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Second Evaluation Round

Compliance Report on Malta

Adopted by GRECO
at its 33rd Plenary Meeting
(Strasbourg, 29 May-1st June 2007)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on Malta at its 24th Plenary Meeting (1st July 2005). This report (Greco Eval II Rep (2004) 14E) was made public by GRECO, following authorisation by the authorities of Malta, on 23 August 2005.
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 implement the recommendations on 4 May 2007.
3. GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Cyprus and the United Kingdom to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Mr Philippos KOMODROMOS on behalf of Cyprus and Mr Tom BARNES on behalf of the United Kingdom. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of Malta, to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its evaluation report addressed seven recommendations to Malta. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended 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.*
7. The authorities of Malta report that the maximum sanctions concerning trading in influence (Article 121 A of the Criminal Code) and the accounting offences (Article 121B of the Criminal Code) have been increased from one year to one and a half years (Amendments VI. 2007. 2 and 3). As a consequence, the interim measures of investigation orders, attachment orders and freezing orders as well as forfeiture under the Criminal Code are available with respect to these offences, in accordance with Article 23A(1) and 23B(1) of the same Code, which are covered by the notion "relevant offence" (intentional offences liable to the punishment of imprisonment or of detention for a term of more than one year). The amendments came into force on 27 April 2007.
8. GRECO takes note of the information provided and welcomes that Malta has enlarged the scope for using forfeiture and interim measures in respect to all corruption offences, including trading in influence and in respect of accounting offences, in accordance with the recommendation.
9. GRECO concludes that recommendation i has been implemented satisfactorily.

Recommendation ii.

10. *GRECO recommended to introduce clear rules/guidelines for situations where public officials move to the private sector in order to avoid situations of conflict of interest.*

11. The authorities of Malta report three main initiatives aiming at implementing this recommendation: i) a Bill for the enactment of an Act on Public Administration, ii) a Code of Ethics for Board Directors in the Public Sector and iii) a Ministry of Finance Directive.
12. Concerning the first item, the Cabinet of Ministers has agreed on a Bill concerning a Public Administration Act, which was subject to a first reading in Parliament on 27 March 2007 and is due to be published in the Government Gazette in the near future prior to the second reading in Parliament. The Bill is based on a previous draft Public Service Act, which had been published together with a White Paper in 2003 and had been subject to public discussion. The Bill takes into account other legislation which in the meantime has come into force, such as the Financial Administration and Audit Act which empowers the Minister of Finance to issue directives. It also takes into account recent organisational changes and addresses problem areas which have been identified by a working group charged with the task of evaluating public employment and industrial relations. The Bill aims at establishing - for the first time - a comprehensive legal framework for the entire public administration. To the Bill is appended a Code of Ethics for all public employees, including those of Government agencies and entities in which the Government has a controlling interest other than commercial partnerships. Article 5 of the Bill makes it a duty of all public employees to comply with the Code of Ethics, subject to disciplinary sanctions. The Code of Ethics contains a first schedule, including sections on conflicts of interests (Section B) and on the acceptance of gifts or benefits (Section C).
13. Paragraph 23 of the Code of Ethics provides that a public employee shall not accept employment in the private sector if s/he will be placed in a position to make use of "insider information" if such information came to his/her knowledge as a direct result of the public employment. Moreover, the Code provides under the heading "Outside Employment and Termination" that a prior approval of the chairperson or chief executive officer is required before public employees may engage in any form of business or employment outside their official duties (paragraph 26), that in all cases when outside employment is considered, public employees should give their public sector employment first consideration and avoid situations which could give rise to, or the appearance of, a conflict of interest. In particular, they must consider whether the company or organisation concerned is in, or entering into, a contractual relationship with the Government, whether its primary purpose is to lobby Government organisations or members of Parliament, or whether it is in a regulatory relationship with the organisation (paragraph 27) and that former public employees should ensure that they do not accept employment or engage in activities which may cast doubts on their own integrity or that of the organisation in which they were previously employed or of the Public Service generally.
14. The authorities of Malta point out that the term "public employee" is defined as public officers and employees of Government agencies and that such a person shall continue to be regarded as a public employee for three years following retirement, resignation or dismissal from public employment (Article 2 of the Bill).
15. In respect of the second item, the Code of Ethics for Board Directors in the Public Sector, the authorities state that in January 2006, the Financial Management Monitoring Unit within the Ministry of Finance (FMMU) has agreed on a Corporate Governance Framework for Public Sector Entities and a Code of Ethics for Board Directors in the Public Sector. These two documents were drafted following studies of various model codes concerning the public and private sectors, national as well as international, in order to implement best practices in the domestic context.

16. The two documents, which have been submitted to the Cabinet of Ministers for their consideration, address issues relating to conflicts of interest. The Code of Ethics is to be applicable to all Board members of statutory organisations to Government appointed Directors of Boards of limited liability companies in which Government has a shareholding interest, as well as to those persons appointed by Government to the governing bodies of other organisations. In the section entitled "Personal and Professional Behaviour" it is laid down that directors must not take or seek to take improper advantage of any official information gained in the course of their term of office. Moreover, Board Directors should act and behave in the best interest of the organisation irrespective of any outside activities, they should not hold any financial interest, either directly or indirectly; or hold any position of employment, ownership, directorship or partnership in any business or other entity with a material relationship with the public sector organisation, where the director could benefit the other interests through the director's involvement in the same public sector organisation.
17. Thirdly, the authorities report that the FMMU, at the request of the Principal Permanent Secretary, has drafted a directive to be circulated to all public sector entities on the "revolving door issue/parachute clause". This directive requires the inclusion of a specific clause in any new or renewed employment contract signed by a Head of Department or other organisation with employees in managerial or other appropriate professional and technical positions which deal with conflicts of interest in general and which states that employees shall not during a period of twelve months after termination of employment make any representational contacts on behalf of any third party with or establish or seek to establish a business relationship as an employee or consultant or have any business dealings whatsoever with any person, company etc with whom the employee has made contact in the course of or in connection with employment activities.
18. GRECO takes note of the progress reported in respect of the establishment of rules to avoid situations of conflicts of interest in public administration in Malta. There appears to be a holistic approach with a view to establishing a common basis for all categories of public officials and employees. The Bill adopted by the Government aiming at enacting a Public Administration Act as a common instrument for the public sector appears promising. It will define the term "public official" (contrary to the situation at the time of the visit by GRECO) and introduce rules/guidelines aiming at regulating situations where public officials move to the private sector. However, the Bill and the appended Code of Ethics have only been subject to a first reading in Parliament. GRECO takes the view that Malta, with the adoption of the Bill by the Government as well as the other efforts reported, has come a long way in order to comply with GRECO's recommendation in this respect, which does not necessarily require legislation. However, as all these processes are still on-going GRECO cannot at this stage anticipate the final result.
19. GRECO concludes that recommendation ii has been partly implemented.

Recommendation iii.

20. *GRECO recommended 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.*
21. The authorities of Malta report that a National Anti Fraud and Corruption Strategy has been established by the Ministry of Finance's Financial Management Monitoring Unit (FMMU) in cooperation with the Internal Audit and Investigations Directorate (IAID). The Strategy, which was drawn up together with the Corporate Governance Framework for Public Sector Entities and the

Code of Ethics for Board Directors in the Public Sector, is based on four pillars: capacity building, communication, co-operation including international co-operation.

22. The Strategy foresees a continuous professional training programme to address fraud and corruption. More particularly, an Action Plan of the Strategy foresees an initial training programme for all staff within the national authorities involved in the fight against fraud and corruption. The areas addressed in the programme will include legal background, investigation techniques, intelligence, analytical techniques, forensic accounting and information system tools. A training needs analysis has been launched and will be followed by a training programme based on the findings of the analysis. The Action Plan also envisages an analysis of public financial control mechanisms in terms of accountability, transparency and reporting. The strategy includes communication campaigns to public sector employees and to managers and accounting offices in the public sector as well as the creation of communication channels for the gathering of intelligence such as free phones, ICT channels, secure mails etc.
23. The Code of Ethics appended to the Bill on the enactment of a Public Administration Act includes a rule that public officials have a duty to report to a senior employee any unethical behaviour or wrongdoing by any other public employee during the course of his her duties (Article 5 D. 19.)
24. The authorities also report that that Bill, which shall apply to the entire public sector, foresees *inter alia* the Merit Protection Commission to ensure that no employee of a Government agency or entity is victimised for making a report to a superior or to any other relevant authority about breaches of the Code of Ethics or of any other provision of the Act. Moreover, where the Commission finds that an employee has been victimised in a manner that it is unable to prevent or redress, it shall make a report to the Prime Minister or to other relevant authorities to redress the situation in an appropriate manner (Article 34).
25. In addition, the authorities report that the offences and penalties available to the Public Service Commission disciplinary regulations have been adjusted (LN 67/2006) to the effect that the victimisation of a witness or of an officer or person lodging a report or doing his duty under the regulations has been added in paragraph 3.2 (q) as a serious offence which may be sanctioned with dismissal from service. This will cover the entire public service and the public sector.
26. The authorities have also referred to Article 28 of the Employment and Industrial Relations Act (Cap. 452 of the Laws of Malta) according to which it is unlawful to victimise any person for having made a complaint to the lawful authorities or for having initiated or participated in proceedings for redress on grounds of alleged violation of the provisions of the Act, or for having disclosed information, confidential or otherwise, to a designated public regulating body, regarding alleged illegal or corrupt activities being committed by his employer or by persons acting in the employer's name and interests. Any person contravening the provisions of articles 28 is liable on conviction to a fine not exceeding one thousand liri (EUR 2,284) and/or to imprisonment for a period up to six months (Article 32 of Chapter 452). By Legal Notice 524 of 2007, Article 28, was rendered applicable to service within the Government.
27. GRECO takes note of the information provided by the authorities. It is pleased to learn that Malta is in the progress of establishing rules for the reporting of unethical behaviour or wrongdoing, which would clearly cover situations of corruption. Such reporting has been made in the form of an obligation in the Code of Ethics, which is foreseen to form a part of the Public Administration Act, once adopted. GRECO was informed that the reporting obligation to a superior would not

prevent a public employee from reporting illegal activities such as corruption outside the hierarchy of the public administration of the employees, for example, directly to the police.

28. GRECO also notes with satisfaction that whistleblower protection has been enhanced with amendments to the Public Service Commission disciplinary regulations which now may treat the victimisation by a superior of a public official reporting on corruption suspicions as a serious offence which may lead to strong sanctions. Article 28 of the Employment and Industrial Relations Act also makes whistleblower's protection stronger. Moreover, further efforts in this area have been introduced in the Bill concerning a Public Administration Act.
29. GRECO has constantly held that rules/guidelines in respect of reporting suspicions of corruption are not enough and that training of public officials is an important component in this respect. GRECO notes that initial steps to establish training of public officials have been included in the National Anti Fraud and Corruption Strategy. Moreover, a training needs analysis has been included in the Action Plan of the Strategy. GRECO is confident that reporting of unethical or illegal activities, such as corruption will be included in the foreseen training programme and is pleased that Malta will introduce such training on a broad cross-section basis for all relevant public officials.
30. Although some components of this recommendation could be seen as implemented at this moment, Malta has not complied fully with recommendation iii. However, it appears that once the Public Administration Act, including the Code of Ethics, which is still under consideration in Parliament, has been adopted and the recommended training has effectively been introduced, Malta will have a comprehensive reform package of the Public Administration which together with the explanations provided by the Maltese authorities will comply with the present recommendation.
31. GRECO concludes that recommendation iii has been partly implemented.

Recommendation iv.

32. *GRECO recommended 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.*
33. The authorities of Malta report that the Cabinet of Ministers has approved a draft Freedom of Information Act. The preparations of the draft Act was initiated in the 2005 in the pre-budget document *A Better Quality of Life*. In a first round of public discussion, in particular, representatives of the media have been requested to give feed back on the draft Act. The required feedback was received at the end of March 2007 after which a White Paper including the revised Bill is expected to be published in the first half of 2007. After a period allowing for contributions from all other interested parties, the Bill will be published in the Government Gazette for eventual debate in Parliament.
34. The draft Freedom of Information Act is based on the principle that Government information is subject to disclosure unless there is a valid reason, justifiable in terms of specific criteria established by law, to withhold it. The draft Act also provides for an independent mechanism capable of enforcing the law and offering citizens an avenue of appeal against decisions to withhold information.

35. GRECO takes note of the information provided. It welcomes the progress reported in respect of developing a comprehensive legislation on freedom of information. GRECO notes that Malta is among the very few European countries which have not yet such legislation in place. GRECO has constantly stated that openness and transparency are of utmost importance for the fight against corruption and it is therefore pleased that Malta is accelerating this process. At the same time it fully understands that the elaboration of a comprehensive freedom of information legislation, including a review mechanism, involves extensive preparations and debate which requires considerable time.
36. GRECO concludes that recommendation iv has been partly implemented.

Recommendation v.

37. *GRECO recommended 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.*
38. The authorities of Malta state that the National Anti Fraud and Corruption Strategy envisages a policy making mechanism as well as an executive mechanism. The policy making body will be a Co-ordination Committee which would consist of representatives from authorities and entities involved in the combating of fraud and corruption. It will be the task of the Committee to keep under review the relevant legislation, eliminate overlapping and streamline the legal framework. It will also review existing mechanisms to identify needs for better cooperation. It will also identify areas of particular risks of corruption and develop strategies to address them. The strategy will also address public internal control mechanisms in terms of accountability, transparency and reporting and will deal with communication campaigns to the general public, public sector employees, including managers.
39. GRECO takes note of the on-going progress reported. With the adoption of the National Anti Fraud and Corruption Strategy, Malta is in possession of an overall anti-corruption plan and will in the future have a particular body with a broad remit to oversee the functioning of the anti-corruption regime and its efficiency. GRECO considers that although the National Strategy has not yet been fully implemented, the measures reported already comply to a large extent with the measures requested by recommendation v. GRECO encourages Malta to continue its efforts in this respect.
40. GRECO concludes that recommendation v has been dealt with in a satisfactory manner.

Recommendation vi.

41. *GRECO recommended to introduce rules/guidelines and training for the staff of Tax authorities concerning the detection of corruption offences.*
42. The authorities of Malta have reported that training foreseen within the Action Plan of the National Strategy against fraud and corruption includes provision for staff of the tax authorities. This training will cover matters such as legal background, detection, investigation etc. In addition, the authorities report that the Action Plan foresees the development of tailor-made training programmes for the needs of different organisations, including the tax authorities. Moreover, the Office of the Prime Minister (Planning & Priorities Coordination Division) has established a training programme for a "number of stakeholders", including public officials at the treasury

department. The Authorities also refer to the development of a Code of ethics and training for customs officers.

43. GRECO welcomes the training foreseen in the Action Plan – and specifically the provision for tailor-made training programmes – and look forward to this training being undertaken in the near future. GRECO notes, however, that the information provided does not make any reference to the establishment of rules/guidelines for staff at the tax authorities. GRECO urges that such rules /guidelines are introduced without delay.
44. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

45. *GRECO recommended 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.*
46. The authorities of Malta report that statutory audits in Malta are carried out in accordance with International Standards on Auditing (ISA). One of these standards, ISA 250 *Consideration of Laws and Regulations in an Audit of Financial Statements* includes indicators of non-compliance with laws and regulations which could also be used as indicators of possible corruption. As is the case with other International Standards on Auditing, ISA 250 is taught both at University and at the Association of Chartered Certified Accountants (ACCA) courses administered by the Institute.
47. The Malta Institute of Accountants (MIA), which organises Continuous Professional Education (CPE) training on a regular basis on a number of relevant topics and subject areas, including ISA, has issued, in November 2005, a set of Guidance Notes to auditors, external accountants and tax advisors on the prevention of money laundering law and regulations. Corruption is to be treated as one of the predicate offences under the prevention of money laundering legislation. Therefore, auditors, external accountants and tax advisors have also to consider corruption in the light of their obligations under the prevention of money laundering laws and regulations, and the MIA Guidance Notes issued in this regard. This has been further reinforced when Politically Exposed Persons (PEPs), i.e. persons entrusted with prominent public functions, their immediate family members and close associates have been subject to these regulations. The new Regulation (5C) requires auditors, external accountants and tax advisors to establish client acceptance policies that enable them to determine whether the applicant for business is a PEP. The MIA has also issued a briefing note in March 2006 informing members of the recent amendments.
48. The authorities also report that the Institute of Financial Service Practitioners shall be introducing training on money laundering in its educational programme for 2007-2008 in conjunction with the Malta Financial Services Authority. Furthermore, the Institute has set up a Prevention of Money Laundering and Funding of Terrorism Sub-Committee which is responsible for discussing and reviewing guidelines drawn up by its members with the final aim of distributing these same guidelines to its members. These guidelines are still in first draft form to be discussed by the Institute and eventually with the financial intelligence unit (FIU).
49. GRECO takes note of the information provided and concludes that recommendation vii has been dealt with in a satisfactory manner.

III. CONCLUSIONS

50. **In view of the above, GRECO concludes that Malta has implemented satisfactorily or dealt with in a satisfactory manner just under half of the recommendations contained in the Second Round Evaluation Report.** Recommendation i has been implemented satisfactorily and recommendations v and vii have been dealt with in a satisfactory manner. Recommendations ii, iii, iv and vi have been partly implemented.
51. GRECO invites the Head of the Maltese delegation to submit additional information regarding the implementation of recommendations ii, iii, iv and vi by 30 November 2008.
52. Finally, GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of the report.