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Theme I

Third Evaluation Round

Evaluation Report on Malta on Incriminations (ETS 173 and 191, GPC 2)

(Theme I)

Adopted by GRECO
at its 44th Plenary Meeting
(Strasbourg, 6-8 October 2009)

I. INTRODUCTION

1. Malta joined GRECO in 2001. GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 8E) in respect of Malta at its 12th Plenary Meeting (9-13 December 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 14E) at its 24th Plenary Meeting (27 June – 1 July 2005). The aforementioned Evaluation Reports, as well as their corresponding Compliance Reports, are available on GRECO's homepage (<http://www.coe.int/greco>).
2. GRECO's current Third Evaluation Round (launched on 1 January 2007) deals with the following themes:
 - **Theme I – Incriminations:** Articles 1a and 1b, 2-12, 15-17, 19 paragraph 1 of the Criminal Law Convention on Corruption (ETS 173), Articles 1-6 of its Additional Protocol (ETS 191) and Guiding Principle 2 (criminalisation of corruption).
 - **Theme II – Transparency of Party Funding:** Articles 8, 11, 12, 13b, 14 and 16 of Recommendation Rec (2003)4 on Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns, and - more generally - Guiding Principle 15 (financing of political parties and election campaigns).
3. The GRECO Evaluation Team for Theme I (hereafter referred to as the "GET"), which carried out an on-site visit to Malta on 20 and 21 April 2009, was composed of Mr Jaan GINTER, Docent, Faculty of Law, University of Tartu (Estonia) and Mr Paul E. MURPHY, Assistant Principle Officer, Department of Finance (Ireland). The GET was supported by Mr Björn JANSON, Deputy to the Executive Secretary of GRECO. Prior to the visit the GET experts were provided with a comprehensive reply to the Evaluation questionnaire (document Greco Eval III (2009) 2E, Theme I), as well as copies of relevant legislation.
4. The GET met with representatives of the following public officials and institutions: the Attorney General, the Chief Justice, the Economic Crime Unit of the Police Force, the Permanent Commission against Corruption and academics of the Faculty of Law of the University of Malta.
5. The present report on Theme I of GRECO's 3rd Evaluation Round – "Incriminations" – was prepared on the basis of the replies to the questionnaire and information provided during the on-site visit. The main objective of the report is to evaluate the measures adopted by the Maltese authorities in order to comply with the requirements deriving from the provisions indicated in paragraph 2. The report contains a description of the situation, followed by a critical analysis. The conclusions include a number of recommendations adopted by GRECO and addressed to Malta in order to improve its level of compliance with the provisions under consideration.
6. The report on Theme II – "Transparency of party funding", is set out in Greco Eval III Rep (2009) 2E, Theme II.

II. INCRIMINATIONS

Description of the situation

7. Malta ratified the Criminal Law Convention on Corruption (ETS 173) on 15 May 2003 and the Convention entered into force in respect of Malta on 1 September 2003. Malta has made no reservation in respect of this Convention. Malta has signed, on 15 May 2003, but not ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).

8. Any reference to the Criminal Code (CC) in this Report means Chapter 9 of the Laws of Malta (the Criminal Code of Malta).

Bribery of domestic public officials (Articles 1-3 and 19.1 of ETS 173)

9. Passive bribery of public domestic officials is established under Article 115 CC, which reads as follows:

“Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

(a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;

(b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;

(c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.”

10. Active bribery of public domestic officials is established under Article 120 (1) CC, which makes reference to passive bribery and reads:

“(1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years.

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years.”

11. As regards the punishment of accomplices, i.e. the person(s) committing the active bribery, reference is to be made to Article 43 CC, which establishes that an accomplice is liable to the same punishment as the principal as a main rule: *“Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.”*

Elements/concepts of the offence

“Domestic public official”

12. The term “public official” under Maltese Law is to be understood by reference to the terms of “public officer” and “public servant”. In this respect, Article 92 CC gives an inclusive list of who is considered a public officer: *“The general expression ‘public officer’ includes not only the constituted authorities, civil and military, but also all such persons that 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.”*. It was explained to the GET that the term public officer would comprise persons entrusted with public functions based on the pertinent law creating the office in question. Other persons of the public sector, who do not by their own authority but through the authority of a public officer, carry out acts pertaining to the public officer or assist the public officer in the execution of his/her functions, cannot, on account of this, be considered as public officers. Such subordinate employees who are not vested by law with any authority, fall within the category of persons charged with a public service. The definition given of the terms public officer and public servant includes official, public officer, mayor, minister or a judge. As regards prosecutors, these are either members of the police force, in the rank of inspectors, or advocates employed on a full time basis with the Office of the Attorney General. Thus, by virtue of their employment, they are also covered by the notion of public officer.

“Promising, offering or giving” (active bribery)

13. Article 120 CC (active bribery) mirrors the content of Article 115 CC (passive bribery), wherein it is stated *“accepts [...] any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage”* and renders the provisions of passive bribery applicable also to active bribery.

“Request or receipt, acceptance of an offer or promise” (passive bribery)

14. The above elements are found in Article 115, which contains the words *“requests, receives or accepts [...] any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage”*.

“Undue advantage”

15. Article 115 CC, which is mirrored in Article 120 CC, covers *“any reward in money or other valuable consideration or of any other advantage [...] to which he is not entitled”*. The GET was informed that the advantage comprises material as well as immaterial advantages. The “undue” element is found in the words “to which he is not entitled” in Article 115 CC. The Criminal Code does not set any restriction on the amount or type of benefit. This interpretation was confirmed by the Courts of Justice in the case *Police vs Carmelo Sant* (dated 11th December 1997).

“Directly or indirectly”

16. The Criminal law does not make any express or formal distinction between the terms directly or indirectly in connection with the offer made which, according to the authorities, implies that any offer made, under whatever circumstances and whether it is made directly or indirectly, is enough to satisfy this provision. The authorities have added that – in any event – the provisions on accomplices (Article 42 CC etc.) would also be applicable for situations of indirect bribery.

“For himself or herself or for anyone else”

17. “For himself or herself or for anyone else” is reflected in the wording *“for himself or for any other person”* in respect of passive bribery (Article 115 CC).

“To act or refrain from acting in the exercise of his or her functions”

18. The above elements are divided in two separate sub-articles under Article 115 CC. The reason for such a distinction lies in the sanctions connected to the offence (see below). The punishment for refraining from exercising one’s functions, as comprised under Article 115 (b), may lead to a more severe sanction than acting in the exercise of one’s functions, as is covered by Article 115(a) CC. Both these provisions address the situation where the officer is induced to do, or to refrain from doing, what s/he is duty bound to do.
19. Article 115(c), on the other hand, contemplates a different sanction in cases where - besides from accepting the offer - the officer actually fails to do his/her duty.
20. It must be noted that Article 120 of the Criminal Code renders the above elements and concepts applicable also in respect of active bribery.

“Committed intentionally”

21. As a rule, it is only the material conduct which is defined in the law. But the element of criminal intent is always deemed to be implied and required in the case of every criminal offence. Wilful intent is deemed to be the intent required for every criminal offence unless the definition of the offence specifically lays down that negligence would be sufficient for criminal liability. Since none of the bribery offences specify negligence as the required *mens rea* for the offence, wilful criminal intent is required.

Sanctions

22. Imprisonment is the only criminal sanction foreseen in the Criminal Code provided for in respect of bribery of public officials and it cannot be combined with a fine. However, the severity varies according to the nature and type of the offence as well as to its effects. The various sanctions are contained in the provisions relating to the passive side of the offence according to the following:
- a. where the public official is induced to measures within his/her formal duty: 6 months to 3 years (Art. 115 (a) CC);
 - b. where the public official is induced to measures which deviate from his/her duty: 9 months to 5 years (Art. 115(b) CC);
 - c. where the public official effectively fails to do his duty: 1 year to 8 years (Art. 115(c) CC).
23. The offender committing active bribery is, according to Article 120 CC (1), considered an accomplice. Article 43 CC, establishes that an accomplice is liable to the same punishment as the principal as a main rule (*“Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal”*). However, cases where the public official does not accept the bribe, i.e. attempt to active bribery, may only lead to imprisonment of 6 months to 3 years (Art. 120(2)).
24. In addition, there are special higher sanctions provided for the particular situation where an official (typically a judge) accepts a bribe for sentencing a defendant. Where the measure of the

bribed person (the judge) consists in sentencing a defendant or accused, then the judge will be subject to a sanction of imprisonment from 18 months to 10 years, or if the punishment is higher than imprisonment for 10 years, the judge will be awarded that same higher punishment (Art. 116 CC).

25. Article 117 CC provides for the opposite situation, i.e. when the action by the official (typically a judge) in return for the bribe consists in the discharge of a defendant or accused, the term for imprisonment shall be as follows:
 - a. where the discharge is for an offence liable to imprisonment for a term higher than 2 years: 18 months to 5 years (Art. 117(a));
 - b. where the discharge is for an offence liable to imprisonment for a term lower than 2 years but is not a contravention: 9 months to 3 years (Art. 117(b));
 - c. where the discharge is in respect to a contravention: 4 months to 12 months (Art. 117(c)).
26. In addition to imprisonment, a person convicted for active/passive bribery, is also liable to “perpetual general interdiction” in cases where the punishment exceeds two years’ imprisonment; or temporary general interdiction where the imprisonment does not exceed the period of two years (Art. 119 CC). Article 10(2) CC specifies that the punishment of general interdiction disqualifies a person from holding any public office or employment with the public sector generally. It should also be noted that Article 10(4) and (5) CC stipulate the periods applicable in respect to perpetual interdiction or temporary interdiction. Article 10(4) CC stipulates that interdiction may be for life (therefore perpetual) or for a time to be stated (temporary). Where the interdiction is temporary, it shall be applicable for a period of 5 years, unless the law specifically prescribes a longer period. Concerning the bribery offences no provision specifies such longer periods.

Case law

27. The Court of Criminal Appeal (inferior jurisdiction), in the case *Police vs Lawrence sive Lorry Cuschieri et* (1986) had the opportunity to examine in detail the elements of the offence of bribery of public officials, both in its active and passive forms. Summarily, this case concerns the transfer of Lm 50,000 (Eur 116,468) from a group of building developers to a public official who was in charge of determining building schemes and consequently paving the way for another department to issue building permits. The zone in question was on the outer border of a building scheme and the developers wanted their land to be included in the scheme. The Court held that it appears that in order for the offence of complicity in bribery to subsist, the following elements must exist: a public officer or servant who receives or requests a reward or advantage in connection with his/her office or employment to which s/he is not entitled. Once these elements are established the person who delivered the advantage or entered into a promise for such advantage is guilty as an accomplice, since such a person would have instigated or strengthened the will to commit the offence. The first element is relative to the capacity or office of the person accepting the advantage. The law expressly requires that the person is a public official or a public servant and this excludes altogether any person who does not have such capacity. In this particular case, a difficulty arose as to whether the person accepting the bribe was to be considered a public officer since he was employed by a para-state company (the Malta Drydocks) and seconded to the Government Office. The Court held that this person was covered by the bribery provision as the Malta Drydocks was a body established by law and that his functions related to the public office. Therefore, the Court held that notwithstanding that the person in this case, was employed by a distinct legal body, he still satisfied the elements required for the offence of bribery of a public official or servant. Three persons were sentenced in this case to 3, 7 and 9 months of imprisonment, respectively.

28. As regards active bribery, the Court of Magistrates, in the case *Police vs Leonard Cachia* (15 December 2008), held that at the moment a person accepts to bribe the public officer s/he renders himself/herself guilty as an accomplice under Article 120 of the Criminal Code and therefore, by analogy, becomes guilty of the offence of active bribery. In this particular case, the offender was involved in organising illegal lotto and gambling and therefore accepted to pay a senior police officer with the aim of avoiding inspections by the police over the premises where he was carrying out these illegal activities. He was sentenced to imprisonment, for 18 months together with a fine (*multa*) of Eur 2,500.
29. In the case, *Police vs Carmelo Sant* (11 December 1997), the Court of Criminal Appeal held that “the offer of money, no matter how small such offer is, always carries with it the potentiality for corruption, as long as such an offer has been made seriously and with the intention of being accepted by the other party. In fact, this offence is committed as soon as the public officer accepts the offer made, independently from the fact that the officer does or omits to do what was in his duty to do.” The offender was sentenced to two years and eight months of imprisonment. In a separate case, *Police vs Paolo Pace* (17 May 2005), the Court of Criminal Appeal held that “court referees” are court officials and therefore covered by the bribery provision as public officials.
30. As regards the sanctions that are to be applied in bribery cases, the criminal Court stated in the case *Republic of Malta vs Dr. Patrick Vella LL.D* (13 March 2007) that the higher the position [of the public official], the more responsibility and the more influence a person guilty of bribery has, the more dangerous his actions are and therefore the more grievous should the punishment be.”

Bribery of members of domestic public assemblies (Article 4 of ETS 173)

31. Article 118 CC establishes the offence of passive bribery of members of the House of Representatives, which is the only national domestic public assembly in Malta. Article 118 CC reads: “*Any member of the House of Representatives who requests, receives or accepts, for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage given or made with the object of influencing him in his conduct as a member of the House shall, on conviction, be liable to imprisonment for a term from one year to eight years*”.
32. Passive bribery of members, officers or servants of local councils are specifically covered by Article 121(4)(e) CC, on the same premises as in respect of passive bribery of domestic public officials as there is a reference in this Article to Article 115 CC.
33. It should be noted that unlike Article 115 (passive bribery of domestic public officials), Article 118 does not require that the bribee (parliamentarian) was not entitled to the advantage. The decisive element in this respect is not whether the Member of the House of Representatives was entitled or not to the reward offered but whether the reward was intended to influence the Member in his conduct as a Member of the House.
34. The offence of active bribery, both in relation to members of the House of Representatives and local councils is established by virtue of Article 120, above, which makes the briber an accomplice.
35. As regards sanctions, the Criminal Code does not differentiate between active bribery and passive bribery of a member of the House of Representatives. Any member who requests, accepts or receives (thus passive bribery) a bribe is liable to imprisonment for a term of 1 year to

8 years. The same punishment is applicable to any person who actively bribes the member of the House of Representatives. However, it should be noted that Article 118(3) stipulates that where a Member of the House of Representatives does not commit the crime (does not accept the bribe), then the person offering the bribe is liable to imprisonment for a term of 6 months to 4 years (Article 120 (3) CC).

36. All other elements/concepts, including the penal sanctions in respect of bribery of members of local councils, described under bribery of domestic public officials (above) are equally applicable in respect of these offences.
37. The authorities informed the GET that there were no statistics or specific case law available in respect of these offences.

Bribery of foreign public officials (Article 5 of ETS 173)

38. *Active and passive bribery of foreign public officials* are criminal offences under the Criminal Code in the same manner as when such acts are performed by domestic public officials. The relevant provision is contained in Article 121(4)(a) CC, which specifically includes “*a public officer or servant of any foreign State*” as the persons who may be liable to this offence. Furthermore, Article 121(4) also stipulates that the provisions concerning active bribery contained in Articles 115, 116, 117 and 120 of the Criminal Code are applicable to bribery of foreign public officials.
39. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of foreign public officials.
40. The authorities informed the GET that there were no statistics or specific case law available in respect of these offences.

Bribery of members of foreign public assemblies (Article 6 of ETS 173)

41. *Active and passive bribery of members of foreign public assemblies* are criminal offences under Article 121(4)(a) CC, which includes “*any member of a domestic assembly of any foreign State which exercises legislative or administrative powers*” in its application and makes reference to active and passive bribery as provided for in Articles 115-117 and 120 CC.
42. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of members of foreign public assemblies. The authorities stress that Article 121(4)(a) CC is very wide in its application and that it would include any member of a domestic assembly of a foreign state which exercises legislative or administrative powers.
43. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery in the private sector (Articles 7 and 8 of ETS 173)

44. *Active and passive bribery in the private sector* are criminal offences under Maltese law. Article 121(3) CC, which renders the provisions relating to passive bribery of domestic public officials contained in Article 115 CC applicable also to passive bribery in the private sector under certain conditions, reads:

“The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression "breach of duty" includes 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 within the business in question.”

45. Active bribery in the private sector is covered by the provisions contained in Article 120(1) CC, which makes reference to the provisions concerning active bribery applicable to the private sector according to the following: *“In the cases referred to in articles 115, 116, 117 and 118 [...] or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice”.*

Elements/concepts of the offence

“Persons who direct or work for, in any capacity, private sector entities

46. The wording *“...any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector...”* are expressly provided in Article 121 (3) CC.

“In the course of business activity”; “...in breach of duties”

47. Both these elements are components of this offence: *“In the course of business activity”* is explicitly provided for in Article 121 (3) CC. The expression “breach of duty” is contained in the same Article and is furthermore explained in the second paragraph of Article 121(3) to include 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 within the business in question. Moreover, Maltese law extends the scope of private sector bribery by also including persons working for other natural persons, i.e. the offence is not limited to corporate entities (such as companies).

Other elements

48. All other elements/concepts, including the penal sanctions, described under bribery of domestic public officials (above) are equally applicable in respect of this offence.
49. Furthermore, Article 121D CC stipulates that where a person is found guilty of an offence relating to, *inter alia*, private sector bribery and such a person is the director, manager, secretary or other principal officer of a body corporate or has the power to represent, take decisions or bind the body corporate, and the offence was committed for the benefit of that same body corporate, then such a person is deemed to be vested with the legal representation of that body corporate and is thus liable to an extensive fine (*multa*) of between EUR 1,165 and 1,164,687 approx.
50. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of officials of international organisations (Article 9 of ETS 173)

51. *Active and passive bribery of officials of international organisations*, are criminalised under Article 121(4)(b) CC, which makes the provisions of public sector bribery (Articles 115 and 120 CC) applicable also in respect of “*any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee*”.
52. All other elements/concepts of the offence, including the penal sanctions (the latter through a reference in Article 121(4)(g)(i) CC to Articles 115 and 120CC), described under bribery of domestic public officials (above) are equally applicable in respect of bribery of officials of international organisations.
53. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of members of international parliamentary assemblies (Article 10 of ETS 173)

54. *Active and passive bribery of members of international parliamentary assemblies* are covered by virtue of Articles 121(4) (c) and 121(ii) CC, which makes the provisions of passive bribery of a member of the House of Representatives (Article 118 CC) as well as the active side of the offence (Article 120) applicable also in respect of “*any member of a parliamentary assembly of any international or supranational organization*” (Article 121(4) (c) CC).
55. All other elements/concepts of the offence, including the penal sanctions, described under bribery of a member of the House of Representatives (above) are equally applicable in respect of bribery of officials of international parliamentary assemblies.
56. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of judges and officials of international courts (Article 11 of ETS 173)

57. *Active and passive bribery of judges and officials of international courts* are criminal offences according to Article 121(4)(d) CC which renders the provisions on active and passive bribery in the public sector (Articles 115, 116, 117 and Article 120) applicable to “*any holder of judicial office or any official of any international court*”. The authorities added that the provisions would apply to international courts, the jurisdiction of which is accepted by Malta.
58. All other elements/concepts of the offence and the penal sanctions, including those relating to domestic judges described under bribery of domestic public officials (above) are equally applicable in respect of bribery of judges and officials of international courts.
59. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Trading in influence (Article 12 of ETS 173)

60. *Active and passive trading in influence* is criminalised under Article 121A CC, which reads:

“(1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this sub-title, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three months to eighteen months” (active trading in influence).

(2) Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in subarticle (1) shall on conviction be liable to the punishment laid down in that subarticle. (passive trading in influence).

(3) The offences referred to in subarticles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.”

Elements of the offence

61. The elements of the offence as required by Article 12 of the Criminal Law Convention (ETS 173) are literally transposed into domestic legislation Article 121A(1) and (2) CC. Furthermore, Article 121A(3) CC stipulates that both active and passive trading in influence is fulfilled independently of whether the activity is exerted or not or whether it leads to the intended result or not.

62. The sanction established for trading in influence (active and passive) is imprisonment for a term of 3 to 18 months.

Case law

63. In its judgment on the preliminary pleas raised by the defendant on the Bill of Indictment, in the case *Repubblika ta' Malta vs Noel Arrigo* (13 July 2006), the Criminal Court examined the elements of the offence of trading in influence. This case concerned an allegation of bribery and trading in influence against two judges. The Criminal Court of Appeal (Superior) is presided over by three judges and one of the three judges in this particular case had been approached by the accused and offered a sum of money with the purpose of reducing the prison sentence decided by the lower court. The judge allegedly accepted this offer and also accepted to exercise his influence on a second judge, in order to secure that a majority of the three judges would ensure that the sentence be lowered. In this case, the Court held:- *“From an examination of the new Article 121A it results that there are two separate offences. The first offence is that contemplated under sub-article (1) is that of having a person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles. This is the case where A is the active subject, who is promising, offering or giving B any undue advantage so as to influence the way C decides, whether such undue advantage is for C or for any other person D. Sub-article (2), on the other hand, creates the offence with respect to those who receive or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in subarticle (1). In this case, the active subject A who is receiving or accepting from*

B any undue advantage either for himself or for another person, so as to exercise undue influence on C. Sub-article (3) stipulates that the offences under sub-articles (1) and (2) exist irrespective of whether the alleged capacity of unduly influencing a person existed or not; whether the influence was exercised or not or whether the influence exercised brought the intended results or not. Therefore it is clear that for the offence stipulated by Article 121A (2) to exist, there must be the active subject A, who accepted or received the undue advantage so as to exercise his influence on the decisions taken by C, a third party, and not simply of accepting an advantage to influence himself". The above legal consideration was just one from a number of preliminary pleas raised by the defendant but which do not concern this evaluation. The Court rejected all pleas raised and ordered the continuation of the trial. The case was pending before the Court at the time of the adoption of this report.

64. The authorities informed the GET of a large number of recent judgments where the offenders had been convicted of trading in influence. *These cases relate to an investigation carried out by the Police after it was discovered that somebody inside the Malta Maritime Authority (MMA) was issuing navigation licenses to persons who had not undergone the obligatory course or sat for the tests. It was discovered that the Head of the Small Ship Registry and one of his clerks were involved in the issuing of more than 400 such licenses for which they received a bribe. As a result, the Police charged the two persons responsible for the issuing of the bogus licenses with corruption offences and all of those persons who had used influence to obtain their licenses without being through the course or the tests. The case against the two MMA officers is still underway but most of those persons who illegally obtained their navigation license have been found guilty of the offences they have been charged with and the Court sentenced them to a one year prison sentence suspended for two years, a fine of Lm500 (€1,164.00) and the suspension of their navigation licenses. A number of these cases are still pending as the accused are awaiting a ruling from the Court of Appeal regarding their plea that the charges are time barred.*

Bribery of domestic arbitrators (Article 1, sections 1 and 2 and Articles 2 and 3 of ETS 191)

65. *Active and passive bribery of domestic arbitrators* are not criminalised as such under Maltese criminal law. (Malta signed the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) in 2003, but has not yet ratified this instrument.

Bribery of foreign arbitrators (Article 4 of ETS 191)

66. *Active and passive bribery of foreign arbitrators* are not criminalised as such under Maltese criminal law. Malta signed the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) in 2003, but has not yet ratified this instrument.

Bribery of domestic jurors (Article 1, section 3 and Article 5 of ETS 191)

67. Notwithstanding the fact that Malta has only signed and not yet ratified the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191), *active and passive bribery of domestic jurors* are criminal offences under Article 121(2) CC which reads: "*Articles 115 to 117, article 119 and article 120(1) and (2) shall apply to and in relation to jurors as they apply to or in relation to a public officer or servant referred to in article 115*".
68. The concept of "juror" is used generically; although Maltese Law does not define the term "juror", the Criminal Code regulates the functions and appointment of jurors. Jurors, under the Maltese legal system are only used in criminal proceedings.

69. All other elements/concepts of the offence, described under bribery of domestic public officials (above) are equally applicable in respect of bribery of domestic jurors.
70. The different sanctions applicable to domestic public officials and judges (including jurors) as described above are equally applicable in respect of active and passive bribery of domestic jurors.
71. The authorities informed the GET that there were no statistics or specific case law available in respect of this offence.

Bribery of foreign jurors (Article 6 of ETS 191)

72. *Active and passive bribery of foreign jurors* are not criminalised as such under Maltese criminal law. Malta has signed the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) in 2003, but has not yet ratified this instrument.

Other questions

Participatory acts (Article 15 of ETS 173)

73. Article 15 of the Criminal Law Convention is transposed into the Criminal Code, through Article 42(d) CC, which contains the general provisions on participation in criminal offences (aiding and abetting), applicable in respect of any offence, including the above-mentioned corruption offences: *“A person shall be deemed to be an accomplice in a crime if he [...] in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed”*.
74. As a main rule, an accomplice in a crime shall be liable to the punishment established for the principal, according to Article 43 CC.

Jurisdiction (Article 17 ETS 173)

75. Malta has made no reservation in respect of Article 17 of the Criminal Law Convention. Offences committed “in the whole” of the territory of Malta fall within the jurisdiction of the Maltese criminal courts. This principle is enunciated by Article 5(1) CC: *“(1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta (a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;”*
76. Offences committed “in part” of the territory of Malta also fall within the jurisdiction of Maltese courts according to Article 121C CC which reads: *“Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:(a) only part of the action giving execution to the offence took place in Malta”*.
77. Moreover, Article 121C (b) CC stipulates that, without prejudice to the provisions of Article 5 CC (above), the Maltese courts shall also have jurisdiction over the offences of active/passive bribery and active/passive trading in influence offences where: *(b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council”*. Although the above provision does not directly include active/passive bribery of domestic jurors, this instance is covered by the blanket jurisdiction established under Article 5(1) CC.

78. Article 121C (c) CC provides that Maltese courts also have jurisdiction where the offence involves a public officer or servant of Malta or a member of the House of Representatives or of a Local Council.
79. Finally, Article 121C(d) CC, establishes jurisdiction over offences that involve: i. *officials of international or supranational organisations or bodies (as covered by Article 121(4)(b) CC; and ii. members of parliamentary assemblies of international or supranational organisations (as covered by Article 121(4)(c) CC and holders of a judicial office or any official of any international court (as covered by Article 121(4)(d) CC who are, at the same time, citizens or permanent residents of Malta.*

Statute of limitations

80. The Statute of limitation for offences is regulated under the general provisions of “prescription” in the Criminal Code. Prescription has the effect of extinguishing the action which may be brought in Court by the prosecution in respect to any crime or contravention committed by an offender. Article 690 CC stipulates that the prescriptive period shall be reckoned according to the ordinary calendar and Article 692 stipulates that the period of prescription with respect to any crime does not start running if the offender is unknown. The commencement of the period of prescription depends on the type of offence concerned. This period starts from the day on which the offence was completed in respect of an instantaneous offence, from the day on which the last act of execution was committed in respect of an attempted offence, from the day on which the last violation took place in respect of a continuous offence and from the day on which the continuance ceased in respect of such an offence.
81. The period of prescription may also be interrupted by any act of the proceedings served on the person charged or by the warrant of arrest or summons issued in the name of the person(s) charged even though such person(s) may, in fact, be absent from Malta. Where the prescriptive period has been interrupted, the full period shall commence afresh from the day of interruption (Article 693 CC).
82. Article 687(2) CC stipulates that the period of prescription is suspended from the moment a charge, or bill of indictment, is served upon the accused until a final and definitive judgment is pronounced. The prescriptive period is also suspended in cases where the criminal action cannot be instituted or proceeded without a special authorisation or where the criminal proceedings are pending the determination of any issue upon separate proceedings. In such instances, prescription shall continue from the day on which the authorisation is granted or the issue is determined.
83. The institute of prescription exists *erga omnes* and if it is interrupted or suspended vis-à-vis one offender, it is likewise interrupted or suspended for all other co-offenders (if any). Furthermore, the issue relating to prescription may be raised by the Court *ex officio*.
84. The length of the prescription depends on the gravity of the offence, which is normally reflected by the severity of the punishment. All bribery offences in Malta are considered crimes (as opposed to contraventions) and the prescription time varies between 5 to 15 years depending on the offence. As an illustration, active and passive bribery under Article 115(a) CC with the maximal sentence of 3 years of imprisonment, would have a prescription period of 5 years; active and passive bribery under Article 115(b) CC with the maximal sentence of 5 years of imprisonment, would have a prescription period of 10 years; active and passive bribery of public

officials under Article 115(c) CC with the maximal sentence of 8 years of imprisonment, would have a prescription period of 10 years; and active and passive bribery of judges under Article 116(a) CC with the maximal sentence of 10 years of imprisonment, would have a prescription period of 15 years.

85. The interlocutors met during the on-site visit did not refer to any practical difficulties in respect of statute of limitations and the GET was informed that there is no specific case law of relevance in this respect.

Defences

86. There are no special defences in respect of perpetrators of corruption offences under Maltese law.

Legislative amendments

87. Malta signed the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) on the 15th May 2003 but has not yet ratified it. The Government, however, is planning to amend various provisions of the Criminal Code. Discussions on the amendments were at the time of the adoption of this report in a preliminary stage and the authorities could not foresee the time within which legislative amendments would be completed.

Data

88. The tables below demonstrate the number of investigations, prosecutions and persons charged in court in respect of corruption offences for the years 2006 – 2008.

2006

Offence	Charged	Acquitted	Convicted	Sub-Judice
Bribery (Article 115)	10	1	6	3
Trading in influence (Article 121A)	8		4	4
Bribery and Trading in influence (Articles 115 + 121A)	5		3	2
Total 2006	23	1	13	9

2007

Offence	Charged	Acquitted	Convicted	Sub-Judice
Attempted Bribery (Article 115)	2		1	1
Bribery (Article 115)	14		4	10
Trading in influence (Article 121A)	433*	3	400*	30
Bribery and Trading in influence (Articles 115 + 121A)	4			4
Total 2007	453	3	405	45

* Note: this figure reflects two major investigations concluded by the Economic Crimes Unit, within the Malta Police Force, regarding the granting of certificates by officers within the Malta Maritime Authority as well as the granting of licenses by officers within the Malta Transport Authority.

2008

Offence	Charged	Acquitted	Convicted	Sub-Judice
Attempted Bribery (Article 115)				
Bribery (Article 115)	2			2
Trading in influence (Article 121A)	13		6	7
Bribery and Trading in influence (Articles 115 + 121A)				
Total 2008	15	0	6	9

III. ANALYSIS

89. The criminal law in Malta is codified in the continental European tradition through the Criminal Code of Malta, which dates back to the 19th century. The Code has been amended in respect of corruption offences several times and provides a solid basis for the criminalisation of the various corruption offences contained in the Criminal Law Convention on Corruption (ETS 173), which Malta ratified in 2003. However, some offences contained in the Additional Protocol to the Criminal Law Convention (ETS 191), i.e. bribery of domestic and foreign arbitrators and bribery of foreign jurors are not covered by the Criminal Code to date and, as a consequence, the Additional Protocol has not yet been ratified by Malta. The GET was pleased to learn that the process of including these offences into the Criminal Code was planned to take place within one or two years, after which the ratification process of the Additional Protocol was to follow. This process is certainly supported as it is meant to ensure full coverage of the criminal offences contained in the Convention and its Protocol. The GET recommends **to amend the Criminal Code to include the offences of bribery of domestic and foreign arbitrators as well as foreign jurors and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191).**
90. The model provision and point of departure in respect of most bribery offences (including bribery in the private sector) under Maltese law is contained in Article 115 CC where the offence of passive bribery in the public sector is defined. The active bribery offences (including in the private sector) are subsequently mirrored in Article 120 CC which refers to the various requisites of the passive bribery offence. Furthermore the passive bribery offence is to be seen as the “main” offence, while the active briber is regarded as an accomplice under Maltese law. As a consequence, passive and active bribery offenders are subject to the same sanctions as a main rule.
91. In general, the wording of the pertinent legislation, in particular the provisions that have been introduced more recently, such as international bribery offences, private sector bribery and trading in influence, have to a large degree been “transposed” into the Criminal Code from the wording of the Criminal law Convention, thus providing for a high degree of clarity. The various elements of the corruption offences, as described in this report appear to be well covered in the various provisions. For example, the definition of public officials is broad and refers not only to public officers with powers provided for in law, such as ministers, mayors, judges and

prosecutors, but also to subordinate public servants with delegated powers. The GET noted however, that the criminal provisions do not explicitly provide for indirect commission of bribery offences, i.e. bribery committed through intermediaries. The authorities have stated that indirect forms of bribery are covered by the specific provisions and, moreover, that the general provisions on accomplices (Article 42 CC) would apply in any event. The GET accepts this explanation.

92. Unlike many other European countries, Maltese law provides for imprisonment only as the penal sanction of corruption offences and such a sanction cannot be replaced or combined with fines, even if the offence is minor. Furthermore, the sanctions provided for in respect of the various corruption offences are fragmented and sometimes difficult to foresee; the severity of the sanctions is linked to a number of different factors, such as the nature and type of the offence, its effects and the professional status of the person who requests, receives or accepts the bribe. In respect of bribery of domestic public officials, which is the “model offence” to which most other offences make reference, the sanction to be applied depends on the action or inaction taken by the official as a result of a bribe and his/her duties. When the action does not involve a breach of duty (for example, to speed up the ordinary procedure for a bribe), the maximum penalty is 3 years of imprisonment; when the public official is induced to a measure which deviates from the duty (for example, a police officer who clears the road for a bribe), the maximum penalty is 5 years of imprisonment; and where the official fails to do his/her duty (for example, when a police officer does not report an offence as the result of a bribe), the sanction is up to 8 years of imprisonment. This differentiation – unnecessarily complex in the view of the GET – aims at qualifying the seriousness of an offence in respect of the actions taken by the bribed person as a result of the bribe. However, whether this differentiation also has a direct impact on the sanctions in respect of the active bribery offence – which follows from the fact that the active briber is considered an accomplice – is more doubtful to the GET. Another feature of the legislative technique applied in the Criminal Code of references from “specific” to “principle” provisions is, *inter alia*, that the maximum sanction of public sector bribery (Article 115 CC) – 8 years – is the same also in respect of private sector bribery, which clearly follows the intentions of the Criminal Law Convention, but which is not a reality in many other member States. By contrast, the maximum penalty for trading in influence under Maltese law is not more than 18 months of imprisonment. Despite the fact that this offence is extraditable (more than 12 months is required), the GET finds this sanction low in comparison with the maximum sanctions provided for all the other corruption offences in Malta. The GET therefore recommends **to increase the maximum penalty provided for trading in influence (Article 121 A of the Criminal Code) in order to render it effective, proportionate and dissuasive as required by Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).**
93. The GET was also concerned about the additional sanctioning provisions contained in Articles 116 and 117 CC, which deal with the specific situations where officials (typically judges) – in return for a bribe – either sentence somebody to imprisonment (Article 116 CC) or release or discharge an offender (Article 117 CC). The former provision, which is inherited from the past and appears to be closely related to the “*lex talione*” principle, aims at qualifying the sanctions for such officials and to make them reflect the official’s action. Where a judge, in return for a bribe would sentence somebody, the sanction for the bribery offence would be from 18 months to ten years, however, never lower than what the person was wrongfully sentenced to; this could in principle include life imprisonment. Even if the GET has strong doubts about the necessity of such a specific provision in modern Malta, Article 116 CC cannot be said to run counter to Article 19.1 of the Convention concerning effective, proportionate and dissuasive sanctions. In contrast, Article 117 CC regulates the opposite situation where a judge – in return for a bribe – discharges a defendant. In such a situation, this Article provides for more limited sanctions than foreseen for “ordinary” bribery offences of public officials; the sanction would be 2 - 5 years of

imprisonment, unless the discharge concerned a “contravention” (a less serious offence), in which case the sentence would be 4 – 12 months of imprisonment. The GET takes the view that these rules – also inherited from the past – incorrectly convey the message that these specific categories of bribery offences are less serious than other forms of bribery of public officials. The GET is of the firm opinion that situations where judges are bribed in order to violate the paramount principles of justice and the rule of law needs to be considered particularly grave. As a consequence, the limited sanctions against judges as provided for in Article 117 CC are, in the view of the GET, too lenient in comparison with other bribery offences of public officials of the Criminal Code. Moreover, this low maximum punishment may exclude the full use of interim measures and forfeiture in cases of passive bribery. The GET also noted that Article 117 c CC as applied may lead to another contradictory effect, i.e. this offence only provides for imprisonment up to 12 months in respect of the bribe receiver as well as of the briber, who is regarded an accomplice. However, if the official (judge) would refuse the offer of such a bribe, then Article 117 c CC no longer applies, and the active bribery offence becomes punishable – as an attempt – where the sanction foreseen is between 6 months and 3 years’ imprisonment, according to Article 120(2) CC. Consequently, the situation described may lead to a more severe sentence for the unsuccessful briber than for a successful one. The GET understands that this is not the result of an intention of the legislator, but rather an unforeseen consequence of the legislative technique applied. The GET also notes that the special provisions contained in Article 117 CC are inherited from the past and have not been applied recently. However, the rules form part of the current legislation and do not fully comply with the requirements of Article 19.1 of the Criminal Law Convention. The GET therefore recommends **to revise Article 117 of the Criminal Code in order to provide for effective, proportionate and dissuasive penal sanctions for all bribery offences of judges, in accordance with Article 19.1 of the Criminal Law Convention on Corruption (ETS 173).**

94. GRECO concluded already in its First Evaluation Round Report on Malta (Greco Eval I Rep (2002)8), adopted in 2002, that there were only few prosecuted and adjudicated cases of corruption. Since then, the corruption legislation has been amended and ensures to date a rather complete coverage, with the few exceptions mentioned above. Measures to make institutions, such as the Police and the Commission against Corruption more effective have also been taken by the authorities. Officials interviewed during the on-site visit considered the existing criminal laws sufficient and the enforcement framework satisfactory, explaining the limited case law available by the small size of the country. Having said that, Malta was shaken by a corruption scandal in 2002, when the then Chief Justice (the highest judge in Malta) and another judge had accepted bribes for lowering a prison sentence. More recently, there have been a large number of convictions for trading in influence, relating to systemic wrongful issuing of navigation certificates, which was a result of the recent introduction of trading of influence under Maltese law. The GET notes that there have been no convictions regarding private sector bribery. However, it was told that several investigations concerning this offence were under way in 2009. The current situation of few corruption cases adjudicated makes it difficult to assess the effectiveness of the Maltese criminal bribery legislation as applied.

IV. CONCLUSIONS

95. Malta has ratified the Criminal Law Convention on Corruption (ETS 173) without any reservations and all offences covered by that Convention have been incorporated into the Criminal Code. However, the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) has not been ratified and three of the offences contained therein (i.e. bribery of domestic and foreign arbitrators as well as bribery of foreign jurors) are not yet criminalised under Maltese law. The elements of the corruption offences contained in the Criminal Code are to a large extent in compliance with the elements provided for in the Convention. The available penal sanctions are also to a large degree in compliance with the requirements of the Criminal Law Convention, but could well be modified in respect of some particular offences inherited from the past, in order to provide for more uniform sanctions. Moreover, the legislative technique to consider the briber an accomplice rather than an offender in his/her own capacity can be seen as a strength, however, it may sometimes lead to undesired effects on the active side of bribery as shown in this report. Overall, Malta has established a solid legal framework, which – with a few amendments – would appear to be in full compliance with the Criminal Law Convention and its Protocol. It is noteworthy though, that in practice there appears to be a generally low level of investigated/adjudicated corruption cases in Malta and several of the offences provided for in law, including private sector bribery, have never been tried by a court.
96. In view of the above, GRECO addresses the following recommendations to Malta:
- i. **to amend the Criminal Code to include the offences of bribery of domestic and foreign arbitrators as well as foreign jurors and to proceed swiftly with the ratification of the Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) (paragraph 89);**
 - ii. **to increase the maximum penalty provided for trading in influence (Article 121 A of the Criminal Code) in order to render it effective, proportionate and dissuasive as required by Article 19.1 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 92);**
 - iii. **to revise Article 117 of the Criminal Code in order to provide for effective, proportionate and dissuasive penal sanctions for all bribery offences of judges, in accordance with Article 19.1 of the Criminal Law Convention on Corruption (ETS 173) (paragraph 93).**
97. In conformity with 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 30 April 2011
98. GRECO invites the authorities of Malta to authorise, as soon as possible, the publication of this report.

APPENDIX

Relevant Excerpts from the Criminal Code of Malta
Chapter 9 of the Laws of Malta
English

Sub-title IV

OF ABUSE OF PUBLIC AUTHORITY

§ OF UNLAWFUL EXACTION, OF EXTORTION AND OF BRIBERY

Unlawful exaction.
Amended by:
XLIX. 1981.4.

112. Any officer or person employed in any public administration, or any person employed by or under the Government, whether authorized or not to receive moneys or effects, either by way of salary for his own services, or on account of the Government, or of any public establishment, who shall, under colour of his office, exact that which is not allowed by law, or more than is allowed by law, or before it is due according to law, shall, on conviction, be liable to imprisonment for a term from three months to one year.

Extortion.
Amended by:
XLIX. 1981.4.

113. Where the unlawful exaction referred to in the last preceding article, is committed by means of threats or abuse of authority, it shall be deemed to be an extortion, and the offender shall, on conviction, be liable to imprisonment for a term from thirteen months to three years.

Aggravating
circumstances.

114. Where the crimes referred to in the last two preceding articles are accompanied with circumstances which render such crimes liable also to other punishments, the higher punishment shall be applied with an increase of one degree.

Bribery.
Amended by:
XII. 1914.8, 9;
IV.1974.2;
XLIX. 1981.4;
III. 2002.27;
III. 2004.70.

115. Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

- (a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;
- (b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;
- (c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

Where failure of duty consists in passing sentence on defendant or person accused.
Amended by:
XXI. 1971.14;
IV. 1974.3;
XLIX. 1981.4;
X. 2000.11;
III. 2004.71.

116. (1) Where the crime referred to in paragraph (c) of the last preceding article consists in sentencing a defendant or person accused, the punishment shall be imprisonment for a term from eighteen months to ten years:

Provided that in no case shall the punishment be lower than that to which the defendant or person accused has been sentenced.

(2) Where the punishment to which the defendant or person accused is sentenced is higher than the punishment of imprisonment for ten years, such higher punishment shall be applied.

Where failure of duty consists in releasing a person charged or in discharging a defendant or person accused.
Amended by:
IV. 1974.4;
XLIX. 1981.4;
III. 2004.72.

117. Where the crime referred to in article 115(c) consists in the release of a person charged with an offence, or in the discharge of a defendant or person accused, the punishment shall be as follows:

- (a) where the charge, complaint, or indictment be in respect of a crime liable to a punishment higher than that of imprisonment for a term of two years, the punishment shall be imprisonment for a term from eighteen months to five years;
- (b) where it be in respect of an offence liable to a punishment not higher than that of imprisonment for a term of two years, but not falling in the class of contraventions, the punishment shall be imprisonment for a term from nine months to three years;
- (c) where it be in respect of a contravention, the punishment shall be imprisonment for a term from four to twelve months.

Bribery of member of House of Representatives.
Added by:
IV. 1974.5.
Amended by:
XLIX. 1981.4;
XIII. 2002.10;
III. 2004.73.

118. Any member of the House of Representatives who requests, receives or accepts, for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage given or made with the object of influencing him in his conduct as a member of the House shall, on conviction, be liable to imprisonment for a term from one year to eight years.

Cases in which punishment of general interdiction is applied.
Amended by:
XLIX. 1981.4.

119. The punishment of perpetual general interdiction shall be added to the punishments established in the preceding articles of this sub-title when the maximum of such punishments exceeds two years' imprisonment; when the maximum of the said punishments does not exceed two years' imprisonment, then the punishment of temporary general interdiction shall be added.

Punishment for persons bribing public officers or servants.
Added by:
I. 1903.3.
Substituted by:
IV. 1974.6.
Amended by:

120. (1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

XLIX. 1981.4;
III. 2004.74.

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years.

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years.

Embracery and
corruption of other
persons.

Amended by:
VI. 1871.7.
Substituted by:
IV. 1974.7.
Amended by:
III. 2002.28;
XIII. 2002.10;
III. 2004.75.

121. (1) The provisions of this sub-title shall apply to and in relation to any person who is entrusted with or has functions relating to the administration of a statutory or other corporate body having a distinct legal personality, or who is employed with such a body, as they apply to or in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115

(2) Articles 115 to 117, article 119 and article 120(1) and (2) shall apply to and in relation to jurors as they apply to or in relation to a public officer or servant referred to in article 115.

(3) The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression "breach of duty" includes 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 within the business in question.

(4) The provisions of this sub-title shall also apply to any conduct falling within the descriptions set out in the provisions of this sub-title and in which is involved:

- (a) a public officer or servant of any foreign State including any member of a domestic assembly of any foreign State which exercises legislative or administrative powers; or
- (b) any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee;
- (c) any member of a parliamentary assembly of any international or supranational organisation; or

- (d) any holder of judicial office or any official of any international court; or;
- (e) any member, officer or servant of a Local Council; or
- (f) any person mentioned in the preceding paragraphs and the offence was committed outside Malta by a Maltese citizen or by a permanent resident in Malta;

For the purposes of this paragraph, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(d); or

- (g) as the person who committed the offence, any person mentioned in paragraph (b) and the organisation, institution or body in question has its headquarters in Malta:

Provided that:

- (i) where the person involved is any person mentioned in paragraphs (a), (b), (d) or (e) the provisions of articles 115, 116, 117 and 120 shall apply; and
- (ii) where the person involved is any person mentioned in paragraph (c) the provisions of articles 118 and 120 shall apply.

Trading in
influence.
Added by:
III. 2002.29.
Amended by:
VI. 2007.2;
XXXI. 2007.8.

121A. (1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this sub-title, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three months to eighteen months.

(2) Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in subarticle (1) shall on conviction be liable to the punishment laid down in that subarticle.

(3) The offences referred to in subarticles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

Accounting
offences.
Added by:
III. 2002.29.
Amended by:
VI. 2007.3.

121B. Whosoever, with intent to commit, conceal or disguise any offence under the preceding articles of this sub-title, creates or uses an invoice or any other accounting document or record containing false or incomplete information or unlawfully omits to make a record of payment, shall on conviction be liable to the punishment of imprisonment from three months to eighteen months without prejudice to any other punishment to which he may be liable under any other

provision of this Code or of any other law.

Jurisdiction.
Added by:
III. 2002.29.
Amended by:
XIII. 2002.10.

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or
- (c) the offence involves a public officer or servant of Malta or is a member of the House of Representatives or of a Local Council; or
- (d) the offence involves any of those persons to whom reference is made in article 121(4)(b), (c) or (d) and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(d).

Corporate liability
for offences under
this title.
Added by:
III. 2002.29.
Amended by:
L.N. 407 of 2007.

121D. 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 one thousand and one hundred and sixty-four euro and sixty nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

Applicability of
article 248E(4) of
the Code.
Added by:
XXXI. 2007.9.

121E. The provisions of article 248E(4) shall apply mutatis mutandis to any person found guilty of any of the offences under this sub-title.

Title VI

OF PRESCRIPTION

Sentences not
barred by
prescription.
Amended by:
XI. 1900.92;
III. 2002.156.

687. (1) Sentences awarding punishment shall not be barred by prescription notwithstanding the lapse of any time.

(2) The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and, or bill of indictment is served on the person charged or accused until such time as a final and definitive judgment is delivered in the proceedings which commenced as a result of such charge or bill of indictment.

Prescription
barring criminal
actions.
Amended by:

688. Save as otherwise provided by law, criminal action is barred-

- (a) by the lapse of twenty years in respect of crimes liable to the

*XI. 1900.92;
VIII. 1909.62;
XXI. 1971.36;
XLIX. 1981.4.*

punishment of imprisonment for a term of not less than twenty years;

- (b) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;
- (c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;
- (d) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;
- (e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions;
- (f) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions."

Extenuating circumstances and previous conviction not to be taken into account in reckoning period for prescription.
*Amended by:
XI. 1900.92.*

689. For the purposes of prescription, regard shall be had to the punishment to which the offence is ordinarily liable, independently of any excuse or other particular circumstance by reason of which the offence is, according to law, liable to a lesser punishment; nor shall any regard be had to any increase of punishment by reason of any previous conviction.

Reckoning of time according to calendar.
*Amended by:
XI. 1900.92.*

690. In computing the period established for prescription, the months and years shall be reckoned according to the ordinary calendar.

Commencement of prescription.
*Amended by:
XI. 1900.92.*

691. (1) With regard to a completed offence, the period of prescription shall run from the day on which the offence was completed; with regard to an attempted offence, from the day on which the last act of execution was committed; with regard to a continuous offence, from the day on which the last violation took place; and with regard to a continuing offence from the day on which the continuance ceased.

Suspension of prescription.

(2) Where the criminal action cannot be instituted or proceeded with except on a special authorization, or after the determination of any issue upon separate proceedings, the period of prescription shall be suspended, and shall continue from the day on which the authorization is granted or the issue is determined.

Prescription not to run when offender is unknown.
*Amended by:
XI. 1900.92.*

692. The period of prescription in respect of crimes shall not commence to run when the offender is unknown.

Interruption of prescription.
*Amended by:
XI. 1900.92.*

693. (1) The period of prescription is interrupted by any act of the proceedings served on the party charged or accused in respect of the fact with which he is charged.

(2) The period of prescription is also interrupted by the warrant of arrest or, where there are no grounds for the arrest, by the summons, although the warrant of arrest or the summons shall have had no effect on account of the fact that the party charged or accused had absconded or left Malta.

(3) Where the period of prescription has been interrupted, it shall recommence to run from the day of the interruption.

(4) The interruption of prescription shall operate in regard to all persons who took part in the offence, even though the act of interruption takes place against one person only.

Application of
prescription ex
officio.
Amended by:
XI. 1900.92.

694. Prescription shall be applied ex officio, and it shall not be lawful for the party charged or accused to waive prescription.