and Planning Authority, Financial Intelligence & Analysis Unit, Internal Audit and Investigations Directorate, Armed Forces of Malta, Management and Personnel Office – Head of Civil Service, Malta Financial Services Authority. Moreover, the GET met with members of the following non-governmental institution: Malta Institute of Financial Service Practitioners.
  3. It is recalled that GRECO agreed, at its 10<sup>th</sup> Plenary meeting (July 2002), that, in accordance with Article 10.3 of its Statute, the 2<sup>nd</sup> Evaluation Round would deal with the following themes:
    - **Theme I - Proceeds of corruption:** Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
    - **Theme II - Public administration and corruption:** Guiding Principles 9 (public administration) and 10 (public officials);
    - **Theme III - Legal persons and corruption:** Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.
- Malta ratified the Criminal Law Convention on Corruption (ETS No 173) on 15.5.2003.
4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the Maltese authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to Malta in order to improve its level of compliance with the provisions under consideration.

## II. THEME I – PROCEEDS OF CORRUPTION

### a. Description of the situation

#### Interim measures

5. Articles 23A and 435 A to C of the Criminal Code (CC) extend the application of the relevant provisions of the Prevention of Money Laundering Act (PMLA) and the Dangerous Drugs Ordinance (DDO) to the crimes carrying a sentence of imprisonment of more than one year, including corruption. Thus, the interim measures which apply in corruption cases are: the Investigation Order (which enables access to material which is likely to be of substantial value to the investigation), the Attachment Order (a measure whose ultimate goal is the freezing or seizure of proceeds of crime in the investigative phase) and the Freezing Order (having the effect of freezing all the property of the accused pending trial and until final judgment).<sup>1</sup> These measures are ordered by the Court upon application of the Attorney General. In addition, the GET was informed, during the visit, that Article 355P of the CC allows the police to seize anything on any premises if they have reasonable grounds to believe that it has been obtained as a result of an offence or that it constitutes evidence in relation to an offence and that its seizure is necessary to prevent it from being concealed, lost, damaged, altered or destroyed.
6. The investigation order (Article 4 (1) of the PMLA) enables the police to override all confidentiality and professional secrecy provisions (barring privileged communications covered by lawyer-client confidentiality and those between the penitent and his confessor)<sup>2</sup>. When issued, an attachment order (Article 4 (6) of the PMLA) attaches in the hands of third parties (garnishees such as banks, companies, etc...) all money and other movable property (including negotiable instruments, cash or currency deposits or accounts with any banking, credit or other institution) due or pertaining or belonging to a suspect, and prohibits the suspect from transferring or otherwise disposing of any movable or immovable property. This order is served on both garnishees and suspects and is valid for a period of 30 days which can be extended for a further 30 days if new evidence comes to light. If the suspect is abroad, the period is held in abeyance. When a suspect has been arraigned, the prosecution may request that all property owned or under the suspect's control and possession is frozen. This freezing order will remain in force until final judgement is pronounced (Article 22A(1) of the DDO).
7. Specific financial investigations – aiming at identifying, tracing and freezing proceeds of crime or monitoring a suspect's property - may be conducted concurrently with the investigation into the predicate offence. Where appropriate, the investigation may be referred to the criminal investigations department or the anti-money laundering unit of the Police. It is possible to use special investigative means in corruption cases, depending on the gravity of the offence, by virtue of the Security Service Act. It is possible to use special investigative means in the case of proceeds of trading in influence (Art. 121A of the CC) and accounting offences (Art. 121B of the CC), when they give rise to substantial gain according to the appreciation of the competent authorities (Articles 2(3)(a) and 3(3)(b) of the Security Service Act).
8. Management of seized or frozen property is governed by Articles 667 to 679 and 355S of the CC. Further provision may be made by regulations under Articles 668(2) and 697 of the CC. Establishment of a specific body was under consideration at the time of the visit.

---

<sup>1</sup> The said measures apply with regard to offences which carry a sentence of imprisonment of more than 1 year, hereafter referred to as 'relevant offences'. They are not applicable to trading in influence (Article 121A CC) and account offences (Article 121B of the CC), as these offences carry a sentence of imprisonment of three months to one year.

<sup>2</sup> Articles 257 and 435A of the CC; Section 4 PMLA; Section 24A DDO and Article 6B of the Professional Secrecy Act.

## Forfeiture

9. Forfeiture is governed by Articles 23, 23B and 435D of the CC<sup>3</sup>. It is a *mandatory measure* imposed in addition to and as a consequence of a sanction, except in cases where a person who has not participated in the crime has a legitimate claim to the property concerned. Article 23 of the CC deals with forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime. In the case of things whose manufacture, use, carrying, keeping or sale constitutes an offence, forfeiture may be ordered by the court even without a conviction and although such things do not belong to the accused. Forfeiture of proceeds of crime is catered for, in particular, under Article 23B CC. It is applicable to proceeds of a "relevant offence"<sup>4</sup> - including all corruption offences - and to such property, the value of which corresponds to the value of the proceeds. Where the proceeds of the offence have been dissipated or where it is not possible to identify and forfeit those proceeds or to order the forfeiture of property the value of which corresponds to the value of the proceeds, the court shall impose a fine equivalent to the amount of the proceeds of the offence. If the fine is not paid it is converted to a term of imprisonment according to law. The principle of presumption of innocence is enshrined in the Constitution. The burden of proof lies with the prosecution. However, in instances dealing with the laundering of proceeds of corrupt practices, Article 3(5) of the PMLA provides that any property of or in the possession or under the control of any person (legal or natural) found guilty shall, unless proved otherwise, be deemed to be derived from the offence of money laundering and liable to forfeiture by the court.

## Third parties

10. It is possible to confiscate proceeds of crime if they have been transferred to third parties in order to avoid an attachment or freezing order or to conceal or disguise the origin of these proceeds, by virtue of the PMLA and the Criminal Code. Under the terms of Article 6 of the PMLA, if any person acts in contravention of a freezing order (i.e. issued once a person is arraigned under that Act) he/she shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding 5.000 liri (11.500 €) or to imprisonment for a period not exceeding 12 months, or to both. Any action carried out in contravention of such a freezing order shall be null and void. This is also applicable to attachment orders. Any property transferred as a result of such action would then be liable to forfeiture. Moreover, if the transfer was used to conceal or disguise the origin of property in such a manner that the transfer qualifies as a money laundering act, then the transferees, if proven to have acted knowingly, may also be found guilty of money laundering.

## Statistics

11. According to the figures of the Police, there have been 9 cases and 19 persons under investigation for corruption in 2002, 7 cases and 11 persons under investigation in 2003, and 12 cases and 14 persons under investigation in 2004. No specific figures were reported on interim measures or forfeiture orders in relation to corruption cases for the last three years.<sup>5</sup>

---

<sup>3</sup> And since the introduction of Article 121D CC on corporate liability for criminal offences, it is also applicable to instrumentalities, proceeds of crime and property equivalent to these proceeds of a corporate or an unincorporated body.

<sup>4</sup> i.e. any intentional crime other than a crime under the DDO and the Medical and Kindred Professions Ordinance or under the PMLA, which carries a sentence of imprisonment of more than one year.

<sup>5</sup> After the GET's visit, the judicial authorities informed the GET that, from 1995 to 2004, they received 68 requests for investigation and/or attachment orders and that they were always dealt with expeditiously. Among these 68 requests, they received 3 requests for an attachment order in 2002, 3 in 2003 and 4 in 2004. The figures do not distinguish between requests initiated upon request by local authorities and those applications made in terms of requests for mutual assistance. In the last 3 years, one case of corruption concerned two higher members of the judiciary.

## Money laundering

12. All corruption offences qualify as predicate offences of the money laundering offence<sup>6</sup>, even if they are committed abroad. Certain conditions apply (cf. Article 121C of the CC). Though criminalised since 2002, Malta did not consider, at the time of the GET's visit, trading in influence (Art. 121A of the CC) as a predicate offence for the purpose of their money laundering legislation. However, at the time of ratification of the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No 141) it had entered a reservation to Article 6 and it was in the process of adopting an "all crimes" money laundering offence.<sup>7</sup> Accounting offences, as defined in Art. 121D of the CC, were also not predicate offences of the domestic money laundering offence<sup>8</sup>. The domestic money laundering cases which were investigated and prosecuted in the last three years did not have corruption-related offences as the predicate offence. The Prevention of Money Laundering Regulations, including Regulation 2 as amended in 2003, define the persons and institutions compelled to report suspicious transactions (STRs) to the Maltese Financial Intelligence Analysis Unit (FIAU). Article 27 of the PMLA provides for the co-operation between the FIAU and other supervisory authorities. Article 24 of the Act further provides for the appointment of a Police Liaison Officer who assists the Unit in the analysis and processing of STRs and other information and intelligence data. The FIAU has entered into agreements with regulatory authorities, in particular with the Malta Financial Services Authority (financial services regulator), to undertake on-site examinations on behalf of the Unit. During the visit, the Unit was in the process of setting up a Compliance Section for the implementation of the Unit's supervisory responsibilities under the PMLA.

## International Co-operation: provisional measures and forfeiture

13. Mutual legal assistance in criminal matters for the temporary seizure and forfeiture of proceeds of crime, including corruption, is based on the provisions of the Criminal Code (in particular Articles 399, 435C, 435D, 628A, 628B and 649), the DDO, the PMLA and applicable international treaties.<sup>9</sup> Articles 435B, 435C, 649 of the CC and Articles 9 and 10 of the PMLA provide for the procedure to be applied when Malta is the requested State. When Malta receives a request for assistance for a temporary seizure, the Attorney General applies to the Criminal Court for an attachment order (Article 25B of the CC, in the investigative stage, when the suspect has not yet been charged in court), or for a freezing order (Article 435C of the CC when the suspect has already been charged in court abroad), which is issued for a period of 6 months (renewable).<sup>10</sup> With regard to requests for the enforcement of a forfeiture order made by a court outside Malta, the Attorney General submits the forfeiture order to the competent court demanding the enforcement of the order.<sup>11</sup> In terms of requests from foreign authorities which concerned

---

<sup>6</sup> including unlawful exaction, extortion, active and passive bribery of judges, of jurors or persons entrusted with or having functions relating to the administration of a statutory body, the attempt to commit any of the foregoing or which constitute complicity in any of the offences described, conspiracy, private interest in adjudications or in the issue of orders, and the malicious violation of official duties.

<sup>7</sup> By virtue of Legal Notice No 176/2005 of 31<sup>st</sup> May 2005, under the PMLA, Malta adopted an "all crimes" money laundering offence.

<sup>8</sup> See the footnote above.

<sup>9</sup> Malta is, *inter alia*, a party to the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No 30), to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No 141) and to the United Nations Convention against Transnational Organized Crime.

<sup>10</sup> In general, the magistrate shall conduct the requested measure and comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

<sup>11</sup> For this purpose a "confiscation order" is widely defined as including any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property. The court shall not order the enforcement of the foreign confiscation order if: the respondent had not been notified

corruption-related offences, there was one request for extradition to Italy of an Italian national under the European Convention on Extradition (ETS No 24), and under the 1959 European Convention on Mutual Assistance in Criminal Matters (ETS No 30) there were two requests in 2004, whilst under the 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (ETS No 141) one request which resulted in interim measures being applied for (the attachment order is still in force given that investigations are still underway and subject is away from these islands). Another common form of international co-operation, often of an informal nature, is that between the police and Interpol, Europol and Sirene. Finally, the FIAU is a member of the Egmont Group and co-operates with foreign counterparts.

## b. Analysis

14. The regime of interim measures comprises Investigation Orders, Attachment Orders and Freezing Orders since the relevant provisions of the Prevention of Money Laundering Act (PMLA) and the Dangerous Drugs Ordinance (DDO) have been extended to serious crimes, including corruption. Seizure is traditionally applied by investigating police officers in order to seize instrumentalities of crime, independently of the nature of the criminal offence. According to the Maltese authorities, in Maltese law, instrumentalities include not only the *corpus delicti* and the instruments used or intended to be used in the commission of a crime but also anything obtained by such crime. In the case of proceeds of crime, freezing measures may be used only when a person is arraigned in judicial proceedings and cases of serious crimes, normally after the Police or the Attorney General has required and obtained an Investigation, Attachment or Freezing Order. The recently introduced Article 355P of the CC allows investigating police officers to use seizure even without waiting for a Court order or approval. The GET was told that this new provision helps to remove doubts and difficulties concerning the powers of the police and that a training programme was organised for police officers on the effects of the new provisions. Nevertheless, not all of the GET's interlocutors were familiar with the newly introduced Article 355P. In addition, interim measures seem to be used in a variable way – according to the Maltese authorities, only when the nature of the offence or of the investigations so dictate - and are not always coupled with in-depth financial investigations. However, the Maltese authorities reported after the GET's visit, that additional training given on a regular basis on the effective use of interim measures, especially seizure, has already contributed to clarifying the situation.
15. Under Maltese legislation forfeiture is mandatory. Meanwhile, interim measures are implemented in a discretionary manner when a number of conditions provided by the law are met and the concrete circumstances of the case convince the police, prosecutors and judges to make use of them. Interim measures (Articles 23A and 435 A to C of the CC) and forfeiture of proceeds (Article 23B of the CC) are applied to all corruption offences foreseen in the Criminal Law Convention on Corruption (ETS No 173) but not to trading in influence (Article 121A CC) and account offences (Article 121B of the CC) because both carry a sentence of imprisonment of less than one year.<sup>12</sup> Considering the requirements of Articles 19 and 23 of the Convention, **the GET recommends that the law be amended to permit, where appropriate, the full use of interim measures and forfeiture in cases of trading in influence and account offences as defined in the Criminal Law Convention on Corruption.**
16. The Criminal Code provides for the forfeiture of the proceeds of an offence as well as value forfeiture, when such proceeds have been received by the person found guilty or by a corporate

---

of the proceedings which led to the making of the order; the order was obtained by fraud; the order contains dispositions contrary to the public policy or internal public law of Malta; the order contains contradictory dispositions.

<sup>12</sup> Nevertheless, according to Article 307 of the Companies Act, the destruction or hiding of accounting records or books is subject to a maximum fine of 100,000 liri (€230,000) and a maximum of 5 years imprisonment.

body for whose benefit the offence may have been committed. The existing forfeiture system is based on the existence of a link between a conviction and ownership or control of the assets and other proceeds by the perpetrator but it makes it difficult to apply forfeiture in cases where no conviction is possible or, in connection with a conviction, where the illegal proceeds are held by a third party. However, the Maltese authorities informed the GET that they were considering ways to facilitate the forfeiture of proceeds in such cases.

17. The international co-operation between the FIAU and homologue structures of other countries is said to be satisfactory. In 2004, the FIAU received 21 requests from foreign FIUs and addressed to them 31 requests. The GET was told that the judiciary lacks human and financial resources to deal efficiently with complex economic crime proceedings, interim measures and forfeiture. This situation has also led to problems – mainly related to the length of procedures - in mutual legal assistance and the processing of rogatory letters. *The GET observes that the possibilities of courts and other relevant authorities to deal with mutual legal assistance should be improved.*

### **III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION**

#### **a. Description of the situation**

##### Definitions and legal framework

18. Malta is divided into 2 regions and 68 Local Councils. There are several public enterprises and other para-statal bodies too. There is no single legal definition of the term “public administration”. A distinction is made between the wider public sector (as used for the purposes of the Code of Ethics for Employees for the public sector) and the public service proper.<sup>13</sup> In practice, (i) most organisations within the public service are under direct ministerial responsibility, whereas other public sector entities are usually run by a board of directors which reports to the Minister; (ii) most organisations within the public service are funded directly by the government's annual budget, that is to say they do not retain the revenue they generate; (iii) most public servants are recruited through the Public Service Commission or under powers delegated by it and are classified within a common pay and grading structure; (iv) public service organisations do not have, in principle, a legal personality separate from that of the government as a whole, unless they have been established by law as autonomous agencies.

##### Anti-Corruption Policy

19. There is no comprehensive written or published anti-corruption plan or general strategy, nor a specific body for defining, co-ordinating and following the implementation of such a strategy/plan.<sup>14</sup> Nevertheless, the Government has put in place a series of legal and institutional measures to counteract corruption, including the development of several Codes of Ethics and the establishment of a number of bodies responsible for detecting and investigating corruption-related cases, *i.e.*, Tribunal for the Investigation of Injustices, Ombudsman and Permanent

---

<sup>13</sup> The Constitution defines instead the term “public service” as the service of the Government of Malta acting in its civil capacity and explicitly excludes from its scope i) members of the office of the Prime Minister or other Ministers, Parliamentary Secretaries, Speakers, Deputy Speakers, members of the House of Representatives, members of a Commission established by the Constitution; (ii) Ambassadors, High Commissioners or other principal representatives of Malta in any other country; or (iii) those cases prescribed by the Parliament, as well as members of any council, board, panel, committee or other similar body as established by law. The Public Service Management Code lay out the regulatory basis for public service. Officials of the Armed Forces, members of public corporations and local councils are not part of the Maltese public service.

<sup>14</sup> However, the Public Service Management Committee, which consists of all the Permanent Secretaries in the Public Service, pursues *inter alia* cross-departmental and cross-agency objectives, including co-ordination on corruption issues.

Commission Against Corruption (see GRECO's First Round Evaluation Report). The latter may issue targeted recommendations to the President of Malta to prevent further corruption. In 2004, it made a report on corruption in the area of border control and immigration but the report and its recommendations remained strictly confidential. In addition, the National Audit Office and the Internal Audit and Investigations Directorate may consider issues of corruption leading to misuse of public resources and recommend remedial measures, as appropriate.

### Transparency

20. There is no comprehensive legislation on freedom of information or access to official documents (see GRECO's First Round Evaluation Report). Nevertheless, there are a number of legislative enactments such as the Press Act and the Data Protection Act which do provide for the possibility of such access in a number of cases. Moreover, other avenues to access information exist, such as through Parliamentary Questions and a Government internet website "servizz.gov" as well as the Data Protection Commissioner's website at [www.dataprotection.gov.mt](http://www.dataprotection.gov.mt) where information on access to certain data may be obtained. Consideration is being given to consolidating these different avenues to access official documentation in one piece of legislation.

### Control of Public Administration

21. Pursuant to Article 469A of the Code of Organisation and Civil Procedure, administrative decisions can be challenged in court. In addition, various laws set out procedures for appeals, usually to a higher authority or special appeals board, in respect of specific areas. Public administration, at central and local level, is also subject to other types of internal and external controls by, for example, the National Audit Office, the Internal Audit and Investigations Directorate (IAID), and the Public Accounts Committee (PAC). They take measures to prevent and to eradicate corruption and other related unethical conduct. The Ombudsman is entitled to investigate cases of maladministration of acts taken by or on behalf of the Government and its statutory bodies as well as those of the local councils (see GRECO's First Round Evaluation Report). Consequently, allegations of corrupt activity may also fall within his investigative responsibilities. It may conduct investigations *ex officio* or upon the written complaint of a person individually affected by the maladministration. 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. At the time of the GET's visit, no case of corruption had been reported to the police. The Ombudsman normally reports to the Minister concerned and may also report to the Prime Minister and to the House of Representatives. Furthermore, it releases regular activity reports to the House of Representatives. The Permanent Commission Against Corruption is entitled to examine the practices and procedures of government departments, local government authorities, statutory bodies or other relevant bodies to facilitate the finding of any corrupt practices and to recommend the revision of working methods or procedures, which may lead to corrupt practices. The Commission investigates the conduct of any public officer suspected of corrupt practices. It can even investigate persons who are or have been entrusted with, or have had functions relating to the administration of a company or other body in which a public authority has a controlling interest or over which it has effective control. Nevertheless, the result of these investigations may remain confidential. Actually, since 2001, the Commission's reports that were sent to the Minister of Justice have been made public with the exception of one where the harm that could be caused by publication outweighed the benefit that could be obtained from publication.



## Status, recruitment, career and preventive measures

22. The GET was told that there are approximately 35,000 “public officers” in Malta. Different definitions of the term “public officer or servant” exist according to the purpose the term is used for in the Constitution, the Criminal Code, the Permanent Commission Against Corruption Act, the Public Service Management Code and the Code of Ethics for Employees in the Public Sector.<sup>15</sup> During the visit, the GET was told that a new Public Service Act was under preparation for “public servants”. As mentioned above, for instance, officials of the Armed Forces, members of public corporations and local councils are not part of the Maltese public service.
23. There is a standardised procedure for the selection and recruitment of public officers, which is applicable to both external and internal applications. All applicants must complete a standard application form and are evaluated by a Selection Board established for the relevant recruitment process. Members of the Selection Board are subject to stringent confidentiality requirements and are bound to sign a declaration excluding a potential conflict of interest by indicating that they are not related in any manner to any candidate. The Selection Board is responsible for assessing the eligibility of all candidates and for proposing a preliminary report on their evaluation for further consideration by the Heads of Department and the Public Service Commission - which has the mandate to ensure that recruitment, promotions or appointments within the public service are made in an equitable and impartial manner, are free from patronage and discrimination and based on the principle of merit. Finally, the list of selected candidates is published in the Government gazette. Screening of personal criminal records takes place as each candidate is required to enclose a certificate of good conduct issued by the police; moreover, the Heads of Department recommending public officers for appointment have the responsibility to ascertain that no serious disciplinary cases are pending against them.
24. There are no legal provisions in place concerning periodical rotation of public officials; however, such rotation occurs in practice due to the need to fill vacancies or specialised positions in newly created units. Furthermore, rotation within the customs administration effectively takes place in a time span that usually varies between one year and a half for certain clerks/inspectors to approximately four weeks for guards/gate personnel; exceptions may occur and certain staff could remain on the same post for an indeterminate period of time. Rotation also takes place within the Police Force.
25. The Staff Development Organisation, within the Management and Personnel Office and the Employment and Training Corporation is responsible for training of public officials. It organises a wide range of training programmes. In particular, training on ethical matters is provided when joining the public service or being promoted. Targeted training on police ethics is provided to police officials, and takes account of the European Code of Police Ethics (Recommendation Rec(2001)10) and of the Recommendation on Codes of Conduct for Public Officials (No. R(2000)10).

---

<sup>15</sup> The definition of “public officer” in Article 92 of the CC covers “not only the constituted authorities, civil and military, but also all such persons as are lawfully appointed to administer any part of the executive power of the Government, or to perform any other public service imposed by law, whether it be judicial, administrative or mixed”. For the purposes of the Permanent Commission Against Corruption, the scope of the term has been broadened to also include “members of the House of Representatives, any person who is entrusted with or has functions relating to the administration of statutory body having a distinct legal personality, any council, Board panel, committee or other similar body established by any law, or who is employed with such a body; and includes in relation to any act or omission during the tenure of such post, any person who, within a period of twelve years before or at any time after the coming into force of (the) Act, was a public officer”. Under the Constitution, the Public Service Commission has certain functions with regard to the appointment, removal or discipline of “public officers” to ensure, in fact, that civil servants are not victimised for political purposes.

### Conflicts of interest

26. The Public Service Management Code, together with the Code of Ethics for Employees in the Public Sector, establish that public officials should avoid any financial or other interest or undertaking that could directly or indirectly compromise the performance of their duties. They must also disclose to their Head of Department any potential or actual conflict of interests, in writing, within a week of assuming office or upon a change in duties or change in circumstances. Safeguards against conflicts of interest are much stricter in the case of members of Parliament, Parliamentary Secretaries and Ministers according to their respective Codes of Ethics. The Code of Ethics for Members of the Judiciary establishes that members of the judiciary shall not accept any post that could hinder them or restrict them in the full and correct performance of their duties and that they shall not practice any activity that is in its very nature incompatible with the office they hold. Exceptions are provided by law and always need to be reported to the Chief of Justice.
27. Public officials are free to resign from their posts to join the private sector at any time unless they are prevented from doing so due to any contractual obligation to which they may be subject. Persons who leave the service, however, remain bound by confidentiality and official secrecy with respect to matters acquired in the course of their public service. Public employees are expected to take decisions impartially and in the public interest. They are expected not to be susceptible to influence from former employees who might have moved to the private sector.

### Codes of conduct/ethics

28. Codes of Ethics have been developed for several professional activities, such as Members of the House of Representatives, Ministers and Parliamentary Secretaries, Members of the Judiciary, Accountants and Employees in the Public Sector. The Code of Ethics for Employees in the Public Sector specifically indicates that sanctions may be applied in cases of infringement of its provisions. The content of these sanctions will depend on the seriousness and nature of the breaches (warnings, suspension without pay, dismissal) and may entail formal disciplinary and/or criminal action, as applicable.

### Gifts

29. According to the Public Service Management Code and the Code of Ethics for Employees in the Public Sector, public officials should not accept gifts or benefits or promises of gifts connected to their duties; only token gifts may be accepted. The aforementioned prohibition also applies to partners or families of the public official. Members of the Parliament, parliamentary secretaries, ministers, and judges are precluded in their respective Codes of Ethics from accepting any gift, favour or benefit, which might possibly influence them in the proper fulfilment of their duties. Furthermore, members of the judiciary must refrain from individually accepting any advantage or benefit from the Executive, except when such advantages or benefits are addressed to the Judiciary collectively. Gifts from foreign dignitaries, which cannot be refused without giving offence, are to be handed over to the State. When gifts are received on behalf of the State, they are to be handed over to the State and included in the Department's inventory. Any return gifts are to be given at the Government's expense.

### Reporting corruption

30. According to the Maltese authorities, public officials are required to report cases of corruption to their hierarchical superiors. Failure to do so would entail at least a disciplinary action. The

hierarchical superior is required to take disciplinary measures against any improper conduct, and if the conduct in question is likely to amount to a criminal offence, to consult the Attorney General on further action to be taken. There is no specific legislation in place concerning protection of public officials who report corruption cases. However, protection of victims, collaborators of justice, witnesses, judges and prosecutors is provided by the Police whenever it is considered that their safety is at risk. According to the Maltese authorities, a public official could not be sanctioned for doing his duty (to report). In addition, there are a number of available legal remedies against any attempt at oppressing a public employee who reports cases of corruption, such as: a judicial review of administrative action, the Public Service Commission, the Ombudsman and the Commission Against Corruption. During the GET's visit, a 2003 White Paper, including a draft of the new Public Service Act, which contains provisions to prevent the victimisation of whistleblowers, was undergoing consultation in the Parliament.

### Disciplinary proceedings

31. Disciplinary proceedings are normally dealt with by the Heads of Department in line with the 1999 Disciplinary Regulations.<sup>16</sup> The Public Service Commission has the duty to ensure that disciplinary action against public officers is fair, prompt and effective; it remains directly responsible for proceedings in cases which could lead to dismissal of the public official. Disciplinary enquiries are conducted by the Head of Department. Where a Head of Department becomes aware that a public official may have committed a crime, he/she is obliged to refer the matter to the police for investigation. A public official who is charged with a criminal offence may then be suspended on half pay, but no further disciplinary proceedings may be taken against him/her until the criminal case has been terminated. However, if the public official is held criminally liable, the Public Service Commission may recommend to the Prime Minister that disciplinary sanctions, including dismissal, apply. In 2003, 416 officers received written warnings, 96 officers were suspended without pay, an additional 22 officers were suspended without pay and received warnings of dismissal, and 6 officers were dismissed.

#### **b. Analysis**

32. Based on the available statistics and on the GET's interviews with a wide spectrum of public and other bodies concerned with corruption, the GET formed the impression that *de facto* instances of corruption within the public administration are rare and that the public service ethos in Malta is one of zero tolerance vis-à-vis bribery, abuse of power, favouritism or other corrupt practices within the public service. Examples cited of successful investigation and punishment of specific instances appear to corroborate this view. Nevertheless, it is still essential that legislation, codes of conduct and ethics, and administrative structures, functions and practices, be proof against subversion of the prevailing ethos by atypical individuals or groups. The GET notes that several codes of conduct apply to different employees of the public sector – however it is not universal that staff (statutory or not) have to confirm in writing that they have read and accept the relevant codes and that adherence thereto is a condition of their contract of employment. In the GET's view such practice could be reviewed in all public sector bodies to ensure that knowledge of the Code is formally acknowledged, and that breaches will result in disciplinary proceedings up to and including dismissal.

---

<sup>16</sup> Appeals may be lodged before the Public Service Commission in the following cases: i) when the charge of which the officer has been found guilty has been considered as a serious offence; ii) where the penalty imposed by the head of department is or includes a "warning of dismissal"; iii) where the officer can prove that there has been significant disregard of the procedures laid down in the disciplinary regulations and such disregard has prejudiced his/her interests.

33. The GET noted that there is no single legal definition of the term “public officer or servant”, therefore some public officials (in particular those excluded from the definition and the scope of the Public Service Management Code) may not be subject to the same or equivalent rules and preventive measures as other public servants are, for instance, during the recruitment process by the Employment and Training Corporation, for receiving initial and ongoing training on ethical rules and the risks of corruption, on conflicts of interest, reaction to gifts, etc. The GET was told that some categories of officials may also be excluded from the scope of the Code of Ethics for Employees in the Public Sector and/or be subject to their own ethical/professional rules. These rules or sectoral and specific codes are often however less detailed than the Code of Ethics. *The GET observes that in the context of the preparation of the new Public Service Act it should be verified that all public officials are bound by clear and detailed ethical rules.*
34. The GET appreciates that, in a small administration, the scope for pre-planned staff rotation is limited. It welcomes that a system of rotation has been put in place in the Police Force and in the customs administration for some positions exposed to corruption as a tool to reduce risks of corruption in vulnerable sectors. *The GET observes that the Maltese authorities should examine whether this approach could serve as a model for other sectors of public administration (e.g. procurement, purchasing, licensing, document issue, cash transactions), if deemed necessary.*
35. The GET notes that there are no significant restrictions on senior public officials who resign to take up employment in the private sector. It considers that (while this may not have, as yet, posed a problem in Malta) there is a potential risk that a promise of future lucrative employment may be used to influence serving officials, and that former officials may abuse their contacts and inside knowledge of their former work areas, especially in cases where their new employment is closely related to their previous functions. The GET realises that a balance has to be struck between free choice of employment and residual fiduciary obligations but **recommends to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflicts of interest.**
36. The GET was told that public officials are required to report cases of corruption to their hierarchical superiors but it could not assess the exact nature and scope of the obligation. The Tax administration told the GET that there is no such obligation for them. However, under the Disciplinary Regulations of 1999, supervisors must promptly report to the police offences committed by officers of whom they are in charge. In the GET’s view, rules and codes should stress the obligation to report suspected instances of corruption (in addition to the obligation existing under the Regulations of 1999). In-service staff training programmes should address the appropriate procedures to be followed in reporting suspicious activities. The GET notes with approval that the proposed Public Service Act should provide for better protection of ‘whistle-blowers’ within the public service, in addition to the existing remedies. **The GET recommends to introduce clear rules/guidelines and training for public officials concerning the reporting of suspicions of corruption and to enhance protection for whistle-blowers who report in good faith.**
37. While it notes the commitment to transparency in the administration generally and in specific key areas (e.g. planning), the GET found that there is still no comprehensive legislation on freedom of information or access to official documents applicable to the wider public sector. For the purpose of legislative certainty and the uniformity of practice, **the GET recommends that existing rules on freedom of information be extended, involving in particular, access to official documents, and that the implementation of the rules be properly monitored.**

38. A number of bodies are entrusted with detecting, investigating and preventing corruption in its different aspects of the public service. However these do not operate under an overall anti-corruption plan or strategy and for most such bodies corruption is only one aspect of a wider remit. There is no body or mechanism to undertake a regular overall review of the country's anti-corruption regime and its efficiency within the public administration. The Permanent Commission against Corruption prepared a report in 2004 on corruption in the area of border control and immigration but the report and its recommendations remained strictly confidential. In some instances, resource constraints or confidentiality requirements imply that the number and depth of investigations, as well as their efficiency are extremely limited in terms of an overall anti-corruption drive. In the GET's opinion, the aforementioned review could focus on the risks of corruption in the various sectors of public administration, the role and functions of the bodies involved in the prevention, detection, and/or investigation of corruption within the public service; their impact and effectiveness; the scope for enhanced co-operation, mutual assistance or amalgamation; and the resources allocated and/or available to these bodies. Consequently, **the GET recommends that assessments be made periodically on the country's anti-corruption measures and their effectiveness within the public administration, and that consideration be given to publishing the results of these assessments, together with recommendations to the Government.**
39. The GET notes that the external and internal auditing processes in Malta's public service both deter corrupt activity and increase the likelihood of detection. It notes, however, that not all Ministry Accounts are scrutinised by the Public Accounts Committee (PAC) (unless pursuant to an issue raised in the annual NAO Regularity Audit report or Performance/ Value for money Audit Report). It suggests that consideration be given to providing that every Permanent Secretary appears before the PAC at least once every two years. The GET also notes the contribution to regularity, efficiency and value for money made by the auditors and reviews conducted by the IAID. The GET considers that this valuable work might be enhanced, and ownership and commitment to the process optimised, by the establishment, under the overall guidance of the IAID and the IAIB, of Internal Audit Units and Boards within at least the major spending Ministries. The GET notes the relevant role of the Armed Forces in VAT and Revenue Security, in maritime security and general commercial security. Given the scale of purchasing in an establishment of over 2,000, it considers that the relevant army and navy personnel would benefit from specific training on stocktaking, procurement rules and guidelines, and from Public accounting requirements. The GET would also support the creation, within the Forces, of a specialised Audit Inspection Branch, that would also give due consideration to the necessity of fighting corruption.
40. In respect of disciplinary proceedings the GET notes that heads of department, when confronted with a suspicion of corruption must refer the matter to the Attorney General. Sometimes, disciplinary investigations may prove to be inappropriate in terms of the means available to obtain substantial evidence and, in any case, they have to be suspended when a public official is charged with a criminal offence until the criminal case has been terminated. Private investigations carried out by the Permanent Commission against Corruption and their results are also constrained by strict confidentiality rules. Finally, considerable time can elapse in the processing of corruption and other criminal cases through the criminal justice system. While recognising the resource implications, the GET would stress that the undoubted deterrent effect of successful corruption prosecutions can be optimised by expeditious processing. In the GET's opinion, a review of the manner in which notifications of corruption are being processed in public administration could be carried out. On another subject, the GET noted that the authority delegated to Permanent Secretaries only permits the following disciplinary sanctions: warnings, suspensions on half pay for up to 5 days and dismissal. It understands that the Public Service

Commission (if the case is referred to them) can impose longer periods of suspension at their discretion<sup>17</sup>. In this connection, consideration might be given to introducing additional disciplinary sanctions - in the interests of flexibility, ownership and delegated accountability.

#### **IV. THEME III – LEGAL PERSONS AND CORRUPTION**

##### **a. Description of the situation**

###### Definition and Establishment of legal persons

41. Article 2 of the Companies Act defines a “body corporate” as any entity having a legal personality distinct from that of its members, and includes foreign corporations. Whether an entity has a legal personality or not will have to be determined by case law, on the basis of the evidence available. Any entity capable of acquiring and disposing of property in its own name or of standing judgement in court proceedings, or which is otherwise vested with legal standing or legal personality distinct from its members constitutes a legal person. There are several types of legal persons but the main type is commercial partnership, of which there are three main categories, subject to the requirements laid out in the Companies Act of 1995, and which all enjoy a distinct legal personality: a) limited liability company, of either public or private character, with approximately 34,000 private companies registered since 1965; b) “partnerships *en nom collectif*” (general partnership), which is formed by unlimited partners; and c) “partnership *en commendite*” (limited partnership), which is composed of both unlimited partners, responsible for management with unlimited liability, and limited partners, who are liable only to the extent of their capital contributions to the partnership. Additionally, there are some 50 co-operative societies, basically covering agricultural activities and regulated by the Co-operative Societies Act of 2002. Finally, some associations enjoy legal personality.
42. The establishment of commercial partnerships is subject to certain minimum requirements with regard to capital and number of members. A private company must have an issued capital of LM500 (€1,150), of which 20% must be paid upon incorporation, and it can be founded even by one single member. A public company must have an initial issued capital of LM20,000 (€46.000), of which 25% must be paid upon incorporation and must have at least two members. Finally, a co-operative society requires a minimum of five members, but no minimum capital applies. In any case, no restrictions, related to the capital and the number of persons, apply, concerning the nationality of founding members or subsequent shareholders.

###### Registration and transparency measures

43. Commercial partnerships are registered in the Register of Companies, once certain documents and formalities listed in the Act are fulfilled and after the Registrar has issued a certificate or registered them. This requires the filing of a signed memorandum and articles of association indicating names of directors and shareholders, registered address (of the registered office) and share capital and objects of the company or partnership. The Companies Act also requires foreign companies which establish a branch or place of business in Malta, to register with the Registrar of Companies. These are referred to as “overseas companies” and, in order to be registered, they are required to file financial statements, a copy of their statute and any amendments thereto and to appoint a Maltese resident to receive legal papers, etc. The purpose

---

<sup>17</sup> In the case of a public officer found guilty of a criminal charge in any court the PSC may, where appropriate and at its discretion, recommend to the Prime Minister other penalties for serious offences in addition to or instead of those listed in this paragraph (Appendix 10.VIII.2 PSMC).

of the registration procedure applicable to an overseas company is not to create a new legal person but is rather intended to ensure its transparency and accountability.

44. In order to ensure transparency, the publication of the registration of the aforementioned types of legal persons is mandatory, while all constitutive company documents, amendments and names of relevant persons are required to be available for public inspection. Filing of annual return forms of capital, directors and shareholders (in relation to companies) and the obligation to keep annual financial statements (in relation to companies and co-operatives but not to partnerships) are additional measures towards transparency. By virtue of its legal personality, a legal person may own immovable and other property, including shares in other entities, establish subsidiaries, etc. In the case of the participation of a legal person in another legal person, the Co-operative Societies Act has introduced some restrictions on the participation of companies in co-operative societies and the involvement of co-operatives in companies.

#### Limitations on exercising functions in legal persons

45. The Companies Act of 1995 provides for possible disqualification of directors, company secretaries, liquidators and promoters from acting in a leading position in companies, when such persons are found guilty of having committed an offence. Pursuant to the Companies Act, such disqualification is ordered by a court upon the application of the Registrar of Companies or the Attorney General and it may be issued for a minimum of one and a maximum of fifteen years.

#### Liability of legal persons

46. Concerning the criminal liability of legal persons, Article 121D of the Criminal Code (CC), which was introduced in 2002, provides that a legal person can be held liable for an offence committed for its benefit by the responsible/authorised person acting on behalf of the legal person.<sup>18</sup> Legal persons can, thus, be held liable for unlawful exaction, extortion, active bribery, trading in influence, accounting offences and money laundering offences. According to the Maltese authorities, liability of a legal person is also applicable when lack of supervision has facilitated the commission of the criminal offence due to a breach of duty by the natural person who has a leading position in the legal entity. Article 121 of the CC defines breach of duty as “any disloyal behaviour, constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply to the relevant business”. Additionally, Article 13 of the Interpretation Act excludes the liability of the natural person vested with managerial powers if he/she can prove that an offence was committed without his/her knowledge and he/she exercised all due diligence to prevent the commission of the offence. The mere offer of a benefit is sufficient to establish liability. Furthermore, liability may be assigned to the legal person, notwithstanding that the natural person, who actually perpetrated the offence, is not convicted or even identified. Finally, liability of legal persons does not exclude criminal proceedings against natural persons, who are perpetrators, instigators or accessories to corruption-related offences.
47. Civil liability of legal persons for corruption-related offences is provided for in the recently introduced Article 1051A of the Civil Code. This Article provides for civil remedies in cases of

---

<sup>18</sup> “Where the person found guilty of an offence (under this title) 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 of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (*multa*) of not less than 500 liri (€1,150) and not more than 500,000 liri (€1,150,000)”.

corruption, thus victims of corruption can sue either a legal person or a natural person for civil damages.

### Sanctions

48. According to Article 121D of the CC, a legal person found guilty of a corruption-related offence shall be liable to the payment of a fine of not less than 500 liri (€1,150) and not more than 500,000 liri (€1,150,000). Moreover, pursuant to Article 23B of the CC, and in addition to the aforementioned sanctions, the competent 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.
49. There are measures in place to ensure the effective application of sanctions and to prevent both legal and natural persons from evading penalties, when institutional changes within the legal person occur. According to the Companies Act, when a company is in dissolution, the liquidator is required to wind up the affairs of the company (subject to availability of funds), including the paying of fines imposed on the company by a criminal court, prior to the company to be struck off. Injunctions to prevent a company from going into liquidation, to circumvent criminal liability and to render the application of sanctions effective, are also possible. Additionally, based on certain court jurisprudence, there are some safeguards on lifting the veil of company management and ownership in some instances, where a corporate form is being used to bypass legal obligations, to commit fraud, etc. Finally, according to the Companies Act, the Registrar of Companies has the right to appoint investigators to investigate companies who may seize books and records, investigate beneficial ownership, trace bank records etc.
50. Records of companies found liable for acts of corruption are kept not only by the Police (the Economic Crimes/Anti-Money Laundering Unit) but also by the Registrar of Companies, Malta's Financial Services Authority (MFSA) and the Financial Intelligence Unit, to the extent that it becomes aware of such activity in the course of its functions. The GET was informed that, in practice, there is permanent co-operation between the MFSA, the Registrar of Companies and the Police, concerning the exchange of information related to convicted legal persons for corruption offences.

### Tax deductibility and tax authorities

51. Deductibility of facilitation payments, although not explicitly provided, is prohibited and this includes payments made to obtain or retain business or other improper advantage. Although there is no legal obligation imposed on tax authorities to report any suspicion of corruption (or money laundering), in practice, tax authorities (the Inland Revenue Department – IRD) are becoming more involved in facilitating relevant data – as reported by the Maltese authorities, otherwise covered by professional secrecy, when requested by the Maltese Financial Intelligence and Analysis Unit (FIAU) or the competent courts investigating criminal offences (Articles 257 of the CC and 6B of the Professional Secrecy Act). During the visit, the GET was told that the Prime Minister may enable the Tax authorities to provide the police, prosecutor or court with required information for the purpose of corruption and money laundering investigation and judgment.

### Accounting rules

52. Traders are obliged to keep proper accounting records. The Companies Act of 1995 establishes the obligation to keep accounting records for a period of at least ten years and failure to do so is sanctioned with a maximum fine amounting to 5,000 liri (€11,500). Different time periods for



accounting purposes may apply, according to other legislative texts. Pursuant to Article 121B of the CC, the intentional use of invoices or any other accounting document containing false or incomplete information, as well as the unlawful omission of payment records, are punishable with imprisonment from 3 months to 1 year, without prejudice to any other sanction to which the offender may be liable according to law. Additional provisions are included in the Companies Act for the same type of offences, including criminal liability for failure to keep proper records when a company has been dissolved. The Companies Act provides for cases of personal criminal or civil liability. According to Article 307 of the Companies Act, the destruction or hiding of accounting records or books is punishable and subject to a maximum fine of 100,000 liri (€230,000) and a maximum of 5 years of imprisonment.

### Role of Accountants and Auditors

53. Accountants and auditors have no duty to report suspicions of corruption to the law enforcement authorities, except in the case of money laundering offences. However, as previously mentioned, the professional secrecy clause may be lifted when requested by the competent courts investigating criminal offences (Articles 257 of the CC and 6B of the Professional Secrecy Act). Furthermore, the Joint Anti-Money Laundering Committee has been developing significant proposals to encourage reporting of suspicions arising from potential money laundering offences.

#### **b. Analysis**

54. The existing legal framework for the legal persons described above seems to work in a satisfactory manner. Registration of commercial partnerships in the Registrar of Companies, as well as the publication of such registration, is mandatory and constitutes a pre-condition for acquiring legal capacity. Co-operative societies are registered by the Co-operatives Board, established to supervise their activities. All information delivered by the companies under the Companies Act, is available to the public, *inter alia*, via the Internet. The GET was informed by the Institute of Financial Service Practitioners (IFSP) that although the registration of a company is limited to formally checking that all relevant information is submitted by the applicant company, a number of requests by foreign applicant companies are declined every year by the competent authority, i.e. Malta's Financial Services Authority (MFSA), in particular, in the light of information concerning their criminal record or suspicions concerning their commercial activities. Furthermore, the GET was told that a registry record with names of all companies operating in Malta is kept by the Registrar of Companies and the MFSA, while another record of legal entities found guilty of criminal offences is kept by the Police. The latter is in close co-operation with the MFSA, the Income Revenue Department (IRD) and the corresponding foreign law enforcement authorities, whenever deemed necessary. Furthermore, the GET was informed that a registry of convicted persons who have been disqualified is kept by the Police, aiming at ensuring transparency and the protection of *bona fide* third parties.
55. Civil liability of legal persons for corruption-related offences is provided for in the recently introduced Article 1051A of the Civil Code. In 2002, Article 121D of the CC introduced corporate criminal liability for, among others, active bribery, trading in influence, accounting offences and money laundering offences, when committed for the benefit of the legal person by the administrative body or the responsible/authorised person, acting on behalf of the legal person. The GET was informed that, although no case related to civil liability of legal persons in relation to corruption has been finalised, only recently, civil proceedings have been instituted against a legal person for an accounting offence, involving the accountants and the directors of a company. The case is still pending. Concerning criminal liability of legal persons, the GET was informed that, due to its recent introduction, no cases of corruption-related offences involving legal persons

have been completed. Moreover, the GET was told that legal persons, under the appropriate circumstances, can be prosecuted for corruption-related offences, in parallel with the prosecution of natural persons, since officials of legal persons involved in such cases are prosecuted for their individual criminal acts. The GET was also informed that most such cases are related to tax account offences and misappropriations of funds.

56. According to Article 121D of the CC, the only sanction provided for legal persons is a fine from €1,150 to €1,150,000. According to Article 23B of the CC, the competent court may impose forfeiture of the proceeds of the offence or their corresponding value. The GET was told that there is no intention to amend the Criminal Code at present so as to increase the sanctions for corruption-related offences or to establish additional measures or sanctions such as making the legal person ineligible for the awarding of contracts, exclusion from entitlement to public aid, etc. The Maltese authorities might wish to give appropriate consideration to this issue. That said, there are adequate measures in place to ensure the effective application of sanctions when institutional changes within the legal person occur (injunctions, specific process during liquidation, safeguards on lifting the veil of company management and ownership, appointment of investigators by the Registrar of Companies). For any conviction and for any sanctions imposed upon a legal person, both the Registrar of Companies and the Malta's Financial Services Authority (MFSA) are informed. Moreover, the GET was told that due to the fact that corporate criminal liability is a very recent development, the relevant legal regime is under continuous review to detect any adjustments, which may become necessary in the light of experience.
57. Tax officials may report suspicions of corruption to their supervisory authority (the IRD), and the IRD may report such suspicions to the FIU, when there is a money laundering element, and to courts, when requested to do so. Nevertheless, the Tax authorities have no directives and receive no training on the procedures related to reporting suspicions of corruption to the most appropriate bodies, as well as on the indices to detect corruption. Furthermore, the GET understands that the Maltese legislation enables access to material which is likely to be of substantial value to the investigation of corruption. Therefore, the GET reiterates its recommendation on the development of clear rules/guidelines on reporting suspicions of corruption (under paragraph 36). The GET also wishes to stress in this connection, that inspiration could well be drawn from international experience such as reflected in the OECD Bribery Awareness Handbook for Tax Examiners for better detecting corruption and it **recommends the introduction of rules/guidelines and training for the staff of Tax authorities concerning the detection of corruption offences.**
58. Deductibility of facilitation payments, although not explicitly provided for, is prohibited and this includes payments made to obtain or retain business or other improper advantage. The GET was told that there had been no cases where tax deductibility for a bribe had been requested.
59. The GET was informed that all companies, under the provisions of the National Audit Office Act and international accounting and auditing standards, are required to appoint a professional auditor. Moreover, concerning sanctions imposed for the intentional use of invoices or other accounting documents containing false or incomplete information, unlawful omission of payments records and the destruction of such documents, there exist certain relevant provisions in the Criminal Code (Art 121B), the Companies Act (Art 307) and the Prevention of Money Laundering Act (Art 3(1)). In relation to the provisions of these texts, the GET found that there is no adequate homogeneity in the correspondence between the gravity of each offence and the sanction provided. *Therefore the GET observes that due consideration should be given to better harmonising the sanctions, measures and other related issues applicable to account offences.*

60. Accountants and auditors have no duty, explicitly provided by law, to report any suspicion of corruption to the law enforcement authorities, except in the case of money laundering. However, as mentioned above, the professional secrecy clause may be lifted, upon request by the competent courts investigating criminal offences. The GET was told that for the time being, there was no intention to introduce a general obligation to report suspicions of offences to law enforcement authorities, since, in practice, the existing report system established within the legal entities is considered to work in a satisfactory manner. Furthermore, the Joint Anti-Money Laundering Committee has made proposals aimed at encouraging the reporting of suspicions arising from potential money laundering offences. **The GET recommends that existing proposals to encourage the reporting of suspicions of money laundering be accompanied by guidelines and that training be offered to private accountants and auditors on how to identify signs of corruption and to report their findings.**

## **V. CONCLUSIONS**

61. Malta promotes international and co-ordinated actions to prevent and fight corruption, organised crime and money laundering and takes due account of the links between these crimes. It has taken several initiatives to adapt the legal provisions concerning the seizure and forfeiture of proceeds of crime as well as the criminal and civil liability of legal persons with a view to implementing the Criminal Law Convention on Corruption. Minor adaptations are still required. It also adopted, in 1995, a Code of Ethics for Employees of the Public Sector and, subsequently, several other codes of ethics, including for sectors vulnerable to corruption to maintain the existing high ethos of its public officials. That said, the country still lacks a comprehensive anti-corruption strategy and appropriate co-ordination for implementing and monitoring such a strategy in the public sector and in specific areas of law. Further improvements are recommended with respect, for example, to access to official documents, procedures for reporting and processing suspicions of corruption, and abusive migration of public officials to the private sector (pantouflage). Finally, tax authorities, accountants and auditors could also play a more significant role in detecting and reporting corruption.
62. In view of the above, GRECO addresses the following recommendations to Malta:
- i) **that the law be amended to permit, where appropriate, the full use of interim measures and forfeiture in cases of trading in influence and accounting offences as defined in the Criminal Law Convention on Corruption (paragraph 15);**
  - ii) **to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflict of interest (paragraph 35);**
  - iii) **to introduce clear rules/guidelines and training for public officials concerning the reporting of suspicions of corruption and to enhance protection for whistle-blowers who report in good faith (paragraph 36);**
  - iv) **that existing rules on freedom of information be extended, involving in particular, access to official documents, and that the implementation of the rules be properly monitored (paragraph 37);**
  - v) **that assessments be made periodically of the country's anti-corruption measures and their effectiveness within public administration, and that consideration be given to publishing the results of these assessments, together with recommendations to the Government (paragraph 38);**

- vi) **to introduce rules/guidelines and training for the staff of Tax authorities concerning the detection of corruption offences** (paragraph 57);
  - vii) **that existing proposals to encourage the reporting of suspicions of money laundering be accompanied by guidelines and that training be offered to private accountants and auditors on how to identify signs of corruption and to report their findings** (paragraph 60).
63. Moreover, GRECO invites the Maltese authorities to take account of the *observations* (paragraphs 17, 33, 34, and 59) in the analytical part of this report.
64. Finally, pursuant to Rule 30.2 of the Rules of procedure, GRECO invites the Maltese authorities to present a report on the implementation of the above-mentioned recommendations by 31<sup>st</sup> December 2006.