COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

MONEYVAL(2010)29

Malta

Progress report and written analysis by the Secretariat of Core Recommendations [1]

7 December 2010

[1] Second 3rd Round Written Progress Report Submitted to MONEYVAL

Malta is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 34th Plenary meeting (Strasbourg, 7-10 December 2010). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref. MONEYVAL(2010)39) at http://www.coe.int/moneyval.

© [2010] European Committee on Crime Problems (CDPC)/ Committee of experts on the evaluation of anti-money laundering measures and the financing of terrorism (MONEYVAL)

All rights reserved. Reproduction is authorised, provided the source is acknowledged, save where otherwise stated. For any use for commercial purposes, no part of this publication may be translated, reproduced or transmitted, in any form or by any means, electronic (CD-Rom, Internet, etc) or mechanical, including photocopying, recording or any information storage or retrieval system without prior permission in writing from the MONEYVAL Secretariat, Directorate General of Human Rights and Legal Affairs, Council of Europe (F-67075 Strasbourg or dghl.moneyval@coe.int).

Table of Contents

1. Written analysis of progress made in respect of the FATF Core Recommendations........ 4
1.1. Introduction........ 4
1.2. Detailed review of measures taken by Malta in relation to the Core Recommendations........ 5
1.3. Main conclusions........ 12
2. Information submitted by Malta for the second progress report........ 13
2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field........ 13
2.2. Core Recommendations........ 17
2.3. Other Recommendations........ 29
2.4. Specific Questions........ 40
2.5. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)........ 42
2.6. Statistics........ 47
3. Appendices........ 53
3.1. APPENDIX I - Recommended Action Plan to Improve the AML / CFT System........ 53
3.2. APPENDIX II - Excerpts from relevant EU Directives........ 59
3.3. APPENDIX III - Relevant Maltese legislation........ 60

This is the second 3rd Round written progress report submitted to MONEYVAL by the country. This document includes a written analysis by the MONEYVAL Secretariat of the information provided by Malta on the Core Recommendations (1, 5, 10, 13, SR.II and SR.IV), in accordance with the decision taken at MONEYVAL's 32nd plenary in respect of progress reports.

Malta

Second 3rd Round Written Progress Report Submitted to MONEYVAL

1. Written analysis of progress made in respect of the FATF Core Recommendations

1.1. Introduction

1. The purpose of this paper is to introduce Malta's second progress report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the 3rd round mutual evaluation report (MER) on selected Recommendations.

2. Malta was visited under the third evaluation round from 13 to 18 November 2005 and the mutual evaluation report (MER) was examined and adopted by MONEYVAL at its 24th Plenary meeting (10-14 September 2007). According to the procedures, Malta submitted its first year progress report to the Plenary in December 2008.

3. This paper is based on the Rules of Procedure as revised in March 2010 which require a Secretariat written analysis of progress against the core Recommendations[1]. The full progress report is subject to peer review by the Plenary, assisted by the Rapporteur Country and the Secretariat (Rules 38-40). The procedure requires the Plenary to be satisfied with the information provided and the progress undertaken in order to proceed with the adoption of the progress report, as submitted by the country, and the Secretariat written analysis, with both documents being subject to subsequent publication.

4. Malta has provided the Secretariat and Plenary with a full report on its progress, including supporting material, according to the established progress report template. The Secretariat has drafted the present report to describe and analyse the progress made for each of the core Recommendations.

5. Malta received the following ratings on the core Recommendations:

R.1 – Money laundering offence (LC)
SR.II – Criminalisation of terrorist financing (LC)
R.5 – Customer due diligence (LC)
R.10 – Record Keeping (C)
R.13 – Suspicious transaction reporting (PC)
SR.IV – Suspicious transaction reporting related to terrorism (NC)

6. This paper provides a review and analysis of the measures taken by Malta to address the deficiencies in relation to the core Recommendations (Section II) together with a summary of the main conclusions of this review (Section II). This paper should be read in conjunction with the progress report and annexes submitted by Malta.

[1] The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SR.II and SR.IV.

7. It is important to be noted that the present analysis focuses only on the core Recommendations and thus only a part of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system is assessed. Furthermore, when assessing progress made, effectiveness was taken into account, to the extent possible in a paper based desk review, on the basis of the information and statistics provided by Malta, and as such the assessment made does not confirm full effectiveness.

1.2. Detailed review of measures taken by Malta in relation to the Core Recommendations

A. Main changes since the adoption of the MER

8. Since the adoption of the MER and the First Progress Report, Malta has taken the following measures with a view to addressing the deficiencies identified in respect of the core Recommendations, including:

- drafting new Implementing Procedures to cover identified deficiencies on the preventive side (though they are not yet in force but are expected to be by the end of the year)
- achievement of a number of money laundering convictions, including autonomous convictions
- extension of the power to issue monitoring orders to the investigation of money laundering cases.

9. Malta has also taken additional measures to address deficiencies identified in respect of the key and other Recommendations, as indicated in the progress report, however these fall outside of the scope of the present report and are thus not reflected here.

B. Review of measures taken in relation to the Core Recommendations

Recommendation 1 - Money laundering offence (rated LC in the MER)

10. Deficiency 1 identified in the MER (M*ore emphasis should be placed on securing final convictions in money laundering*). At the time of the 3rd evaluation no final money laundering conviction had been secured since the second evaluation, although, as was noted, "the legal basis to prosecute money laundering is already quite sound". There were then 10 cases before the courts – some of which were autonomous cases. At the time of the 1st progress report the mental element of money laundering had been extended to cover 'suspicion' as well as the pre-existing knowledge standard, which was anticipated to increase the possibility of convictions. In 2007, 1 conviction involving 1 person was achieved. In 2008, there had been convictions in 2 cases (involving 2 persons). Since the 1st progress report the number of final convictions has therefore increased. In 2009, of the 9 cases being prosecuted, 5 cases (involving 5 persons) resulted in convictions, and in 2010, 1 case (involving 1 person) resulted in a conviction. The Maltese authorities advised that, since the 1st progress report, 2 of these convictions were in autonomous money laundering cases where the predicate offences were drug trafficking and conspiracy. Overall the major underlying predicate offences are said to be drug trafficking, fraud and misappropriation, which in fact reflect the reported major domestic proceeds-generating crimes. The Maltese authorities accept, however, that almost all investigations of ML relate to self laundering. They also indicated that a substantial number of the cases involved foreign predicate offences, though precise figures could not be provided.

11. Deficiency 2 identified in the MER *(A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure many laundering convictions).* Article 2(2)(a) of the PMLA is relevant here. The evaluation report noted it 'helpfully and explicitly' provides that a person may be convicted of a money laundering offence under the PMLA even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which may be established on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity. The provision also goes on to say 'and without it being necessary to establish which underlying activity'. These are very useful statutory provisions, which reflect Articles 9(5) and (6) of the Warsaw Convention, which were introduced to assist the prosecutorial effort in ratifying countries. It is important therefore to see how the judiciary have interpreted these statutory provisions in practice. The Maltese authorities drew attention to the 2009 case The Police v Sakienah Binti Mat Lazia Dayang. In that case the defendant was alleged to be a drug courier and part of an international organisation which existed to traffic drugs, based on circumstantial evidence. She was charged with being part of a criminal organisation, conspiracy and money laundering (taking proceeds out of Malta and sending proceeds via Western Union). She was convicted on all three counts. The submission of the defence in relation to the money laundering was that the prosecution had failed to show a link between the money taken out and transferred by the defendant and the underlying offence, as no drugs had been found on her. The court found from other circumstantial evidence that the prosecution had satisfied its onus to establish such a link between the money and the drug trafficking operation. This was sufficient under Maltese law for the burden of proof to shift to the defendant for her to show the lawful origin of the money. She produced no such evidence and was convicted and sentenced in the round to 6 years imprisonment. While money laundering was not the only charge before the court, the Maltese authorities point out the importance of a judicial decision in a money laundering case without concrete evidence of the underlying criminal activity but based on objective facts and circumstances surrounding the case. A similar case in 2009 of conspiracy to traffic drugs and money laundering resulted in a sentence, again in the round, of 15 years imprisonment.

12. Deficiency 3 identified in the MER *(More priority should be considered to the investigation and prosecution of ML based on foreign predicates given the level of domestic profit generating cases).* The Maltese authorities indicated at the time of the last progress report that all money laundering cases, irrespective of the country where the predicate offence has been committed, are thoroughly investigated and prosecuted. The Maltese authorities now advise that since the 1st progress report some of the convictions achieved concerned a foreign national with the predicate offence having an international element. In the cases concerned, the predicate offences (drug trafficking) had an international element in that they were carried out by foreign individuals and though they were partly carried out in Malta, they were initiated outside Malta. They also point out that a number of cases currently under investigation either concern foreign nationals or are related to a predicate offence committed outside Malta. The main predicate offences in these cases are fraud and/or misappropriation. The majority of investigations involving foreign predicate offences were initiated as a result of a report from the FIAU following the receipt of an STR. It would appear therefore that this perceived deficiency is being addressed.

13. All in all the Maltese authorities have achieved ML convictions in 9 cases since 2007 (involving 9 persons) and ML investigations are increasing. The judicial decision in Dayang Sakienah to draw inferences of underlying predicate criminality from other objective facts in a ML case is important, and confirms a decision earlier in 2008 in a wholly autonomous ML case, where a mother and daughter were charged with money laundering. In that case the jury found the mother guilty of ML in respect of proceeds from illicit activities of her husband, even though the

proceeds were not attributable to any specific case. The effectiveness of the money laundering offence since 2007 therefore appears, on a desk review, now to have been well demonstrated.

Special Recommendation II - Criminalisation of terrorist financing (rated LC in the MER)

14. Deficiency 1 identified in the MER *(Clarify that Article 328B offences cover contributions used for any purpose (including a legitimate activity) by a terrorist group).* This issue was carefully considered by the 3rd round evaluation team. The financing of terrorist groups is covered by A.328B(3) of the Criminal Code, added in June 2005, which provides:

"Whosoever promotes, constitutes, organises, directs, finances…a terrorist group knowing that such participation or involvement will contribute towards the criminal activities of the terrorist group shall be liable –

(a) where the said participation or involvement consists in directing the terrorist group, to the punishment of imprisonment not exceeding thirty years:

Provided that where the activity of the terrorist group consists only of the acts mentioned in article 328A(2)(j) the punishment shall be that of imprisonment for a period not exceeding eight years;

(c) in any other case, to the punishment of imprisonment not exceeding eight years."

15. The evaluators' concern was that, as the mental element is knowledge that the involvement (financing) "will contribute towards the criminal activities of the terrorist group", the language of the Article may not be wide enough to properly cover contributions used for any purpose (including a legitimate activity) by a terrorist group (such as supporting families while a member of the group is in prison). The Maltese authorities, at the time of the evaluation and now, consider that the courts would interpret it this way. It should also be noted that the general autonomous offence of financing of terrorism in A.328F might also be used to prosecute a person who provides money or other property for legitimate activities which may further "terrorism" generally (either by an organised group or by an individual terrorist). This Article provides:

"(1) Whosoever receives, provides or invites another person to provide, money or other property intending it to be used, or which he has reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, and unless the fact constitutes a more serious offence under any other provision of this Code or of any other law, be liable to the punishment of imprisonment for a term of not exceeding four years or to a fine (multa) not exceeding five thousand Liri or to both such fine and imprisonment. (2) In this article a reference to the provision of money or other property is a reference to its being given, lent or otherwise made available, whether for consideration or not."

16. Notwithstanding these two provisions the evaluators considered that it would "assist if this was clarified in order that the prosecution is in a position to prosecute this type of activity in the context of terrorist groups with the possibility of the lengthy sentences available under this provision".

17. There have been no FT investigations and thus no cases in which either of the above provisions could be tested in this context. In any event, the Maltese authorities advise in this progress report (as in 2008) that amendments are being considered to ensure that the wording of the law does not leave any room for a different interpretation. There is a draft in the AG's office with a proposed amendment to A.328.13(3), which currently reads "whosoever promotes, constitutes, organises, directs, finances, *supplies information or materials to* a terrorist group, knowing that such participation or involvement will contribute towards *any* activity, being criminal *or otherwise*, of

the terrorist group”. It would appear to meet the evaluators’ concerns in this respect. It remains unclear how advanced this proposal now is, and the timescale for taking it forward.

18. Deficiency 2 identified in the MER *(Clarify if provision or collection of funds can be done directly and indirectly).* The examiners accepted, as with the previous potential deficiency, that there were arguments that went both ways and the comment in the mutual evaluation report was that “it would be helpful if it was clarified that this could be done directly or indirectly”. The Maltese authorities point, understandably, to the language of A.328F which includes the language “invites another person to provide”, though whether this covers all possible examples of indirect provision is debateable. They also point out that there is an offence in A.328H (funding arrangements) which carries the same penalties as the general FT offence (funding of terrorism) in A.328F, and provides:

“whosoever –

1.1.1. enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is made available to another, and

1.1.2. knows or has reasonable cause to suspect that the money or other property will or may be used for the purposes of terrorism shall on conviction...”

19. While either of these Articles might be apt for some types of indirect provision, the Maltese authorities are also considering an amendment to add “directly and indirectly” into A.328F, though the timescale for this is also uncertain.

20. Deficiency 3 identified in the MER (*Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences).* There were 4 suspicious transaction reports related to FT at the time of the last progress report, 3 of which had been passed to the police for further investigation. No further reports have been received since. The statistics show the police investigating: 1 FT case (with 2 persons) in 2007 and 2008, though it is unclear whether these are the same cases; and 1 case with 1 person in 2010. These STRs refer to cases reported in the first progress report. The investigations by the police were completed in all cases. Since the police concluded that the persons concerned were not involved in funding of terrorism, no charges were brought.

21. All in all, it appears that the potential deficiencies identified by the evaluators are being considered, and there have been some TF investigations, which, so far, have not resulted in any prosecutions.

Recommendation 5 - Customer due diligence (rated LC in the MER)

22. Deficiency 1 identified in the MER *(The Regulations’ reference to trust principals and beneficiaries could lend itself to an interpretation that it is an option to identify either the trust beneficiary or the settlor (not both).* The Regulations at the time of the evaluation appeared to lend themselves to an interpretation that it was an option to identify the trust beneficiary or the settlor and not both. The was corrected in the 2008 Regulations (Regulation 7(3)e):

“*where the applicant for business is acting as a trustee or under any other fiduciary arrangement, a subject person shall not undertake any business with or provide any service to the applicant for business unless that applicant for business discloses the identity of the beneficial owners, his principal, and the trust settlor, as the case may be, and produces the relevant authenticated identification documentation, and such disclosure procedures shall also apply where there are changes in beneficial ownership, or principal.”*

23. Additionally, the Maltese authorities advise that the draft Implementing Procedures will provide further clarification on the interpretation of Regulation 7(3) to ensure that subject persons shall not undertake any business or provide any service to the trustee unless the trustee discloses the identity of the beneficial owners and the trust settlor and produce authenticated identification of such persons, and the trustee must keep the subject person informed of any changes in the beneficial ownership. As noted in the progress report the Implementing Procedures will be mandatory when they come into force at the end of the year and sanctionable.

24. Deficiency 2 identified in the MER *(For life and other investment linked insurance, the beneficiary under the policy is identified but not verified).* The verification of the identity of the beneficiary under a life insurance policy was covered under Regulation 8(3) of the 2008 Regulations and the draft Implementing Procedures will further clarify that the beneficiary of a life insurance policy falls within the definition of a beneficial owner so that there is no doubt that such verification is required under the general CDD Regulation (Regulation 7). Supervisors have not experienced any difficulty with this practice.

25. Deficiency 3 identified in the MER *(The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000).* Regulation 7(11) of the 2008 Regulations reiterates the requirements for subject persons to comply with Regulation (EC) 1781/2006, even though the Regulation applies *de facto* as domestic legislation. The EC Regulation threshold is Euro 1,000 and thus the recommendation of the evaluators is fully implemented.

26. Deficiency 4 identified in the MER *(There is no requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date).* The asterisked essential criteria (5.7*) is covered in Regulation 7(1)(d) and 7(2) of the 2008 Regulations, as noted in the 1st progress report. The draft Implementing Procedures are intended to include practical explanations on the manner in which ongoing monitoring should be undertaken.

27. Deficiency 5 identified in the MER *(With the exception of non-face to face customers, there is no requirement in the non-bank sector for enhanced due diligence of higher risk customers, business relationships or transactions).* As noted in the 1st progress report Regulation 11 of the 2008 Regulations applies enhanced Customer Due Diligence to all subject persons. Regulation 11(1) requires enhanced CDD in accordance with the Regulation and in any situations which, by their nature, can present a higher risk of money laundering or the funding or terrorism. The Regulation specifically covers non face-to-face relationships, cross-border correspondent banking and other similar relationships, and politically exposed persons. The Maltese authorities advise that in the draft Implementing Procedures more detailed information is to be provided on the manner in which the obligations are to be implemented, including with respect to non face-to-face relationships, correspondent banking relationships and with respect to obligations dealing with politically exposed persons.

28. Deficiency 6 identified in the MER *(No specific requirement to understand the purpose and intended nature of the business relationship).* Regulation 7(1)(c) of the 2008 regulations covers this for all subject persons; The draft Implementing Procedures will, as noted in the progress report, provide further detail on the information required to satisfy this requirement.

29. All in all, the Maltese authorities are clearly upgrading their preventive legislative regime to fully meet the FATF standards on R.5 and improve the subject persons' understanding of the

requirements. It is difficult on a desk review to assess how effectively the preventive regime is applied in practice. From the statistics it appears that there have only been 2 fines and 1 written warning and 1 verbal warning for AML/CFT infringements since 2007. One of the fines was imposed on a corporate service provider for failing to carry out complete customer due diligence measures in relation to a number of corporate customers. The other fine was imposed on a trustee for failing to carry out appropriate customer due diligence measures and to set up adequate reporting procedures. The written warning was given to a corporate service provider following a compliance visit, where it was established that the corporate service provider had failed to properly carry out customer due diligence measures in relation to one customer. The verbal warning was given to a bank after the bank had issued a public statement which included an indication, although indirect, that the bank had filed a report with the competent authorities. It was brought to the attention of the bank that such public statement could have resulted in a breach of the bank's non-disclosure obligations under the PMLFT Regulations and the possibility of the bank being prosecuted for a tipping off offence. There have also been no public sanctions, that is to say, sanctions taken to court (the use of which, where and if warranted, the previous evaluators considered would enhance the sanctioning regime). The effectiveness of implementation will be examined fully in the 4th round evaluation.

Recommendation 10 - Record Keeping (rated C in the MER)

30. There were no recommendations in the last MER. The current effectiveness of implementation will be assessed in the 4th round evaluation.

Recommendation 13 – Suspicious transaction reporting (rated PC in the MER)

31. Deficiency 1 identified in the MER *(Attempted transactions are not explicitly covered)* Regulation 15(6) of the 2008 Regulations comprehensively clarifies that a subject person is obliged to file a report when it knows, suspects, or has reasonable grounds to suspect that a transaction may be related to money laundering or the funding of terrorism, or that a person may have been, is, or may be connected with money laundering or the funding of terrorism, or that money laundering or the funding of terrorism has been, is, or may be committed or attempted.

32. Deficiency 2 identified in the MER *(No reporting obligation on financing of terrorism)* reporting of transactions suspected to be related to the financing of terrorism was provided for under the February 2006 revisions of the Regulations, and was in place at the time of the adoption of the 3rd evaluation report. The reporting of financing of terrorism is now comprehensively covered in Regulation 15(6) of the 2008 Regulation, as set out above.

33. The number of STRs, while not great, has remained relatively constant over the last several years with a slight dip in 2007 and 2008. With 60 STRs received so far in 2010, they have exceeded the 2008 figure. While most reports are from the banks, reports have also been received consistently from insurance, exchange banks and brokerage companies in the financial sector. The MER considered that a "broadly acceptable" number of reports was passed to the police and that appears to remain the case. It is encouraging that at least one successful money laundering conviction arose from the STR system. Thus, from a desk review, the effectiveness of the STR system appears to be demonstrated.

Special Recommendation IV– Suspicious transaction reporting related to terrorism (rated NC in the MER)

34. Deficiency identified in the MER *(Mandatory obligation to report suspicious transactions of FT is not in place)* This deficiency had been broadly addressed by the time of the adoption of the 3rd round mutual evaluation report, though not in the period within which it could have been fully assessed for ratings purposes. The SR.IV obligation is now covered in Regulation 15(6) of the 2008 Regulations.

    "Where a subject person knows, suspects or has reasonable grounds to suspect that a transaction may be related to money laundering or the funding of terrorism, or that a person may have been, is or may be connected with money laundering or the funding of terrorism, or that money laundering or the funding of terrorism has been, is being or may be committed or attempted, that subject person shall, as soon as is reasonably practicable, but not later than five working days from when the suspicion first arose, disclose that information, supported by the relevant identification and other documentation, to the Financial Intelligence Analysis Unit".

.

35. In the Regulations, "funding of terrorism" is defined to mean "the conduct described in Articles 328F and 328I both inclusive, of the Criminal Code". A.328F (funding of terrorism) has been set out at paragraph 18 above. A.328I (facilitating retention or control of terrorist property) is set out beneath:

    328I. *(1) Whosoever enters into or becomes concerned in an arrangement which facilitates the retention or control by or on behalf of another person of terrorist property -*
    (a) by concealment,
    (b) by removal from the jurisdiction,
    (c) by transfer to nominees, or
    (d) in any other way, shall, on conviction, be liable to the punishment laid down in article 328F(1).
    (2) It is a defence for a person charged with an offence under sub article (1) to prove that he did not know and had no reasonable cause to suspect that the arrangement related to terrorist property.

36. "Terrorist property" is broadly defined in S.328E(1) Criminal Code, as follows:

    328E.*(1) In this sub-title, "terrorist property" means -*
    (a) money or other property which is likely to be used for the purposes of terrorism, including any resources of a terrorist group,
    (b) proceeds of the commission of acts of terrorism, and (c) proceeds of acts carried out for the purposes of terrorism.

    (2) In sub-article (1) -
    (a) a reference to proceeds of an act includes a reference to any property which wholly or partly, and directly or indirectly, represents the proceeds of the act (including payments or other rewards in connection with its commission), and
    (b) the reference to a group's resources includes a reference to any money or other property which is applied or made available, or is to be applied or made available, for use by the group.

37. It was unclear in this desk review why the definition of "funding of terrorism" did not comprehensively cover all the possible funding offences and terrorism offences in the CC (in

particular Article 328H "funding arrangements"), particularly as A.328I is expressly covered in the definition, the essence of which seems to be a clandestine funding arrangement. The Maltese authorities have in the course of this review indicated that the definition of funding of terrorism was intended to include Articles 328F to 328I, and that the term "both inclusive" is indicative of this. They confirm that the word "and" is a typographical error.

38. While it may be that the broad term in the CC used in A328F "*for the purposes of terrorism*" is sufficient to cover all the language of SR.IV (including "funds linked or related to or are to be used for terrorism, terrorist acts and by terrorist organisations"), it seems on a desk review, that the real width of the reporting obligation in the 2008 Regulations may cause some confusion. The issue may not simply be academic as there have been no FT reports since the new Regulation came in.

39. The Maltese authorities are encouraged to examine this issue to ensure that the obliged entities fully understand the width of the STR reporting obligation on FT. They have indicated that the error in the legislation will be corrected as soon as possible. It may be that further guidance is required, as the questions raised in the paragraphs above could impact on the effectiveness of implementation of the STR regime in respect of FT.

1.3. Main conclusions

40. The report on the Core recommendations shows that steps have been taken to address the issues raised by the evaluators in respect of R.5. From the information provided, the Implementing Procedures, once they are in force, should bring further solidity to the legal base of the preventive measures. There is also very welcome progress and developing jurisprudence in respect of ML criminalisation and indications that the Maltese authorities are pursuing serious ML offences when they are able to do so. The issue regarding possible judicial reluctance to draw inferences from objective facts identified in the last mutual evaluation report seems to be solved. There appears now to be no real legal obstacle to the pursuit of an active prosecution policy in respect of autonomous money laundering. Malta is encouraged to continue challenging the courts with such cases, where there is evidence from which a court may draw the necessary inferences of either the underlying predicate criminality or of knowledge that relevant property is of criminal origin.

41. As indicated earlier, the rather complex process required to establish what precisely is required in the FT reporting obligation would appear to benefit from further clarification to ensure that the reporting entities fully understand its ambit.

42. In conclusion, as a result of the discussions held in the context of the examination of this second progress report, the Plenary was satisfied with the information provided and the progress being undertaken and thus approved the progress report and the analysis of the progress on the core Recommendations. Pursuant to Rule 41 of the Rules of procedure, the progress report will be subject of an update in every two years between evaluation visit, though the Plenary may decide to fix an earlier date at which an update should be presented.

MONEYVAL Secretariat

2. Information submitted by Malta for the second progress report

2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field

Position as at date of last progress report (8 December 2008)

The AML/CFT regime in Malta has undergone a major overhaul since the last evaluation. The Prevention of Money Laundering and Funding of Terrorism Regulations of 2003 were radically amended by Legal Notice 42 of 2006 with the aim to further align and harmonise the regulations with the FATF 40 as revised in June 2003. It should be noted that these amendments also served to introduce measures which were in discussion and in preparation during the Third Round Mutual Evaluation on site visit in November 2005 and which, consequently, the MONEYVAL Committee of Experts eventually recommended in the 2005 MER. Subsequently the amended 2003 Regulations were repealed and a new set of regulations was introduced in July 2008, transposing the European Union legislation under Directive 2005/60/EC (the Third Directive) and Directive 2006/70/EC (the Implementation Directive). The new regulations further broadened the scope of the AML/CFT regime in Malta and continued to implement those MONEYVAL recommendations which had until then not been addressed.

One of the most significant changes to the AML/CFT regime by virtue of the 2006 amendments was the introduction of the obligation to report knowledge or suspicion of transactions that could be related to the funding of terrorism,. Another important development was the adoption of the risk-based approach also introduced by virtue of the 2008 Regulations. In fact the 2008 Regulations include, *inter alia,* provisions catering for simplified and enhanced customer due diligence measures and provisions for exemptions from certain customer due diligence measures where financial activity is conducted on an occasional or very limited basis, amongst others.

Consequently, the role of the FIAU has also been broadened considerably by law. Its responsibilities have been extended to cover the financing of terrorism whilst the spectrum of persons who fall within its remit has been widened. In order to further ensure that subject persons operate in compliance with all the preventive measures prescribed by the AML/CFT legislation the FIAU has now set up a compliance department. The Department will work in collaboration with the other supervisory authorities as appropriate within the current memoranda of cooperation on compliance monitoring issues.

From a statistical point of view the number of STRs has been more or less constant for the past three years. However, it is worth mentioning that there have been two convictions of money laundering and one conviction on tipping off since the 29th March 2007.

Moreover, the 2008 Regulations now place a mandatory obligation on subject persons and the relevant authorities to collect, maintain and compile appropriate statistics and to make such statistics available to the FIAU. The obligation to collect, maintain and compile statistics is also applicable to the FIAU itself in the course of its work.

This Progress Report confirms that the Maltese authorities have given serious attention to the MONEYVAL recommendations and have taken immediate measures to ensure that the AML/CFT regime in Malta be further harmonised with the recognised international standards and practices. This has been done through significant legislative amendments, ongoing development and increased awareness in this field. In this respect the FIAU has continued to discuss with the industry the implementation of the new Regulations through the work of the Joint Committee on the Prevention of Money Laundering and the Financing of Terrorism.

The Prevention of Money Laundering and Funding of Terrorism Regulations, 2008 and the Prevention of Money Laundering Act, *Cap. 373* are enclosed herewith for ease of reference. They shall be referred to throughout the questionnaire as "the 2008 Regulations" and "the Act" respectively.

> **NOTE:** The following words or phrases shall have the same meaning as defined in Regulation 2 of the 2008 Regulations:
>
> "relevant activity"
>
> "relevant financial business"
>
> "subject person"

New developments since the adoption of the 1st progress report

(In particular, please indicate all new relevant legislative acts with a brief description, and any changes since the adoption of the last progress report in the roles and responsibilities of relevant AML/CFT competent authorities)

Since the submission of the First Progress Report in November 2008 (as adopted by the 28 MONEYVAL Plenary in December 2008) a number of legislative and institutional measures have been implemented to further strengthen the AML/CFT regime in Malta and to ensure continued compliance with all international developments.

One such legislative initiative was the recent addition of a new article (Article 4B) to the Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta)("PMLA")(see Appendix III.1) implementing the provisions of Article 19 of the Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198). It is to be noted that a regime regulating the issuance of monitoring orders had already been in place under Article 435AA of the Criminal Code (Cap. 9 of the Laws of Malta)(see Appendix III.2) in relation to criminal offences under the Code, including funding of terrorism ("FT"). A decision was therefore taken to extend the application of the power to issue such orders to ML offences.

Further to such amendment, where the Attorney General ("AG") has reasonable cause to suspect that a person is guilty of money laundering ("ML"), he may apply to the Criminal Court for the issuance of a monitoring order whereby a bank is required to monitor the bank accounts of the suspect or of any other accounts related to the suspect. On the demand of the AG, the bank will then communicate the information resulting from the monitoring to the person or authority indicated by the AG, which could be the Financial Intelligence Analysis Unit ("FIAU"). This power gives the AG the possibility to make use of the resources available within other entities such as the FIAU for the purposes of implementing these orders. Once such information is collated such person or authority shall transmit this information to the

AG. This power also applies to those instances where the AG receives a request to issue a monitoring order from a judicial or prosecuting authority situated outside Malta.

Monitoring powers have also been granted to the FIAU, which may now request any subject person, whether carrying out relevant activity or relevant financial business, to monitor the transactions or banking operations being carried out through an account which is connected to a person, whether natural or legal, suspected of being involved in ML. Where such an order is issued upon subject persons, they shall communicate the information resulting from the monitoring to the FIAU and the FIAU may use that information for the purpose of carrying out its analysis and reporting functions under the PMLA. This new power may be found under the new Article 30B introduced by virtue of Act VII of 2010.(see Appendix III.1)

The monitoring powers granted to the AG and the FIAU have different objectives, which complement each other. The monitoring powers granted to the FIAU assist the FIAU in conducting its analysis of STRs, especially in determining whether a reasonable suspicion of ML/FT exists, since a determination on whether a suspicion of ML/FT exists may only be established on the basis of information gathered from the monitoring of an account over a period of time. On the other hand, the monitoring powers granted to the Attorney General are intended as an investigative tool. These powers also enable the AG to fulfil requests by relevant foreign authorities to monitor specific accounts.

During the period under review, the Prevention of Money Laundering and Funding of Terrorism Regulations (L.N. 180 of 2008)("PMLFTR")(see Appendix III.3) were also subject to an amendment. Through this amendment, the scope of the application of the PMLFTR was extended to capture captive insurance licence holders and protected cell companies. The inclusion of these licence holders within the definition of 'relevant financial business' took place following a consultation process with the Malta Financial Services Authority ("MFSA") where it was concluded that such entities posed a risk of being misused for ML/FT purposes and should therefore be subject to the obligations under the PMLFTR even though they do not fall within the scope of Directive 2005/60/EC.

Another important development in the AML/CFT field was the issuance by the FIAU for consultation of an updated version of the Procedures Implementing the Provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations ("Implementing Procedures"). The Implementing Procedures, which apply to both the financial and the non-financial sectors, were issued for a consultation period which ended on 29th October 2010. It is expected that the document, which will constitute the first part of the process, will be finalised and issued by the end of the year, after due consideration is given to the feedback received from subject persons, representative bodies and supervisory authorities. Once Part I of the Implementing Procedures is issued, Part II on sector-specific implementing procedures will be prepared by all the bodies representing subject persons and after having been reviewed and endorsed by the FIAU will be annexed to Part I and form part of a comprehensive document. Work is already in progress on Part II.

The Implementing Procedures will be issued under the provisions of the PMLFTR and are intended to assist subject persons in understanding and fulfilling their obligations under the PMLFTR. Regulation 17 of the PMLFTR stipulates that such implementing procedures will be mandatory and binding on all subject persons and shall have the force of law. Subject persons who fail to comply with the Implementing Procedures will be liable to an administrative penalty in terms of the law. Additionally, the PMLFTR (Regulation 4(6)) state that a court shall take into consideration the Implementing Procedures in determining whether a subject person has complied with the obligations emanating from the PMLFTR.

Other legislative developments which are worth mentioning are: (1) the implementation, through Legal Notice 464 of 2010 (see Appendix III.4), of Council Framework Decision 2006/783/JHA of 6th October

2006 on the application of the principle of mutual recognition to confiscation orders as amended by Council Framework Decision 2009/299/JHA of 26th February 2009 and Council Framework Decision 2005/212/JHA of 24 February 2005 on Confiscation of Crime-Related Proceeds, Instrumentalities and Property; and (2) The amendment, by virtue of LN467 of 2010 (see Appendix III.5), of LN397 of 2007 (see Appendix III.6), through which the right to issue a cross-border freezing order was extended beyond the Criminal Court to all courts of criminal jurisdiction.

On an institutional level, it is worth noting that the FIAU has continued the process of strengthening both its financial analysis as well as its compliance sections. A recruitment process was initiated to engage an additional financial analyst to complement the financial analysis section which was previously composed of three analysts. Additionally, this year an application for funds was submitted to the European Union Commission for a grant to cover the costs for the implementation of an electronic system (Go AML) which is aimed at facilitating and enhancing the financial analysis of suspicious transaction reports ("STRs"). The FIAU had already applied for such grants in 2009 but the application was not entertained. It is hoped that the new application will receive a favourable response in order for the FIAU to achieve its aim of further enhancing the tools and systems used for its analysis function.

A recruitment process was also carried out to engage a compliance officer to further strengthen the compliance section which previously consisted of two compliance officers. Although, the arrangements for compliance monitoring purposes between the FIAU and the MFSA and Lotteries and Gaming Authority ("LGA") respectively are still in place, whereby the MFSA and the LGA respectively act as an agent of the FIAU for the purposes of compliance monitoring, the FIAU, through its compliance section, is taking a more active role in the monitoring of subject persons to ensure compliance with the PMFLTR, including those subject persons that are not subject to a supervisory authority. In fact, as well as accompanying the officers of the MFSA when an on-site compliance visit is conducted, the compliance officers of the FIAU have themselves conducted a number of focussed compliance visits.

In relation to the compliance monitoring function of the FIAU it is worth mentioning that a system will be implemented as from 1st January 2011 whereby every subject person is expected to submit an annual compliance report (the first being for 2010) to assist the FIAU in conducting its off-site compliance functions as well as to compile statistics and records in order to review the effectiveness of the AML/CFT regime in Malta. This report ensures that the FIAU gathers such information on a systematic and timely basis. The annual compliance report requires the completion of general details on the subject persons, as well as other information which, *inter alia*, includes information on STRs submitted internally and to the FIAU; an overview of the policies and procedures on internal control, risk assessment, risk management and compliance management established by the subject person and their effective implementation; an overview of the manner through which the MLRO would have assessed internal compliance, including overall oversight by the internal audit function, highlighting any non-compliance findings that may have been identified and corrective measures taken accordingly; and information concerning the AML/CFT training attended by the MLRO and, where applicable, designated employees, and AML/CFT training provided to staff members.

Another important development from a compliance perspective was the setting up of a procedure after discussions held with the MFSA whereby applicants in the process of obtaining a license to operate as a credit institution or a financial institution in or from Malta, would meet representatives of the FIAU to explain the proposed set-up and the internal controls and compliance procedures to be introduced. This development enables the FIAU to be in a position to assess the structures proposed for compliance with the relevant legislation before the operations actually commence. The FIAU also reviewed the questionnaires and check-lists used by the MFSA and the LGA in the course of on-site examinations and has made a series of recommendations most of which were taken on by the respective authorities to bring these documents in line with the PMLFTR.

One last point to be mentioned relates to the number of ML convictions in Malta. Since the adoption of the First Progress Report a number of cases have been brought before the Maltese Courts resulting in several convictions. Additionally, as shown in the tables provided in Section 5 below the number of investigations has also increased. This clearly indicates that the collective effort by prosecutors, law enforcement and judicial authorities in recent years to allocate more resources to the investigation and prosecution of money laundering cases is producing concrete results.

2.2. Core Recommendations

Please indicate improvements which have been made in respect of the FATF Core Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

Recommendation 1 (Money Laundering offence)	
Rating: Largely compliant	
Recommendation of the MONEYVAL Report	*More emphasis should be placed on securing final convictions on money laundering.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	The scope of the definition of 'money laundering' in article 2 of the Act has been widened to also cover the mere *suspicion* further to *knowledge* that property is derived directly or indirectly from criminal activity. This amendment transposes article 9.1.c of the 2005 Council of Europe Convention and it is hoped that it will increase the possibility of securing convictions.
Measures taken to implement the recommendations since the adoption of the first progress report	Since the adoption of the First Progress Report, the number of ML final convictions handed down by the Maltese Courts has continued to increase as indicated in Section 5 of this report.
Recommendation of the MONEYVAL Report	*A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Investigators, prosecutors and judges are showing increasing willingness to draw such inferences. This is evident from the rise of prosecutions initiated. More importantly, as indicated in the introductory part of this Report, since the on site visit in 2005 there have been two convictions for money laundering and one on tipping off.
Measures taken to implement the recommendations since the adoption of the first progress report	The willingness by the judiciary in Malta to draw inferences from objective facts and circumstances is clearly demonstrated in the case *The Police vs Sakienah Binti Mat Lazin Dayang* (Court of Magistrates as a Court of Criminal Judicature, 23rd November 2009). In this case the court specifically referred to the provisions of Article 2(3)(a) of the PMLA (see Appendix III.1), which states that a court may convict a person of a ML offence even in the absence of a judicial finding of guilt in respect of the underlying criminal activity. In fact, in the above-mentioned case, notwithstanding the fact that the court did not have any concrete evidence of the underlying criminal activity, it based its determination on a number of objective facts and circumstances surrounding the case.

Recommendation of the MONEYVAL Report	*More priority should be considered to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Irrespective of the profit generated and of the country where the predicate offence has been committed, money laundering cases are thoroughly investigated and prosecuted. In terms of law, the definition of 'criminal activity' means any activity, whenever or wherever carried out, which under the law of Malta means any criminal offence.
Measures taken to implement the recommendations since the adoption of the first progress report	As stated in the First Progress Report, equal emphasis is placed on the investigation and prosecution of ML cases irrespective of whether the predicate offence was committed in Malta or outside Malta. In fact, some of the ML convictions handed down by the Maltese courts concerned a foreign national with the predicate offence having an international element. Moreover, a number of cases currently under investigation either concern foreign nationals or are related to a predicate offence committed outside Malta.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	Please refer to the introductory comments under Developments above.

Recommendation 5 (Customer due diligence) I. Regarding financial institutions	
Rating: Largely compliant	
Recommendation of the MONEYVAL Report	*The Regulations' reference to trust principals and beneficiaries could lend itself to an interpretation that it is an option to identify either the trust beneficiary or the settlor (not both).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 7(3)(e) of the 2008 Regulations now specifically states that the applicant for business must disclose the identity of the beneficial owners, his principal, and the trust settlor and produce the relevant authenticated identification documentation before undertaking any business. Moreover, the disclosure procedures and obligations remain applicable to any eventual changes in beneficial ownership or principal
Measures taken to implement the recommendations since the adoption of the first progress report	The draft Implementing Procedures provide further clarifications on the interpretation of Regulation 7(3) and state that apart from verifying the identity of the trustee and the protector, where applicable, subject persons shall not undertake any business with or provide any service to the trustee, in relation to a trust, unless the trustee discloses the identity of the beneficial owners and the identity of the trust settlor as well as producing the authenticated identification documentation of such persons. Additionally, the subject person must ensure that the trustee keeps the subject person informed of any changes in the beneficial ownership.
Recommendation of the MONEYVAL Report	*For life and other investment linked insurance, the beneficiary under the policy is identified but not verified.*
Measures reported as of 8 December 2008 to implement	In the definition of 'beneficial owner' under Regulation 2(1)(e) of the 2008 Regulations, in the case of long term insurance business the beneficial owner shall be construed to be the beneficiary under the policy. Regulation 8(1) consequently

the Recommendation of the Report	requires the verification of the identity of the beneficial owner as appropriate. However, Regulation 8(3) of the 2008 Regulations states that in relation to life insurance, subject persons are required to verify the identity of the beneficiary under the policy albeit the verification may be completed after the business relationship has been established**.** This is in accordance with the relevant provisions of the EU Third Directive and the FATF 40.
Measures taken to implement the recommendations since the adoption of the first progress report	The position provided in the First Progress Report will be further strengthened by the interpretation given in the draft Implementing Procedures, where it is specifically stated that the beneficiary of a life and other investment linked insurance policy is to be considered to fall within the definition of a beneficial owner. Regulation 7 of the PMFLTR then clearly states that subject persons have a duty to identify and verify the identity of beneficial owners.
Recommendation of the MONEYVAL Report	*The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Although the European Union Regulation 1781/2006 of 15 November 2006 on information on the payer accompanying transfer of funds applies *de facto* as domestic legislation for wire transfers, yet Regulation 7(11) reiterates this obligation for financial institutions to comply with the EU Directive and Regulation 7(12) imposes administrative penalties for non-compliance. Moreover, with respect to occasional transactions that involve a money transfer or remittance, the definition of 'Case 3' (single large transaction) under Regulation 2 (1) sets the threshold at €1,000. In addition, Regulation 4 of the 2008 Regulations further requires that no subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless the subject person maintains *inter alia* customer due diligence measures. Finally, Regulation 7(5) requires the application of customer due diligence measures in all Cases 1 – 4 as defined in Regulations 2.
Measures taken to implement the recommendations since the adoption of the first progress report	The recommendation has been fully implemented as detailed in the First Progress report and no further measures were required to be taken since then.
Recommendation of the MONEYVAL Report	*There is no requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 7(1)(d) states that as part of the CDD measures the subject person shall conduct ongoing monitoring of the business relationship. Regulation 7(2) then defines this process as including: (*a*) the scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being undertaken are consistent with the subject person's knowledge of the customer and of his business and risk profile, including, where necessary, the source of funds; and (*b*) ensuring that the documents, data or information held by the subject person are kept up to date. Moreover, Regulation 7(6) and Regulation 7(7) require the ongoing or repeated customer due diligence process to ensure that the information held is kept up to date.

Measures taken to implement the recommendations since the adoption of the first progress report	In addition to the provisions referred to in the First Progress Report, the draft Implementing Procedures provide practical explanations on the manner in which the obligation of ongoing monitoring set out in the PMLFTR is to be undertaken by subject persons. The document also includes an explanation on the manner in which the source of funds and source of wealth are to be identified.
Recommendation of the MONEYVAL Report	*With the exception of non-face to face customers, there is no requirement in the non-bank sector for enhanced due diligence of higher risk customers, business relationships or transactions.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As part of the concept of the risk-based approach to customer due diligence procedures, the 2008 Regulations contain a comprehensive provision under Regulation 11 relating to enhanced customer due diligence measures that must be applied by all subject persons, and therefore including the non-bank sector, in situations that, by their nature, can present a higher risk of money laundering or funding of terrorism. Regulation 11 requires the application of enhanced customer due diligence measures where the applicant for business is not physically present for identification purposes (non face-to-face); where cross-border correspondent banking relationships are established; and where transactions are undertaken or relationships are established with politically exposed persons. Regulation 11 also requires subject persons to pay special attention to new technologies and products/transactions that favour anonymity and not to enter into or continue correspondent banking relationships with a shell bank.
Measures taken to implement the recommendations since the adoption of the first progress report	As explained in the First Progress Report a detailed provision dealing with the obligation to carry out enhanced due diligence in situations which by their nature present a higher risk of ML/FT was introduced by virtue of the PMLFTR, which is equally applicable to both the financial and the non-financial sector. In the draft Implementing Procedures, detailed information is provided on the manner in which the obligations set out in Regulation 11 are to be implemented. For instance, with respect to non face-to-face relationships, procedures are provided on the manner in which certification is to be carried out and on the additional documentation that may be collected by subject persons to satisfy the requirements laid out in the law. With respect to correspondent banking relationships, the measures that banks are required to undertake are set out in more detail. For instance an indication of the measures that banks must undertake to assess the adequacy and effectiveness of the internal controls of the respondent institution, as well as the manner in which senior management approval is to be obtained, are provided. The same also applies to the obligations dealing with politically exposed persons.
Recommendation of the MONEYVAL Report	*No specific requirement to understand the purpose and intended nature of the business relationship.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As part of the customer due diligence measures, a subject person must obtain information on the purpose and intended nature of the business relationship, such that the subject person is able to establish the business and risk profile of the customer. This is laid out in Regulation 7(1)(c) of the 2008 Regulations.
Measures taken to implement the recommendations since the adoption of the first progress report	The draft Implementing Procedures specifically provide for the information that subject persons are required to obtain to satisfy this requirement. This includes: (a) the nature and details of the business/occupation/employment of the applicant for business; (b) the source(s) of wealth (refer to Section 3.1.6); (c) the expected source and origin of the funds to be used in the business

	relationship (refer to Section 3.1.6); (d) the anticipated level and nature of the activity that is to be undertaken through the relationship; (e) in the case of a business activity, copies of recent and current financial statements.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 5 (Customer due diligence) II. Regarding DNFBP[2]	
Recommendation of the MONEYVAL Report	*The changes recommended for R.5 should be applied to DNFBP.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	The 2008 Regulations do not particularly distinguish between the financial sector (relevant financial business) and DNFBPs (relevant activity) for the purposes of the application of the obligations under the Regulations. Indeed the term 'subject person' is defined as any legal or natural person carrying out 'relevant financial business' or 'relevant activity' as defined – the latter comprising all DNFBPs under the FATF 40. Throughout the Regulations, then, subject persons are consequently all bound by the same obligations concerning customer due diligence measures. There are however some additional provisions relating to Casino license holders.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.
Recommendation of the MONEYVAL Report	*All persons providing company services need to be covered by Maltese legislation.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 2 of the 2008 Regulations gives a definition of "Trust and company service providers" which are considered to be subject persons under the 2008 Regulations: any natural or legal person who, by way of business, provides any of the following services to third parties: i. forming companies or other legal persons; ii. acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; iii. providing a registered office, business address and other related services for a company, a partnership or any other legal person or arrangement; iv. acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement; v. acting as or arranging for another person to act as a nominee shareholder

[2] i.e. part of Recommendation 12.

	for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Additionally since, as explained to the Plenary during the MER discussion in September 2007, in Malta such activities are often provided by the legal and the accountancy professions, persons providing trust and company services are covered in the definition of 'relevant activity' in relation to: (*a*) auditors, external accountants and tax advisors when acting as provided for in paragraph (c) below; (*c*) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the - (i) organisation of contributions necessary for the creation, operation or management of companies; (ii) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider; (*d*) trust and company service providers not already covered under paragraphs (*a*), (*c*), (*e*) and (*f*); (*e*) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act; (*f*) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act.
Measures taken to implement the recommendations since the adoption of the first progress report	The position remains as explained in the First Progress Report where the 2008 PMLFTR fully cover this recommendation.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 10 (Record keeping) I. Regarding Financial Institutions	
Rating: Compliant	
Recommendation of the MONEYVAL Report	*No recommendation.*
Measures reported as of 8 December 2008 to implement the	

Recommendation of the Report	
Measures taken to implement the recommendations since the adoption of the first progress report	
Recommendation 10 (Record keeping) II. Regarding DNFBP[3]	
Recommendation of the MONEYVAL Report	*No recommendation.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

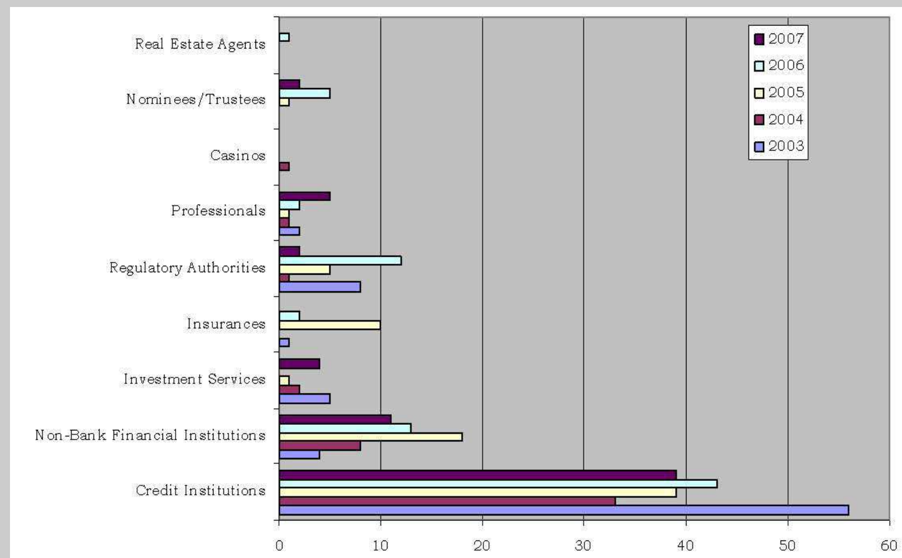
Recommendation 13 (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Reporting procedures and obligations are exhaustively covered by regulation 15 of the 2008 Regulations. More specifically, Regulation 15(6) clarifies and strengthens the reporting of attempted suspicious transactions. *Inter alia* a subject person is obliged to file a report when it knows or suspects that money laundering or the funding of terrorism has been, is being or may be committed or attempted.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR. No further changes are required.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism[4].*

[3] i.e. part of Recommendation 12.

[4] Reporting of transactions suspected to be related to the financing of terrorism was provided for under the February 2006 revisions of the Prevention of ML Regulations and was in place by the time of the adoption of the 3rd evaluation report. All references to this issue in this progress report should be read in the light of this footnote.

Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	
Recommendation 13 (Suspicious transaction reporting) II. Regarding DNFBP[5]	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Reporting procedures and obligations are exhaustively covered by regulation 15 of the 2008 Regulations. More specifically, Regulation 15(6) clarifies and strengthens the reporting of attempted suspicious transactions. *Inter alia* a subject person is obliged to file a report when it knows or suspects that money laundering or the funding of terrorism has been, is being or may be committed or attempted.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report adequately cover this recommendation and no further changes are required.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.

[5] i.e. part of Recommendation 16.

Recommendation of the MONEYVAL Report	*While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As held by the Malta Delegation in the course of the discussions of the Plenary on the adoption of the MER in September 2007, it is generally the situation in most evaluated countries that the number of suspicious reports filed by DNFBPs in relation to those filed by the financial sector is always lower, although to different degrees. This is understandable considering the dominance of the financial sector in all jurisdictions. Hence this cannot be attributed as an effectiveness problem to any one particular jurisdiction. Although this is generally still the case it is worth noting that reports filed by DNFBPs have gradually increased as evidenced by the chart attached hereunder. *STRs filed by Subject Persons for the years 2003-2007* 

Measures taken to implement the recommendation since the adoption of the first progress report	The number of reports submitted by DNFBPs has been increasing steadily since the period covered by the First Progress Report as is evident from the table below. In fact in 2009 18 STRs out of a total of 63 STRs were reported by DNFBPs. Moreover, as at 19th October, 2010, the number of STRs reported by DNFBPs was 19. Such figures are significantly higher than the figures reported between 2005 and 2008 and are a clear indication that the efforts by the FIAU to strengthen its compliance section have started producing concrete results.

Category of subject persons	2003		2004		2005		2006		2007		2008		2009		Totals	
	No	%	No	%	No	%	No	%	No	%	No	%	No	%	No	%
Credit Institutions	56	74	33	72	39	52	42	54	39	62	44	64	26	41	279	59
Financial Institutions [2]	4	5	8	17	18	24	13	17	11	17	13	19	6	10	73	16
Investment Services Licensees	5	7	2	4	1	1	-	-	2	3	-	-	3	5	13	3
Insurance Licensees	1	1	-	-	10	13	3	4	2	3	2	3	0	0	18	4
Supervisory Authorities [3]	8	11	1	2	5	7	12	15	1	2	1	1	3	5	31	7
Independent Legal Professionals [4]	1	1	-	-	-	-	-	-	1	2	1	1	3	5	6	1
Remote Gaming Companies [5]	-	-	1	2	-	-	-	-	-	-	3	4	3	5	7	1
Casino Licensees [6]	-	-	-	-	-	-	-	-	-	-	-	-	1	2	1	-
Trustees & Fiduciaries	-	-	-	-	1	1	5	6	2	3	3	4	2	3	13	3
Real Estate Agents	-	-	-	-	-	-	1	1	-	-	-	-	2	3	3	1
Accounting Professionals [7]	1	1	1	2	1	1	2	3	4	6	-	-	4	6	13	3
Regulated Markets [8]	-	-	-	-	-	-	-	-	1	2	-	-	3	5	4	1
Company Service Providers [9]	-	-	-	-	-	-	-	-	-	-	2	3	3	5	5	1
Others	-	-	-	-	-	-	-	-	-	-	-	-	4	6	4	1
Total	76	100	46	100	75	100	78	100	63	100	69	100	63	100	470	100

(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Special Recommendation II (Criminalisation of terrorist financing)	
Rating: Largely compliant	
Recommendation of the MONEYVAL Report	*Clarify that Article 328 B offences cover contributions used for any purpose ((including a legitimate activity), by a terrorist group.*
Measures reported as of 8 December 2008 to implement the	This issue is being re-addressed through proposed amendments to the relevant laws.

Recommendation of the Report	
Measures taken to implement the recommendations since the adoption of the first progress report	The wording of Article 328B(3) of Sub-Title IVA of the Criminal Code (see Appendix III.7) refers to whosoever "…directs, finances, supplies, information or materials to a terrorist group" without specifying that what is contributed needs to be specifically used for an illegitimate purpose. The general interpretation given to this provision is that even contributions for a legitimate activity would fall within the scope of the offence. Amendments, however, are currently being considered in order to ensure that the wording of the law does not leave any room for a different interpretation.
Recommendation of the MONEYVAL Report	*Clarify if provision or collection of funds can be done directly and indirectly.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Vide above.
Measures taken to implement the recommendations since the adoption of the first progress report	Article 328F (see Appendix III.7) states that whosoever receives, provides or invites another person to provide money or property for the purposes of terrorism shall be guilty of an offence. The phrase '*invites another person to provide*' is considered to cover the criminalization of indirect funding. In addition, Article 328H (see Appendix III.7) extends the purview of the offence to also cover the entering into or becoming concerned in an arrangement as a result of which money is made available or is to be made available to another person, which clearly implies that the criminalization of indirect funding is covered by the said provision. Notwithstanding the above, an amendment to the law is being considered which would specifically include the phrase 'directly or indirectly receives, provides …' in Article 328F in order to eliminate any resultant doubts.
Recommendation of the MONEYVAL Report	*Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Since 2007 the FIAU has received four suspicious transaction reports related to the financing of terrorism, three of which have been passed on to the police for further investigation following the assessment by the FIAU.
Measures taken to implement the recommendations since the adoption of the first progress report	No further FT reports have been received since the First Progress Report.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Special Recommendation IV (Suspicious transaction reporting) I. Regarding Financial Institutions	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	*Mandatory obligation to report suspicious transactions of FT is not in place.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Special Recommendation IV (Suspicious transaction reporting) II. Regarding DNFBP	
Recommendation of the MONEYVAL Report	*Mandatory obligation to report suspicious transactions of FT is not in place.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated in footnote 3 the obligation to report financing of terrorism was introduced by LN 42 of 2006 following the on-site evaluation visit, and is now more comprehensively covered under Regulation 15 of the 2008 Regulations.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.

(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

2.3. Other Recommendations

In the last report the following FATF recommendations were rated as "partially compliant" (PC) or "non compliant" (NC) (see also Appendix 1). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

Recommendation 6 (Politically exposed persons)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*Malta should introduce enforceable means concerning the establishment of business relationships with PEPs.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	The concept of PEPs was introduced into Maltese legislation through the 2006 amendments to the 2003 Regulations, immediately following the completion of the Third Round evaluation on-site visit in November 2005. The 2008 Regulations have broadened the concept of PEPs by adopting the more extensive definition of PEPs in the FATF 40 and the EU Third Directive under Regulation 2 and Regulations 11(6) and (7). More specifically, Regulation 11(6) deals with the undertaking of transactions or establishment of a business relationship by a subject person with politically exposed persons. This regulation imposes enhanced measures to be adopted by subject persons in undertaking transactions or establishing business relationships with PEPs. Enhanced measures include: the approval of senior management for the establishment of such a relationship or the undertaking of transactions; the maintenance of suitable measures and internal procedures to ascertain the source of wealth and funds that are involved in these business relationships or transactions; and the conducting of enhanced ongoing monitoring of the business relationship. Regulation 11(8) then states that where a person has ceased to be entrusted with a prominent public function for a period of at least twelve months such person shall no longer be considered as a politically exposed person.
Measures taken to implement the recommendations since the adoption of the first progress report	Although no further measures have been found necessary to be introduced as the 2008 PMLFTR adequately cover this recommendation, it may be worth further mention that, in addition to the above, the PMLFTR, in Regulation 7(9), also provides for the establishment of a customer acceptance policy which should be conducive to determine whether an applicant for business qualifies as a PEP, in which case the enhanced due diligence measures set out under Regulation 11(6) have to be applied. As a minimum such customer acceptance policy should include:

	(a) a description of the type of customer that is likely to pose higher than average risk; (b) the identification of risk indicators such as the customer background, country of origin, business activities, products, linked accounts or activities and public or other high profile positions. The draft Implementing Procedures further explain in detail the implementation of the measures set out in Regulation 11 of the PMLFTR.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 7 (Correspondent banking)	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	*No law, regulation or enforceable guidance on cross-border correspondent relationships.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	It must be noted that although, in the opinion of the Maltese authorities, the requirements of Recommendation 7 were already partially covered through the Guidance Notes (oem), the 2006 amendments to the 2003 Regulations following the on-site visit strengthened these obligations through the then Regulation 5A. However the Maltese authorities have given due consideration to the MONEYVAL recommendations in this respect. Under the 2008 Regulations therefore, cross-border correspondent relationships with respondent institutions from a country other than a Member State of the Community have been further strengthened and are now regulated by Regulation 11(3). A set of particular measures must be adopted by the subject person carrying out relevant financial business to ensure that money laundering and funding of terrorism are avoided. Subject persons must have knowledge of and understand the business activities and reputation of the respondent institution; assess the adequacy and effectiveness of the internal controls for the prevention of money laundering and the funding of terrorism; obtain the prior approval of senior management for the establishment of new correspondent banking relationships; document their respective responsibilities for the prevention of money laundering and the funding of terrorism; and with respect to payable-through accounts be satisfied that the respondent credit institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and that it is able to provide relevant customer due diligence data to that subject person upon request.
Measures taken to implement the recommendations since the adoption of the first progress report	In addition to the above, the draft Implementing Procedures provide detailed procedures on the manner in which credit institutions are expected to satisfy the requirements set out in Regulation 11(3) mentioned in the First Progress Report.

(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 16 (DNFBP – R.13-15 & 21)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*Attempted transactions are not explicitly covered.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	See reply to Recommendation 13 above.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.
Recommendation of the MONEYVAL Report	*No reporting obligation on financing of terrorism.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	See reply to Recommendation 13 above.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.
Recommendation of the MONEYVAL Report	*Trust Service Providers not being a nominee company or licensed nominee should be expressly covered.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 2 of the Revised Regulations gives a definition of "Trust and company service providers": any natural or legal person who, by way of business, provides any of the following services to third parties: a) forming companies or other legal persons; b) acting as or arranging for another person to act as a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons; c) providing a registered office, business address and other related services for

	a company, a partnership or any other legal person or arrangement; d) acting as or arranging for another person to act as a trustee of an express trust or a similar legal arrangement; e) acting as or arranging for another person to act as a nominee shareholder for another person other than a company listed on an official stock exchange that is subject to disclosure requirements in conformity with the Financial Markets Act or subject to equivalent international standards. Additionally since, as explained to the Plenary during the MER discussion in September 2007, in Malta such activities are often provided by the legal and the accountancy professions, persons providing trust and company services are covered in the definition of 'relevant activity' in relation to: (*a*) auditors, external accountants and tax advisors when acting as provided for in paragraph (c) below; (*c*) notaries and other independent legal professionals when they participate, whether by acting on behalf of and for their client in any financial or real estate transaction or by assisting in the planning or execution of transactions for their clients concerning the - (i) organisation of contributions necessary for the creation, operation or management of companies; (ii) creation, operation or management of trusts, companies or similar structures, or when acting as a trust or company service provider; (*d*) trust and company service providers not already covered under paragraphs (*a*), (*c*), (*e*) and (*f*); (*e*) nominee companies holding a warrant under the Malta Financial Services Authority Act and acting in relation to dissolved companies registered under the said Act; (*f*) any person providing trustee or any other fiduciary service, whether authorised or otherwise, in terms of the Trusts and Trustees Act.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR. No further changes have been necessary.
Recommendation of the MONEYVAL Report	*While the reporting duty is generally in place there have been very few reports from DNFBP (effectiveness).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As held by the Malta Delegation in the course of the discussions of the Plenary on the adoption of the MER in September 2007, it is generally the situation in most evaluated countries that the number of suspicious reports filed by DNFBPs in relation to those filed by the financial sector is always lower, although to different degrees. This is understandable considering the dominance of the financial sector in all jurisdictions. Although this is generally still the case it is worth noting that reports filed by DNFBPs have gradually increased as evidenced by the chart attached under the reply to Recommendation 13.
Measures taken to implement the recommendations since the adoption of the first progress	Please see comments under Recommendation 13.

report	
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 18 (Shell banks)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*Malta should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking with shell banks.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Although as claimed by the Malta Delegation at the time of the Plenary discussion, in this context banks in Malta were already prohibited through the relevant provisions of the Guidance Notes (oem), the Maltese Authorities have taken on board the MONEYVAL recommendations and strengthened this requirement through the specific legislative provisions in the 2008 Regulations. As such, Regulation 11(4) now states that subject persons carrying out relevant financial business under paragraph (*a*) of the definition in Regulation 2 shall not enter into, or continue, a correspondent banking relationship with a shell bank.
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report adequately cover this recommendation.
Recommendation of the MONEYVAL Report	*Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 11(4)*(b)* states that subject persons carrying out relevant financial business under paragraph (*a*) of the definition in Regulation 2 shall take appropriate measures to ensure that they do not enter into, or continue, a corresponding banking relationship with a bank which is known to permit its accounts to be used by a shell bank.
Other changes	The 2008 Regulations now contain a definition of a shell bank: "shell bank" means a credit institution or an institution engaged in equivalent activities, incorporated in a jurisdiction in which it has no physical presence, involving meaningful mind and management, and which is not affiliated with a regulated financial group**.**
Measures taken to implement the recommendations since the adoption of the first progress report	No further changes have been found necessary in addition to what has been implemented and stated for the First Progress Report.
(other) changes since the first progress report	

(e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 21 (Special attention to higher risk countries)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	The 2008 Regulations have retained the concept of 'reputable jurisdiction' but have strengthened the application of the concept throughout the Regulations as appropriate. Regulation 15(2) specifically requires subject persons to pay special attention to business relationships and transactions with persons, companies and undertakings, including financial institutions and DNFBPs, from a jurisdiction that does not meet the established criteria of a reputable jurisdiction as defined by the Regulations. Moreover Regulation 15(3) provides for measures that can be taken by the authorities where a jurisdiction continues not to apply or to insufficiently apply adequate AML/CFT measures. Additionally subject persons are prohibited from: a) applying simplified due diligence measures to all business relationships and transactions from a non reputable jurisdiction (Regulation 10(7)) b) relying on persons and institutions from a non reputable jurisdiction for the performance of customer due diligence requirements (Regulation 12(11)) c) applying the provisions of disclosure with persons and institutions from a non reputable jurisdiction (Regulation 16 (4))
Measures taken to implement the recommendations since the adoption of the first progress report	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were adequately implemented
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 22 (Foreign branches and subsidiaries)	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	*No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Maltese requirements and the FATF Recommendations to the extent that host country laws and regulations permits.*
Measures reported as of 8 December	Regulation 6 of the 2008 Regulations requires financial institutions with overseas branches or majority owned subsidiaries to communicate to such entities their

2008 to implement the Recommendation of the Report	internal AML/CFT procedures and to apply to them such AML/CFT measures that, as a minimum, are equivalent to Maltese requirements.
Measures taken to implement the recommendations since the adoption of the first progress report	As already explained in the First Progress Report the 2008 PMLFTR adequately cover this requirement.
Recommendation of the MONEYVAL Report	*There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 6 (1) states that subject persons carrying out relevant financial business shall not establish or acquire branches or majority owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction. This regulation is meant to further support the policy of the banking regulator not to approve the establishment of branches or subsidiaries in jurisdictions that do not or insufficiently apply the FATF -40. The Maltese Authorities would like to recall that, in terms of the Banking Act and other financial services legislation, financial institutions cannot establish an overseas branch or subsidiary unless so authorised by the regulator (the MFSA) whose policy for such authorisations includes the considerations of the AML/CFT situation and legislative provisions in the jurisdiction of establishment.
Recommendation of the MONEYVAL Report	*Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 6 (2)(b) requires subject persons to apply measures that, as a minimum, are equivalent to those under the 2008 Regulations regarding customer due diligence and record keeping. In the event that such application is not possible the subject person shall immediately notify the FIAU and take additional measures to effectively handle the risk of money laundering or the funding of terrorism. Should the subject person be unable to take additional measures, the FIAU in collaboration with supervisory authorities may order the closure of such branches or subsidiaries.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft “other enforceable means” and other relevant initiatives)	The measures mentioned in the First Progress Report clearly indicate that the recommendations made following the Third Round Evaluation were implemented by means of the relevant regulations in the PMLFTR.

Recommendation 24 (DNFBP – Regulation, supervision and monitoring)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*More resources needed for monitoring and ensuring compliance by DNFBPs other than casinos.*
Measures reported as of 8	The FIAU has established its own Compliance Department to develop its compliance

December 2008 to implement the Recommendation of the Report	operations. Currently the Department comprises one compliance officer who will continue to operate in collaboration with the other supervisory authorities with whom the FIAU has entered into MoUs. This notwithstanding, according to the Development Plan of the FAIU, the number of officers should be increased by two to a total of three officers by the year 2010. To date the FIAU has managed to maintain a steady ongoing supervision programme in the financial sector through its agreement with the MFSA. It is worth noting that in accordance with the 2008 Regulations transposing the EU Third AML Directive, the FIAU can apply a risk based approach in monitoring DNFBPs. To this effect, the FIAU will eventually establish its internal risk matrix in order to fulfil this obligation effectively.
Measures taken to implement the recommendations since the adoption of the first progress report	As mentioned in the First Progress Report and in the first part of this Second Progress Report the FIAU is entrusted with the responsibility of monitoring financial and non-financial subject persons to ensure that they are complying with the obligations under the PMLFTR on an ongoing basis. Since the adoption of the First Progress Report the compliance section of the FIAU has become fully functional with staff dedicated solely to ensuring that the PLMFTR obligations are being followed in practice. In fact, a number of focused inspection on-site visits have been conducted by the compliance section of the FIAU. As already mentioned the FIAU is in the process of implementing a system whereby an annual compliance report is submitted by all subject persons to the FIAU. Additionally, the FIAU has held a number of meetings and conducted seminars with representative bodies of DNFBPs in order to continue increasing awareness.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Recommendation 25 (Guidelines and Feedback)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*CFT issues are not addressed in sector specific guidelines.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	In general, this is gradually no longer the case. Through its Legal and Compliance Departments the FIAU is working with the industry to continue to develop guidelines based on the 2008 Regulations. Vide for instance 'Guidance Notes on the Prevention of Money Laundering and Funding of Terrorism' issued by the institute of financial services practitioners in October 2007.
Measures taken to implement the recommendations since the adoption of the first progress report	As already mentioned the FIAU issued the draft Implementing Procedures for a period of consultation which expired on 29th October 2010. The document is now being finalized taking into consideration the comments and feedback received from associations and bodies representing subject persons in Malta, the MFSA, the LGA, the Central Bank of Malta and other subject persons. In the meantime, the associations and bodies representing subject persons have started a process together with the FIAU to issue sector-specific procedures modelled on the Implementing Procedures of the FIAU, which once finalized will be annexed to the Implementing

	Procedures and form part of a comprehensive document. Work in this regard is already in progress with some sectors having finalized their contribution.
Recommendation of the MONEYVAL Report	*The provision of feedback is not fully in line with the FATF Best Practices Guidelines in providing feedback.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Regulation 14(4) of the 2008 Regulations states that the FIAU shall provide subject persons and supervisory authorities with timely feedback on the effectiveness of the suspicious transaction reports, on other information it receives from subject persons and the effectiveness of the statistical data gathered by the FIAU. The FIAU is further bound by the Act to provide feedback on STRs as may be requested by reporting entities. It is worth noting that earlier this year Malta was assessed on its feedback procedures by the EU. The results of the assessment were positive.
Measures taken to implement the recommendations since the adoption of the first progress report	There are no further comments to add.
Recommendation of the MONEYVAL Report	*No sector specific guidelines for DNFBP.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As explained above, these are currently being drafted.
Measures taken to implement the recommendations since the adoption of the first progress report	Earlier this year sector-specific guidance issued by the Institute of Financial Services Practitioners (IFSP) was approved by the FIAU in terms of Article 4(6) of the PMLFTR. The Regulations provide that such Guidance Notes shall be taken into consideration by the courts in determining whether a subject person has complied with the obligations set out in the PMLFTR. This guidance is intended for legal professionals when practicing in the area of financial services, accountants, tax advisors, trust and company service providers and persons providing trustee or any other fiduciary service. Moreover, as explained previously above, the Implementing Procedures to be issued by the FIAU are partly under a consultation process and partly still currently being drafted.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Special Recommendation VII (Wire transfer rules)	
Rating: Partially compliant	
Recommendation of the MONEYVAL Report	*The general identification limit of MTL 5000 (Euro 11 650) applies to occasional wire transfers which is higher than the exception for the purposes of SR VII (Euro 1000).*

Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Although the European Union Regulation 1781/2006 of 15 November 2006 on information on the payer accompanying transfer of funds is directly applicable as part of domestic legislation for wire transfers, yet Regulation 7(11) reiterates this obligation for financial institutions to comply with the EU Directive with Regulation 7(12) imposing administrative penalties for non-compliance. Moreover, with respect to occasional transactions that involve a money transfer or remittance, the definition of 'Case 3' (single large transaction) under Regulation 2 (1) sets the threshold at €1,000. Moreover, Regulation 4 of the 2008 Regulations further requires that no subject person shall form a business relationship or carry out an occasional transaction with an applicant for business unless the subject persons maintains *inter alia* customer due diligence measures. Finally, Regulation 7(5) requires the application of customer due diligence measures in all Cases 1 – 4 as defined in Regulations 2.
Measures taken to implement the recommendations since the adoption of the first progress report	As mentioned in the First Progress Report this is fully covered by the EU Regulation 1781/2006 which is mandatory in all Member States.
Recommendation of the MONEYVAL Report	*No "full" originator information required to accompany cross-border wire transfers.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	EU Regulation 1781/2006 is directly applicable as part of domestic legislation in Malta as an EU Member State. This notwithstanding, Regulation 7(11) of the 2008 Regulations states that subject persons who carry out a financial activity under 'relevant financial business' that involves the transfer of funds both domestically and cross-border shall comply with the provisions of Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfer of funds, as may be in force from time to time. In this case article 5 of Regulation No 1781/2006 is directly applicable.
Measures taken to implement the recommendations since the adoption of the first progress report	As mentioned in the First Progress Report this is fully covered by the EU Regulation 1781/2006 which is mandatory in all Member States.
Recommendation of the MONEYVAL Report	*No measures taken to ensure enhanced scrutiny of and monitor for transfers which do not contain complete originator information.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Articles 8, 9 and 10 of Regulation No 1781/2006 are directly applicable in this case. Additionally Regulation 7(12) of the 2008 Regulations states that a subject person who contravenes the provisions of this regulation or of Regulation No 1781/2006 shall be liable to an administrative penalty of not less than two hundred and fifty euro (€250) and not more than two thousand five hundred euro (€2,500) which shall be imposed by the Financial Intelligence Analysis Unit without recourse to a court hearing.
Measures taken to implement the recommendations since the adoption	As mentioned in the First Progress Report this is fully covered by the EU Regulation 1781/2006 which is mandatory in all Member States.

of the first progress report	
Recommendation of the MONEYVAL Report	*No guidance on batching.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Articles 7 and 8 of Regulation No. 1781/2006 are directly applicable in this case.
Measures taken to implement the recommendations since the adoption of the first progress report	As mentioned in the First Progress Report this is fully covered by the EU Regulation 1781/2006 which is mandatory in all Member States.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

Special Recommendation VIII (Non-profit organisations)	
Rating: Non compliant	
Recommendation of the MONEYVAL Report	*No special review of the risks in the NPO sector undertaken.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	The non-profit organisation sector is now regulated by the Voluntary Organisations Act 2007 and the Second Schedule of the Civil Code introduced in 2007. The FIAU has made recommendations to the Office of the Attorney General to enhance the harmonisation of the Voluntary Organisations Act with Special Recommendation VIII. The recommendations are currently under consideration by the Office of the Attorney General
Measures taken to implement the recommendations since the adoption of the first progress report	Recommendations for the amendment of Voluntary Organisations Act 2007 the have been made to the Minister responsible for Social Policy which are being considered by the legal office within the Ministry.
Recommendation of the MONEYVAL Report	*No general guidance to financial institutions as to the risks (in the light of Best Practice Paper for SR VIII).*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	Guidelines are currently being drafted.
Measures taken to	Guidance has been provided in Chapter 4 of the draft Implementing Procedures

implement the recommendations since the adoption of the first progress report	dealing with Mandatory Risk Procedures and the Risk-Based Approach.
Recommendation of the MONEYVAL Report	*Insufficient legal regulation of NPO sector.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated above the non-profit organisation sector is now regulated by Voluntary Organisations Act 2007 and the Second Schedule of the Civil Code introduced in 2007.
Measures taken to implement the recommendations since the adoption of the first progress report	The position remains as explained in the First Progress Report
Recommendation of the MONEYVAL Report	*No specific measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations.*
Measures reported as of 8 December 2008 to implement the Recommendation of the Report	As stated above the non-profit organisation sector is now regulated by Voluntary Organisations Act 2007 and the Second Schedule of the Civil Code introduced in 2007.
Measures taken to implement the recommendations since the adoption of the first progress report	The position remains as explained in the First Progress Report
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

2.4. Specific Questions

Specific Questions raised in the 1st Progress Report and answers given by Malta

1. Has a general power across the financial sector been introduced to supervise the reporting of unusual business operations involving funds that may be linked or related to terrorism and the financing of terrorism? Have sanctioning powers been introduced in the financial sector for failing to report financing of terrorism transactions?

The FIAU is the entity which has the power to receive suspicious reports relating to the funding of terrorism. This power emanates from Regulation 15 of the 2008 Regulations. Regulation 15 (15) imposes an administrative penalty on those who fail to disclose and report a suspicion of funding of terrorism. Moreover the FIAU remains by law the authority responsible to supervise subject persons under the 2008 Regulations, which now cover reporting of transactions suspected to involve the funding of terrorism.
2. Have there been any changes to the domestic legal regime for freezing assets under SR.III of EU internals since the adoption of the 3rd evaluation report? Have any such orders been made in respect of EU internals since the adoption of the 3rd evaluation report?
There have been no significant changes in the domestic legal regime for freezing assets.
3. Have sanctions been imposed (whether administrative or criminal) specifically for AML/CFT infringements, at the instigation of financial sector supervisors, since the adoption of the 3rd report? If so, please indicate the main types of AML/CFT infringement detected by financial sector supervisors since the adoption of the 3rd report.[NB It is not necessary for these purposes to provide full detailed statistics, but an overview]
Since the adoption of the 3rd Report in September 2007, in the course of its supervisory work, the MFSA has detected a small number of AML/CFT related infringements by licence holders. These included minor deficiencies in written AML/CFT procedures, minor shortcomings in aspects of customer acceptance policies and in CDD information / documentation, and occasionally shortcomings in training obligations. The infringements detected were not serious enough to warrant the imposition of fines but rather the issue of a warning or a reprimand. In all cases the MFSA requested the licence holder concerned to rectify the shortcoming and to comply within an established time period and verified compliance through a follow up on-site visit.
Additional Questions since the 1st Progress Report
1. Please describe how many investigation, and convictions for money laundering so far relate to autonomous money laundering and how many relate to self laundering. What are the major underlying predicate offences involved and how many of these cases involve "foreign" predicate offences?
Almost all <u>investigations</u> for ML relate to self-laundering with the exception of just a few. However, it is difficult to provide exact figures since it is only possible to determine whether a case relates to self-laundering or autonomous laundering once the investigation is completed. However, it is worth noting that two <u>convictions</u> since the 1st Progress Report related to autonomous ML. The major underlying predicate offence remains drug trafficking, followed by fraud and misappropriation. There is quite a substantial number of these cases where the predicate offence was carried out outside Malta.
2. Please describe the procedures currently in place to ensure that action under UNSCRs 1267 and 1373 can be taken in respect of so-called EU internals.
Both UNSCR 1267 and 1373 are implemented through legal notices into Maltese legislation. Legal Notice 156 of 2002 (see Appendix III.8) implements the provisions of UNSCR 1373 while Legal Notice 214 of 1999 (see Appendix III.9) implements UNSCR 1267. These Legal Notices are issued under the National Interest (Enabling Powers) Act (Cap.365 of the Laws of Malta). These laws do not make a distinction between so-called EU internals and other designated persons. Hence action under the said UNSCRs as implemented into local legislation can also be taken against EU internals.
3. What further steps have been taken to develop clear and publicly known procedures for de-listing and unfreezing in the context of SRIII (particularly in respect of Essential Criteria III-6, III-7, III-8 and III-9).
As a Member State of the European Union, Malta adopts lists of persons and entities as adopted at EU level. On this basis we are guided by the listing and de-listing procedures of the EU. It should be noted that Malta does not issue unilateral sanctions which involve national listings. In view of this, the need for the setting up of domestic listing and de-listing procedures has not arisen.
4. What steps have been taken since the first progress report to address the issues set out in the Interpretative Note (IN) to SRVIII (in particular in respect of the measures described in paragraphs 5 + 6 of the IN)?

A number of recommendations made by the FIAU are being considered by the Ministry responsible for social policy with the intention of amending the Voluntary Organisations Act.

2.5. *Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)[6]*

Implementation / Application of the provisions in the Third Directive and the Implementation Directive	
Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when.	The European Union Third Directive and the Implementation Directive have been fully implemented by virtue of the Prevention of Money Laundering and Funding of Terrorism Regulations of July 2008
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	No further changes have been found necessary to be carried out since the First Progress Report.

Beneficial Owner	
Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3rd Directive[7] (please also provide the legal text with your reply)	The legal definition of 'beneficial owner' in Regulation 2 of the 2008 Regulation is fully aligned with the definition given in the 3rd Directive. In addition to the provisions laid out in the definition of the 3rd Directive, Regulation 2 states that in the case of long term insurance business, the beneficial owner shall be construed to be the beneficiary under the policy – this is in line with the FATF 40.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other	The draft Implementing Procedures further elaborate on the definition of beneficial owner provided in the PMLFTR by providing detailed explanations and graphic representations to assist subject persons in determining who qualifies as a beneficial owner.

[6] For relevant legal texts from the EU standards see Appendix II.

[7] Please see Article 3(6) of the 3rd Directive reproduced in Appendix II.

relevant initiatives)	
Risk-Based Approach	
Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations.	In terms of Regulation 3, the FIAU may determine that subject persons who carry on relevant financial business (including therefore financial institutions) on an occasional or very limited basis and where there is little risk of money laundering or funding of terrorism shall not be regarded as subject persons and therefore do not fall within the scope of the 2008 Regulations. Sub-Regulations (2) to (5) of Regulation 3 lay down the criteria on which the FIAU shall make such determination. Regulation 7 establishes the customer due diligence criteria, with Regulation 7(8) providing for subject persons to determine the extent of the application of customer due diligence requirements on a risk sensitivity basis depending on the type of customer, business relationship, product or transaction. The law further requires that subject persons must have internal procedures in place to apply the risk based approach to the satisfaction of the supervisory authority – the FIAU. In this context therefore, subject persons may apply simplified customer due diligence as far as it is permitted by the criteria laid down in Regulation 10 of the 2008 Regulations. Additionally, as far as applicable, subject persons must apply enhanced customer due diligence measures in situations in accordance with Regulation 11 of the 2008 Regulations.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	The draft Implementing Procedures dedicate a whole chapter to the application of mandatory risk assessment procedures and the risk-based approach. The benefits of implementing the risk-based approach and the manner in which it is to be implemented are clearly set out in this chapter.

Politically Exposed Persons	
Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive[8] are provided for in your domestic legislation (please also provide the legal text with your reply).	The definition of "politically exposed persons" completely reflects the definition in the EU Third Directive and the Implementation Directive. Definition under Regulation 2: "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and shall include their immediate family members or persons known to be close associates of such persons, but shall not include middle ranking or more junior officials; Regulation 11(7) states For the purposes of the definition of 'politically exposed persons' - (*a*) the term 'natural persons who are or have been entrusted with prominent public functions' shall include the following: (i) Heads of State, Heads of Government, Ministers and Deputy and Assistant Ministers and Parliamentary Secretaries; (ii) Members of Parliament; (iii) members of the Courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional

[8] Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

	circumstances; (iv) members of courts of auditors, Audit Committees or of the boards of central banks; (v) ambassadors, *charges d'affaires* and other high ranking officers in the armed forces; (vi) members of the administrative, management or boards of State-owned corporations, and where applicable, for the purposes of subparagraphs (i) to (v), shall include positions held at the Community or international level; (*b*) the term 'immediate family members' shall include the following: (i) the spouse, or any partner recognised by national law as equivalent to the spouse; (ii) the children and their spouses or partners; and (iii) the parents; (*c*) the term 'persons known to be close associates' shall include the following: (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of legal arrangement, or any other close business relations with that politically exposed person; (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that politically exposed person.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	No other changes have been found necessary to be carried out since the First Progress Report.

"Tipping off"	
Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations.	Officials or employees of the FIAU (article 33 of the Act) and subject persons, supervisory authorities or any official or employee of a subject person or a supervisory authority (Regulation 16 of the 2008 Regulations) are prohibited from disclosing to the person concerned or to a third party, that an investigation is being or may be carried out, or that information has been or may be transmitted to the Financial Intelligence Analysis Unit. Article 4(2) of the Act prohibits any person from disclosing that an investigation is taking place or makes any other disclosures likely to prejudice such investigation where an investigation order has been applied for by the Attorney General.
With respect to the prohibition of "tipping off" please indicate whether there are circumstances where the prohibition is lifted and, if so, the details of such circumstances.	In transposing the relevant articles under Section 2 of Chapter III of the EU Third Directive, Regulation 16(2) provides that disclosures made under the following circumstances shall not constitute a breach of that subregulation: (*a*) disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies in accordance with applicable law; (*b*) disclosures by the reporting officer of a subject person who undertakes relevant financial business to the reporting officer of another person or persons undertaking equivalent activities and who form part of the same group of companies of the former subject person, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction;

	(*c*) disclosures by the reporting officer of a subject person who undertakes activities under paragraph (*a*) or paragraph (*c*) of the definition of 'relevant activity' to the reporting officer of another person or persons undertaking equivalent activities, who perform their professional activities whether as employees or not, but within the same legal person or within a larger structure to which the subject person belongs and which shares common ownership, management or compliance control, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction; (*d*) disclosures between the same professional category of subject persons referred to in paragraph (*b*) and paragraph (*c*) in cases related to the same customer and the same transaction that involves two or more institutions or persons, whether situated domestically, within another Member State of the Community or in a reputable jurisdiction, provided that such subject persons are subject to equivalent obligations as regards professional secrecy and personal data protection and, provided further that the information exchanged shall only be used for the purposes of the prevention of money laundering or the funding of terrorism. (3) The fact that a subject person as referred to in subregulation (2)(*c*) is seeking to dissuade a client from engaging in an illegal activity shall not constitute a disclosure in breach of subregulation (1). (4) Where the FIAU determines that a jurisdiction does not meet the criteria of a reputable jurisdiction as defined in regulation 2 of the 2008 Regulations, or where the FIAU is otherwise informed that a jurisdiction is not considered as meeting the criteria of a reputable jurisdiction, it shall, in collaboration with the relevant supervisory authorities, prohibit subject persons from applying the provisions of subregulation (2) with persons and institutions from that jurisdiction. Moreover, Article 34 (1) of the Act states that the FIAU, and its officers, employees and agents, whether still in the service of the FIAU or not, shall not disclose any information relating to the affairs of the FIAU or of any person, physical or legal, which they have acquired in the performance of their duties or the exercise of their functions under this Act except: (*a*) when authorised to do so under any of the provisions of the Act; (*b*) for the purpose of the performance of their duties or the exercise of their functions under the Act; (*c*) when specifically and expressly required to do so under a provision of any law. Article 34 (2) states further that the FIAU may disclose any document or information referred to in subarticle (1) to an organization outside Malta which in the opinion of the FIAU has functions similar to those of the FIAU and which has similar duties of secrecy and confidentiality as those of the FIAU or to a supervisory authority in Malta or to a supervisory authority outside Malta which in the opinion of the FIAU has duties similar to those of a supervisory authority in Malta.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	No other changes have been found necessary to be carried out since the First Progress Report.

"Corporate liability"

Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person.	Regulation 5 (1) states that where an offence against the provisions of Regulation 4 is committed by a body or other association of persons, be it corporate or unincorporate, every person who at the time of the commission of the offence was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence. Article 3(4) of the Act states: Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article 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 Act 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).
Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person.	Regulation 5(2) states that without prejudice to subregulation (1), where the offence is committed by a body or other association of persons, be it corporate or unincorporate, or by a person within and for the benefit of that body or other association of persons consequent to the lack of supervision or control that should have been exercised on him by a person referred to in subregulation (1), such body or association shall be liable to an administrative penalty of not less than one thousand and two hundred euro (€1,200) and not more than five thousand euro (€5,000). Regulation 5(3) establishes the application of this administrative penalty either as a one time penalty or on a daily cumulative basis not exceeding €50,000 in aggregate.
(other) changes since the first progress report (e.g. draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	No other changes have been found necessary to be carried out since the First Progress Report.

DNFBPs	
Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over.	In accordance with the definition of 'relevant activity (DNFBPs) in the 2008 Regulations, the following shall be considered to be subject persons: natural or legal persons trading in goods whenever payment is made in cash in an amount equal to fifteen thousand euro (€15,000) or more whether the transaction is carried out in a single operation or in several operations which appear to be linked.
(other) changes since the first progress report (e.g.	No other changes have been found necessary to be carried out since the First Progress Report.

draft laws, draft regulations or draft "other enforceable means" and other relevant initiatives)	

2.6. Statistics

Money laundering and financing of terrorism cases

a. Statistics provided in the last progress report:

2005												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
ML	27	44	3	3	-	-	2	-	2	-	-	-
FT												

2006												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
ML	38	51	4	9	-	-	12	279,525	12	279,525	-	-
FT												

2007												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
ML	32	43	6	9	1	1	8	759,942	8	759,942	1	-
FT	1	2										

2008												
	Investigations		**Prosecutions**		**Convictions (final)**		**Proceeds frozen**		**Proceeds seized**		**Proceeds confiscated**	
	cases	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)	**cases**	**amount** (in EUR)
ML	42	54	2	3	2	2	5	985,816	5	318,716	-	-
FT	1	2										

b. Please complete, to the fullest extent possible, the followng tables since the adoption of the first progress report.

2009												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	21	25	9	10	5	5	15	2,670,811.19	15	2,670,811.19	-	-
FT	-	-	-	-	-	-	-	-	-	-	-	-

31.10.2010												
	Investigations		Prosecutions		Convictions (final)		Proceeds frozen		Proceeds seized		Proceeds confiscated	
	cases	persons	cases	persons	cases	persons	cases	amount (in EUR)	cases	amount (in EUR)	cases	amount (in EUR)
ML	19	23	4	7	1	1	6	2,278,098.72,6	6	2,278,098.72,6	-	-
FT	1	1	-	-	-	-	-	-	-	-	-	-

c. AML/CFT sanctions imposed by supervisory authorities

Please complete a table (as beneath) for administrative sanctions imposed for AML/CFT infringements in respect of each type of the supervised entity in the financial sector (eg, banks, insurance, securities etc). If similar information is available in respect of supervised DNFBP, please provide an additional table (or tables), also with information as to the types of AML/CFT infringements for which sanctions were imposed.
Please adapt the tables, as necessary, also to indicate any criminal sanctions imposed on the initiative of supervisory authorities and for what types of infringement.

	2007 for comparison	2008 for comparison	2009	31.10. 2010
Number of AML/CFT violations identified by the supervisor				
Type of measure/sanction*				
Written warnings	**1**			**1**
Fines				**2**
Removal of manager/compliance officer				
Withdrawal of license				
Other**				**1 (verbal warning)**
Total amount of fines				**2**
Number of sanctions taken to the court (where applicable)				**Nil**
Number of final court orders				
Average time for finalising a court order				

* Please amend the types of sanction as necessary to cover sanctions available within your jurisdiction
** Please specify

STR/CTR

a. Statistics provided in the last progress report

<table>
<tr><th colspan="16">2005</th></tr>
<tr><th colspan="8">Statistical Information on reports received by the FIU</th><th colspan="8">Judicial proceedings</th></tr>
<tr><th rowspan="4">Monitoring entities, e.g.</th><th rowspan="4">reports about transactions above threshold</th><th colspan="2">reports about suspicious transactions</th><th colspan="2">cases opened by FIU</th><th colspan="2">notifications to law enforcement/ prosecutors</th><th colspan="4">indictments</th><th colspan="4">convictions</th></tr>
<tr><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th></tr>
<tr><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th></tr>
<tr></tr>
<tr><td>Commercial banks
Credit Institutions</td><td></td><td>39</td><td>-</td><td rowspan="12">62</td><td rowspan="12"></td><td rowspan="12">28</td><td rowspan="12"></td><td rowspan="12">6</td><td rowspan="12">7</td><td rowspan="12">-</td><td rowspan="12">-</td><td rowspan="12">-</td><td rowspan="12">-</td><td rowspan="12">-</td><td rowspan="12">-</td></tr>
<tr><td>Insurance companies</td><td></td><td>10</td><td>-</td></tr>
<tr><td>Notaries</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Currency exchange
Financial Institutions</td><td></td><td>18</td><td>-</td></tr>
<tr><td>Broker companies
securities' registrars
Investment firms</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Lawyers</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Accountants/auditors</td><td></td><td>1</td><td>-</td></tr>
<tr><td>Company service providers</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Nominees and Trustees</td><td></td><td>1</td><td>-</td></tr>
<tr><td>Casinos</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Regulatory Authorities</td><td></td><td>6</td><td>-</td></tr>
<tr><td>Total</td><td></td><td>75</td><td>-</td></tr>
</table>

<table>
<tr><th colspan="16">2006</th></tr>
<tr><th colspan="8">Statistical Information on reports received by the FIU</th><th colspan="8">Judicial proceedings</th></tr>
<tr><th rowspan="4">Monitoring entities, e.g.</th><th rowspan="4">reports about transactions above threshold</th><th colspan="2">reports about suspicious transactions</th><th colspan="2">cases opened by FIU</th><th colspan="2">notifications to law enforcement/ prosecutors</th><th colspan="4">indictments</th><th colspan="4">convictions</th></tr>
<tr><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th></tr>
<tr><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th></tr>
<tr></tr>
<tr><td>Commercial banks
Credit Institutions</td><td></td><td>43</td><td>-</td><td rowspan="2">72</td><td rowspan="2"></td><td rowspan="2">24</td><td rowspan="2"></td><td rowspan="2">11</td><td rowspan="2">13</td><td rowspan="2">-</td><td rowspan="2">-</td><td rowspan="2">-</td><td rowspan="2">-</td><td rowspan="2">-</td><td rowspan="2">-</td></tr>
<tr><td>Insurance companies</td><td></td><td>2</td><td>-</td></tr>
</table>

Monitoring entities, e.g.	reports about transactions above threshold	reports about suspicious transactions ML	reports about suspicious transactions FT	cases opened by FIU ML	cases opened by FIU FT	notifications to law enforcement/ prosecutors ML	notifications to law enforcement/ prosecutors FT	indictments ML cases	indictments ML persons	indictments FT cases	indictments FT persons	convictions ML cases	convictions ML persons	convictions FT cases	convictions FT persons
Notaries		-	-												
Currency exchange *Financial Institutions*		13	-												
Broker companies securities' registrars *Investment firms*		-	-												
Real estate agents		1	-												
Accountants/auditors		2	-												
Company service providers		-	-												
Nominees and Trustees		5	-												
Casinos		-	-												
Regulatory Authorities		12	-												
Total		**78**	**-**												

2007															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial banks *Credit Institutions*		38	1	52	3	24	3	2	2	-	-	1	1	-	-
Insurance companies		-	-												
Notaries		-	-												
Currency exchange *Financial Institutions*		9	2												
Broker companies securities' registrars *Investment firms*		4	-												
Lawyers		1	-												
Accountants/auditors		4	-												
Company service providers		-	-												
Nominees and Trustees		2	-												
Casinos		-	-												
Regulatory Authorities		2	-												
Total		**60**	**3**												

<table>
<tr><th colspan="16">2008</th></tr>
<tr><th colspan="8">Statistical Information on reports received by the FIU</th><th colspan="8">Judicial proceedings</th></tr>
<tr><th rowspan="3">Monitoring entities, e.g.</th><th rowspan="3">reports about transactions above threshold</th><th colspan="2">reports about suspicious transactions</th><th colspan="2">cases opened by FIU</th><th colspan="2">notifications to law enforcement/ prosecutors</th><th colspan="4">indictments</th><th colspan="4">convictions</th></tr>
<tr><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th rowspan="2">ML</th><th rowspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th><th colspan="2">ML</th><th colspan="2">FT</th></tr>
<tr><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th><th>cases</th><th>persons</th></tr>
<tr><td>Commercial banks</td><td></td><td>39</td><td>1</td><td rowspan="13">56</td><td rowspan="13">1</td><td rowspan="13">40</td><td rowspan="13">-</td><td rowspan="13">2</td><td rowspan="13">2</td><td rowspan="13">-</td><td rowspan="13">-</td><td rowspan="13">2</td><td rowspan="13">2</td><td rowspan="13">-</td><td rowspan="13">-</td></tr>
<tr><td>Insurance companies</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Notaries</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Currency exchange</td><td></td><td>13</td><td>-</td></tr>
<tr><td>Broker companies</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Securities' registrars</td><td></td><td>2</td><td>-</td></tr>
<tr><td>Lawyers</td><td></td><td>1</td><td>-</td></tr>
<tr><td>Accountants/auditors</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Company service providers</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Nominees & Trustees</td><td></td><td>2</td><td>-</td></tr>
<tr><td>Casinos (Betting Companies)</td><td></td><td>2</td><td>-</td></tr>
<tr><td>Others (please specify and if necessary add further rows)</td><td></td><td>-</td><td>-</td></tr>
<tr><td>Total</td><td></td><td>59</td><td>1</td></tr>
</table>

b. Please complete, to the fullest extent possible, the following tables since the adoption of the 1st Progress Report

Explanatory note:
The statistics under this section should provide an overview of the work of the FIU.
The list of entities under the heading "*monitoring entities*" is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.
The information requested under the heading "*Judicial proceedings*" refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.
"C*ases opened*" refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term "cases open" is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

2009															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial banks *Credit Institutions*		26	-	53	-	18	-	-	-	-	-	1	1	-	-
Insurance companies		1	-												
Notaries		1	-												
Currency exchange *Financial Institutions*		6	-												
Broker companies *Investment firms*		2	-												
Financial Markets		3	-												
Lawyers		2	-												
Accountants/auditors		4	-												
Company service providers		3	-												
Nominees & Trustees		2	-												
Online betting companies		3	-												
Land-based casinos		1	-												
Real estate agents		2													
Supervisory authorities		3													
Others		4													
Total		**63**													

31.10.2010															
Statistical Information on reports received by the FIU								**Judicial proceedings**							
Monitoring entities, e.g.	**reports about transactions above threshold**	**reports about suspicious transactions**		**cases opened by FIU**		**notifications to law enforcement/ prosecutors**		**indictments**				**convictions**			
								ML		**FT**		**ML**		**FT**	
		ML	**FT**	**ML**	**FT**	**ML**	**FT**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**	**cases**	**persons**
Commercial banks *Credit Institutions*		28	-	47	-	34	-	-	-	-	-	-	-	-	-
Insurance companies		3	-												
Notaries		-	-												

Currency exchange *Financial Institutions*		4	-												
Broker companies *Investment firms*		2	-												
Financial markets		-	-												
Lawyers		3	-												
Accountants/auditors		3	-												
Company service providers		5	-												
Nominees & Trustees		3	-												
Online betting companies		4	-												
Land-based casinos		1	-												
Supervisory authorities		2	-												
Regulatory authorities		1	-												
Others		1	-												
Total		**60**													

3. Appendices

3.1. APPENDIX I - Recommended Action Plan to Improve the AML / CFT System

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2)	• More emphasis should be placed on securing final convictions on money laundering. • A greater willingness to draw inferences from objective facts and circumstances appears necessary to secure money laundering convictions (effectiveness issue). • The evaluators advise to set out in legislation or guidance that knowledge (the intentional element) can be inferred from objective factual circumstances. • More priority should be considered to the investigation and prosecution of money laundering based on foreign predicates given the level of domestic profit generating offences. • To provide for the confiscation of assets of a legal entity at least where it is shown to have benefited from money laundering.
Criminalisation of Terrorist	• Clarify that Article 328 B offences cover

Financing (SR.II)	contributions used for any purpose ((including a legitimate activity),by a terrorist group. • Clarify if provision or collection of funds can be done directly and indirectly. • Assess the effectiveness of the recently (June 2005) introduced terrorist financing offences.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Practice on third party confiscation should be developed. • Consider prolongation of the 30 days attachment order to deal with a translational dimension where e.g. the suspect is within Malta, particularly for money laundering offences dealing with foreign predicates. • More statistics on provisional measures and confiscation is needed.
Freezing of funds used for terrorist financing (SR.III)	• Clarify that domestic action in relation to European Union internals and on behalf of other jurisdictions have been taken. • Guidance and communication mechanisms with the non-financial sector and DNBF need to be developed. • Development of a clear and publicly known procedure for de-listing and unfreezing is needed.
The Financial Intelligence Unit and its functions (R.26, 30 and 32)	
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)	• More emphasis should be placed on Police generated money laundering cases by proactive financial investigation in major proceeds-generating cases. • More officers should be trained in modern financial investigation. • Focused money laundering training should be provided. • An increase in the resources of the Money Laundering Unit should be a priority. • More trained financial investigators are required either in the Money Laundering Investigation Unit or separately for major enquiries. • Special training or educational programmes provided for judges and courts concerning money laundering and terrorist financing offences should be provided. • Statistics be kept about the number of special investigative techniques used in money laundering investigations.
3. Preventive Measures– Financial Institutions	
3.1 Risk of money laundering or financing of terrorism	
3.2 Financial institution secrecy or	

confidentiality (R.4)	
3.3 Customer due diligence, including enhanced or reduced measures (R.5, R.7)	• The requirements under Regulation 7 (5) (b) make reference to the identification of the "trust beneficiaries or of his principal, as the case may be". Clarification is needed to ensure that identification of both settlor and beneficiary is required. • For life and other investment linked insurance, the beneficiary under the policy should be verified. • Specific requirement should be provided in the Regulations for financial institutions to obtain information on the purpose and intended nature of the business relationship. • The Maltese authorities should introduce requirement in the Regulations for ongoing scrutiny of transactions or requirement to ensure the CDD-process is kept up to date. • Enhanced due diligence for higher risk customers, business relationships or transactions should be introduced. Non-face to face customers are already covered by the regulation. • It is recommended that Malta implements legislation to deal with cross-border correspondent banking relationships.
3.4 Politically exposed persons(R.6)	• The Maltese AML/CFT system should introduce enforceable measures concerning the establishment of business relationships with politically exposed persons (PEPs).
New technologies and non-face to face business(R.8)	
Third parties and introducers (R.9)	
Record keeping and wire transfer rules (R.10 and SR.VII)	• The general identification limit of MTL 5000 (EURO 11 650) applies to occasional wire transfers. Maltese authorities should introduce in Law or Regulation a limit which is in line with the Interpretive Note to SR VII. • "Full" originator information (name, address and account number)should be required to accompany cross-border wire transfers. • Malta should take measures to ensure that financial institutions conduct enhanced scrutiny of and monitor for suspicious activity funds transfers which do not contain complete originator information. • Guidance on batching should be issued.
Monitoring of transactions and relationships (R.11 and 21)	• There should be a specific requirement to set forth the findings of financial institutions on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at

	last 5 years. • There should be a specific requirement on the financial institutions to examine the background and purpose of transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, and set out their findings in writing and to make them available for the competent authorities.
Suspicious transaction reports and other reporting (R.13 and 14, 19, 25 and SR.IV and SR.IX)	• The AML law or Regulation should clearly provide for attempted suspicious transactions to be reported. • The reporting obligation should also cover financing of terrorism. • The issue to empower the customs to stop the person and restrain currency etc. until the Police arrive should be addressed. • To consider whether the Central Bank gateway for the FIU to Customs data is adequate in practice.
Internal controls, compliance, audit and foreign branches (R.15 and 22)	• Malta should implement an explicit obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Maltese requirements and FATF recommendations. It should add provisions to clarify that particular attention has to be paid to branches and subsidiaries in countries which do not or insufficiently apply the FATF recommendations and that the higher standard has to be applied in the event that the AML/CFT requirements of the home and host country differ.
The supervisory and oversight system – competent authorities and SROs Roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)	• Sanctioning powers should be introduced for failing to report financing of terrorism transactions. • A general power across the financial sector to supervise reporting of unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be enacted.
Shell banks (R.18)	• Malta should implement provisions with regard to a prohibition on financial institutions to enter or continue correspondent banking with shell banks. • Financial institutions should be obliged to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
Financial institutions – market entry and ownership/control (R.23)	
Ongoing supervision and monitoring (R23, 29)	• Regulatory and supervisory measures on CFT need to be provided.
AML/CFT Guidelines (R.25)	• Sector specific guidance CFT needs to be provided. • The provision of feedback should be fully in line

	with the FATF Best Practice Guidelines on providing feedback.
Money or value transfer services (SR.VI)	• See the changes recommended under R5 and SR VII.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• The changes recommended for Recommendation 5, 6 and 11 for financial institutions should be applied also to DNFBP. • All persons providing company services need to be covered by Maltese legislation.
Monitoring of transactions and relationships (R.12 and 16)	• Trust Service Providers not being a nominee company or licensed need to be covered.
(R.13)	• Requirements under Recommendation 13 should apply to DNFBP, subject to the qualifications in Recommendation 16.
Regulation, supervision and monitoring (R.17, 24-25)	• Sanctioning powers should be introduced also for DNFBP for failing to report financing of terrorism transactions. • It is recommended that more resources are needed for monitoring and ensuring compliance by DNFBPs other than casinos.. • Sector specific guidance needs to be provided.
Other designated non-financial businesses and professions (R.20)	• The examiners recommend that consideration needs also to be given to extending coverage to those DNFBP that are at risk of being misused for terrorist financing as well as money laundering. • Equally the DNFBP coverage should be kept under review to ensure that all non-financial businesses and professions that are at any given time at risk of being used for ML are regularly being considered for coverage in the PMLR.
5. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	
Legal Arrangements–Access to beneficial ownership and control information (R.34)	
Non-profit organisations (SR.VIII)	
6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	
The Conventions and UN Special Resolutions (R.35 and SR.I)	• Confiscation third party provisions need developing and there are reservations in respect of the thirty

	day attachment orders in enquiries with a transnational dimension. • The broad preventative measures set out in the Palermo Convention are generally covered but greater specificity on the concept of beneficial owner would improve compliance with A.7 of that Convention. • The evaluators look forward to the early lifting of Maltese reservations to the Strasbourg Convention which are being reviewed for withdrawal. • A clear and publicly known procedure for de-listing and unfreezing needs to be developed. • Preventive obligations under A.18 TF Convention need fully implementation (e.g. the implementation of SR.VII in the context of international wire transfers).
Mutual Legal Assistance (R.32, 36-38, SR.V)	
Extradition (R.32, 37 and 39, and SR.V)	
Other forms of co-operation (R.40 and SR.V)	

3.2. *APPENDIX II - Excerpts from relevant EU Directives*

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):
(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):
(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Article 2
Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;

(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

3.3. APPENDIX III - Relevant Maltese legislation

See MONEYVAL(2010)29 ANN