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

MONEYVAL(2012)3

Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

MALTA

6 Mars 2012

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LIST OF ACRONYMS USED

AG	Attorney General
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
BA	Banking Act
C	Compliant
CBM	Central Bank of Malta
CC	Criminal Code
CPA	Certified Public Accountants
CDD	Customer Due Diligence
CFT	Combating the financing of terrorism
CIS	Collective Investment Schemes
CO	Criminal Offence
CSP	Company Service Providers
DNFBP	Designated Non-Financial Businesses and Professions
DDO	Dangerous Drugs Ordinance (Chapter 10, Laws of Malta)
EEA	European Economic Area
EAW	European Arrest Warrant
EC	European Commission
ECDD	Enhanced Customer Due Diligence
EJN	European Judicial Network
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FIAU	Financial Intelligence Analysis Unit
FT	Financing of Terrorism
FIA	Financial Institutions Act (Cap. 376 of the Laws of Malta)
FSRB	FATF Style Regional Bodies
GDP	Gross Domestic Product
GPW	Gross Premium Written (by companies)
IFSP	Institute of Financial Services Practitioners
IMF	International Monetary Fund
INVCO	Investment Company with Fixed Share Capital
ISA	Investment Services Act (Cap. 370 of the Laws of Malta)

IT	Information Technology
LEA	Law Enforcement Agency
LGA	Lotteries and Gaming Authority
MER	Mutual Evaluation Report
MFSA	Malta Financial Services Authority
MIA	Malta Institute of Accountants
MKPO	Medical and Kindred Professions Ordinance (Chapter 31, Laws of Malta)
MLA	Mutual Legal Assistance
ML	Money Laundering
ML/FT	Money Laundering and Financing of Terrorism
MLRO	Money Laundering Reporting Office
MOU	Memorandum of Understanding
N/A	Non applicable
NAV	Net Asset Value
NC	Non compliant
NPO	Non-Profit Organisation
OLAF	European Anti-Fraud Office
PC	Partially compliant
PEP	Politically Exposed Persons
PIF	Professional Investor Funds
PMLA	Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta)
PMLFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
R	Recommendation
SR	Special Recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SICAV	Investment Company with Variable Share Capital
SWIFT	Society for Worldwide Interbank Financial Telecommunication
UCITS	Undertakings for Collective Investments in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council Resolution

I. PREFACE

1. This is the 8th report in MONEYVAL's 4th round of mutual evaluations, following up the recommendations made in the 3rd round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The Third EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

3. The evaluation was based on the laws, regulations and other materials supplied by Malta, and information obtained by the evaluation team during its on-site visit to Malta from 29 of May to 4 June 2011, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in Malta. A list of the bodies met is set out in Annex I to the mutual evaluation report.

4. The evaluation was conducted by an assessment team, which consisted of 2 members of the MONEYVAL Secretariat and MONEYVAL experts in criminal law, law enforcement and regulatory issues and comprised: Ms Ivana Hrdlickova (Judge, Regional Court Pardubice, Czech Republic) who participated as legal evaluator, Ms Daina Vasermane (Head of Financial Integrity Division, Supervision Department, Financial and Capital Market Commission, Latvia) and Mr Agim Muslia (Head of Analysis and IT Department, General Directorate for the Prevention of Money Laundering, Albania) who participated as financial evaluators, Mr. Gabor Simonka (Head of the Financial Intelligence Unit, Hungary) who participated as a law enforcement evaluator and Mr John Ringguth and Ms Irina Talianu, members of the MONEYVAL Secretariat. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

5. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

    1. General information
    2. Legal system and related institutional measures
    3. Preventive measures - financial institutions
    4. Preventive measures – designated non financial businesses and professions
    5. Legal persons and arrangements and non-profit organisations
    6. National and international cooperation
    7. Statistics and resources

Annex (implementation of EU standards).
Appendices (relevant new laws and regulations)

6. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 24th Plenary meeting – 10-14 September 2007), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round report continues to apply.

7. Where there have been no material changes from the position as described in the 3rd round report, the text of the 3rd round report remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

8. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2011 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

1. Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in Malta at the time of the 4th on-site visit (29 May to 4 June 2011) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which Malta received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round report. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of Malta.

2. Key findings

2. The Maltese authorities explained that the money laundering and financing of terrorism risk to which the jurisdiction is exposed has not changed considerably since the last evaluation report. No specific national AML/CFT risk assessment has been undertaken since then. However, the Police and the FIAU have identified a number of risks and vulnerabilities, derived mainly from drug trafficking and economic crimes, such as fraud and misappropriation. Representatives of the financial sector emphasised the risks related to foreign investment, possibly for tax evasion purposes and the distinct risk of inward investment by foreign PEPs from Eastern Europe and North Africa. The overall economic loss from crime is not routinely quantified. The authorities consider the TF risk to be low.

3. Malta has a comprehensive legal structure to combat money laundering. The money laundering offences are broad, fully covering the elements of the Vienna and Palermo Conventions. The evaluation team welcomes the significant progress made by the Maltese authorities in extending the mental element of money laundering to cover 'suspicion' and in the effective application of the legal provisions emphasised by the convictions achieved in practice, both in self and autonomous money laundering cases since the third round.

4. The legislative base for the financing of terrorism is largely in place. FT is broadly in line with the international standards. However, the material element of the terrorism financing described in the Maltese legislation could leave room for interpretation in respect of financing of "legitimate" activities furthering terrorism and on direct and indirect financing of terrorism. Also, the financing of offences covered in the annex to the TF Convention has, in the Maltese law, an additional mental element not required by the TF Convention. The existing legislative framework has not been tested so that the effectiveness of the system is difficult to assess.

5. The legal requirements for provisional measures and the confiscation regime are carefully constructed in Malta. However, the lack of information on freezing and confiscation orders made in proceeds-generating predicate offences generally, coupled with lack of evidence of use of attachment orders in proceeds generating cases, raise doubts as to the effectiveness of the freezing and attachment regime, and indeed the confiscation regime overall.

6. Malta has implemented the UN Security Council Resolutions (UNSCRs) by domestic and EU legislation. However there is not any clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner. While there is a system in place for freezing

the assets of EU internals, there is no evidence that designations of EU internals have been made under the Maltese legal framework. The evaluation team found insufficient guidance and communication mechanisms in respect of DNFBP and insufficient monitoring of compliance in respect of DNFBP.

7. The FIU of Malta (FIAU) is an independent government agency falling within the structure of the Ministry of Finance, the Economy and Investment. Although, the FIAU has limited direct access to databases, the AML/CFT legislation provides indirect gateways to financial, administrative and law enforcement information. However in respect to law enforcement and administrative information no reference is made in law or guidance which expressly provides for law enforcement and administrative authorities to respond to the FIAU on a timely basis.

8. Overall progress has been made to strengthen the preventive AML/CFT system. The Prevention of Money Laundering and Financing of Terrorism Regulations introduced the concept of the risk-based approach and includes, inter alia, provisions catering for simplified and enhanced customer due diligence measures. Although the reporting obligation for suspicions of terrorism financing is now in place in Malta, the level of reporting STRs for both ML and TF suspicions remains relatively low. The PLMFTR oblige subject persons to determine whether an applicant for business is a politically exposed person. There were some difficulties by some categories of subject persons in the implementation of effective measures when dealing with PEPs, especially in relation to the identification of clients who acquire the status of a PEP in the course of the business relationship. The FATF requirements regarding correspondent relationships and professional/banking secrecy are fully implemented.

9. The ongoing practice of joint inspections carried out by MFSA and FIAU is a welcome step that has certainly contributed towards strengthening the supervisory regime. However, the number of the on-site visits remains low and not commensurate with the size of the financial market. In addition, the absence of a national risk assessment to identify the most risky areas for ML/FT give rise to concerns with regard to the effective implementation of risk based supervisory activity.

10. The current Maltese legislation provides for broad measures in terms of powers of sanctioning of subject persons for non compliance. There is a range of sanctions in the Law which are potentially effective, proportionate, and dissuasive (both criminal, and administrative). However, the evaluators consider that they have not been sufficiently used, and that the financial penalties that have been imposed were not necessarily dissuasive. No sanctions have been imposed on the financial institutions. The lack of publicity of sanctions imposed is considered as a backward step from the 3rd round report.

11. With regard to DNFBP, a clear increase in the volume of reports is noticeable since the last MER, due mainly to the modification of the legal provisions on reporting obligations and to the efforts made in awareness-raising by the FIAU and some of the supervisory authorities. However, the uneven level of awareness of reporting obligations and procedures between different parts of this sector could negatively impact on the overall reporting behaviour of DNFBP. Enhancement of the resources involved for the oversight process is needed, together with a formalised risk based approach in order to leverage effectiveness.

12. The Maltese mutual legal assistance framework allows the judicial authorities to give sufficient assistance in money laundering and terrorism financing cases, including the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets. The legal provisions regulating the mutual legal assistance appear to be effectively applied in practice by Maltese authorities.

13. Significant progress has been achieved since the 3rd round report, in order to address FATF requirements related to NPOs on the legislative side, by the adoption of the Voluntary

Organisations Act. However, the registration of the NPOs is still not compulsory in Malta. No specific risk assessment has been undertaken to identify possible vulnerabilities to misuse of NPOs for terrorist financing purposes. No awareness raising measures have been put in place and public access to NPO information is impeded by the lack of an electronic form of the register. The office of the Commissioner for Voluntary Organisations is understaffed for the fulfilment of its obligations under this standard.

3. Legal Systems and Related Institutional Measures

14. At the time of the fourth round on-site visit, money laundering continued to be criminalised under the same principal laws as described in the 3rd MER: Prevention of Money Laundering Act, (PMLA), the Dangerous Drugs Ordinance (DDO) and the Medical and Kindred Professions Ordinance (MKPO). The AML Law explicitly provides that a person might be convicted of a ML offence even in the absence of a judicial finding of guilt in respect of the underlying criminal activity. In addition, the Maltese authorities have introduced further statutory provision, in line with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), that it is also unnecessary to establish precisely the underlying criminal activity. Since the last MER (where there were no final convictions), eight money laundering cases were brought to court involving nine persons and resulting in seven convictions. The majority of investigations and convictions of ML, relate to self laundering, but recently a number of autonomous ML cases have been prosecuted too. The Maltese authorities indicated that the completed cases with money laundering convictions should encourage prosecutors to pursue serious autonomous ML cases more frequently.

15. The offences that might be considered as "*terrorism financing*" are provided in a series of articles of the Criminal Code. Due to the broad language used, it is clear that the terrorism financing offence covers any funds whether from a legitimate or illegitimate source. The material element of the terrorism financing described in the Maltese legislation could leave room for doubt in respect of two elements required by the Terrorism Financing Convention. In fact is not totally clear if the provisions cover legitimate activities furthering terrorism and if direct and indirect financing is covered. Also, a difficulty arises from the language of Article 328A which limits the financing of terrorism acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328 A (1) a), b) and c). Financing the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention. Due to the absence of cases before the prosecutors or the courts, it is not possible to assess the effectiveness of the provisions. Although the legislative base is largely in place, for the avoidance of any doubt, the Maltese authorities have indicated that they proposed amendments to legislation to make it unambiguous.

16. Malta has a generally comprehensive provisional measures and confiscation regime. The main laws providing for the attachment, freezing and confiscation of proceeds of crime are the Prevention of Money Laundering Act, Dangerous Drugs Ordinance, Medical and Kindred Professions Act and the Criminal Code. Seizure as a preventive measure is obtained by means of an attachment order, whilst upon arraignment, the measure employed to block a suspect's funds and other property is referred to as a freezing order. Confiscation and forfeiture can be enforced upon conviction. The powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime primarily turn on Article 4 of the PMLA. However, a proper overall assessment of the effectiveness of the freezing and confiscation regime is considerably impeded by the lack of statistics. Moreover, the continued adequacy and effectiveness of a court appointed expert to search for property and other assets is questioned.

17. The UNSCRs are implemented in Malta by domestic and EU legislation. UNSCR 1267 and 1373 are enforceable in Malta by virtue of Legal Notice 214 of 1999 and Legal Notice 156 of 2002 respectively. They are also enforceable by virtue of the European Union Council Regulations 881/2002 and 2580/2001 which are binding in their entirety and are directly applicable. As regards EU internals, the evaluators received no sufficient evidence that the designation of EU internals have been converted into the Maltese legal framework. No freezing measure has been applied in Malta in the context of combating FT. At the same time the authorities pointed out onsite that assets had been frozen on the basis of other EU financial sanctions not involving UNSCRs 1267 and 1373. No clear and publicly known procedure for de-listing and unfreezing is in place. Freezing measures at the request of another party relies on judicial proceedings. In terms of supervision, the Sanctions Board and the MFSA are responsible for the compliance with Special Recommendation III. The Maltese authorities indicated that there is a mechanism for sanctioning breaches of the relevant legislation; however it has never been used. The evaluation team found insufficient guidance and communication mechanisms and insufficient monitoring of compliance in respect of DNFBP.

18. The FIAU was established as an administrative FIU in 2002 and is composed of the Board of Governors, the Director and its permanent staff. The Prevention of Money Laundering Act Part II provides for the powers and functions of the FIAU. The core function is the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism. At the time of the on-site visit, the FIAU had direct access to a very limited number of databases. Consequently the authorities should consider extending the direct availability of information for the FIAU. The law provides indirect access to information, but the access to law enforcement and administrative information is not guaranteed by law or guidance on a timely basis. The supervisory function of the FIAU has been significantly broadened by law since the 3rd evaluation, in the sense that the number of entities subject to the PMLFTR has increased, thereby increasing the FIAU's compliance oversight. The FIAU exercises supervisory functions over all reporting entities in the AML/CFT field.

4. Preventive Measures – financial institutions

19. The scope of preventive measures in the AML/CFT area covers all financial institutions in Malta. An important development since the last mutual evaluation report is that the PMLFTR introduced the concept of the risk-based approach into the Maltese AML/CFT regime. The 2008 Regulations now 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 (amongst others) on an occasional or very limited basis. The PMLFTR was amended to expressly prohibit subject persons from maintaining anonymous accounts or accounts in fictitious names.

20. The beneficial owner is defined in the Regulation 2 of the PMLFTR and the expansion of the definition provides further details for identifying the beneficial owner in case of a body corporate or a body of persons and also the case of legal entity or legal arrangement which administers and distributes funds (and in the case of a life-insurance policy).

21. All financial institutions in Malta appeared to be generally aware of the identification obligations. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation. A series of effectiveness issues have been identified, including difficulties in managing the risk based approach, in fully understanding the distinction between CDD and ECDD and in a clear perception of the concept of "*reputable jurisdictions*".

22. PMLFTR requires subject persons to develop and establish customer acceptance policies and procedures that are, *inter alia*, conducive to determine whether an applicant for business is a politically exposed person (including domestic PEPs). In practice, only banks are applying measures for establishing the source of wealth and source of funds of PEPs.

23. The FATF standard concerning cross-border correspondent banking relationships with respondent institutions is fully met in Malta.

24. Financial institution secrecy laws do not appear to inhibit the implementation of the FATF Recommendations.

25. PMLFTR requires reporting entities to have record-keeping procedures in place and provides details on their implementation, including procedures for keeping records: information relating to the business relationship and to all transactions (irrespective of whether these are domestic or international) carried out by that person in the course of an established business relationship or occasional transaction. The Regulation states that such records shall be kept for a period of five years commencing on the date on which all dealings taking place in the course of the transaction in question were completed. Records must be kept longer if requested by a competent authority in specific cases and upon proper authority.

26. Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006 provides rules on transactions related to domestic or cross-border money transfer or remittance, in amounts of €1,000 or more. This Regulation is directly applicable as domestic law in view of Malta's membership of the European Union. National implementation is therefore limited to establishing an appropriate monitoring, enforcement and penalties regime and to applying certain derogations allowed for in the EU Regulation. The monitoring of the implementation of the standard by money remittance businesses is checked by the MFSA during the on-site inspections. Although the level of fines appears to be proportionate and dissuasive, the lack of sanctions applied does give rise to concerns over effective application.

27. A mandatory obligation for subject persons to report suspicious transactions of ML as well as FT (without any threshold for reporting) is in place and in the PLMFTR. The subject persons should report suspicious transactions related to ML or FT regardless of the nature of the underlying criminal activity which is defined as any criminal offence. There are no provisions in the AML/CFT legislation that could prohibit the STR reporting on grounds that tax matters are involved. The evaluators considered the level of reporting to be relatively low compared with the size of the financial market. It has to be emphasised that no national risk assessment has been conducted in Malta and the authorities were not in the position to quantify the approximate economic loss or damage from criminal offences of an economic nature. Therefore, Maltese authorities are invited to carry out a comprehensive assessment on the general adequacy of the level of reporting, the scope of reporting obligation in respect of TF and the practice followed by subject persons.

28. As regards the scope of reporting obligation the uncertainty as to whether financing of legitimate activities are covered in the definition of terrorist financing might limit the reporting obligation under R13, R16 and SRIV.

29. The reporting of suspicious transactions related to financing of terrorism regime is identical to the one for ML and it is provided for by the same Regulation. The examiners were concerned that, in pursuance of their obligation to identify and report FT suspicions, most interlocutors of the financial industry referred to UNSCR 1267 and 1373 as the sole indicator for suspicion. Given the size of the financial market in Malta, the number of STR on FT submitted to the FIAU seems to be insufficient and questions arise regarding the effectiveness of reporting system. Specific training and guidance should be provided to subject persons on terrorist financing suspicious transactions reporting, including red flags/indicators of suspicion and case studies.

30. The prohibition for the credit institutions from entering into, or continuing correspondent banking relationships with a shell bank was introduced in PMLFTR following the recommendations of the 3rd evaluation report. Though the requirement itself is now present in the legislative acts, the evaluators noted an insufficient understanding among market participants as to how they can be able to verify that their correspondent banks are not servicing shell banks.

31. The requirement to pay special attention to countries which do not, or insufficiently apply the FATF Recommendations is provided in Malta by PMLFTR that make reference to the concept of "*reputable jurisdiction*" and require subject persons to pay special attention to countries that do not meet the criteria of "*reputable jurisdiction*". According to the said provision, subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings including those carrying out relevant financial business or a relevant activity from a jurisdiction that does not meet the criteria of a reputable jurisdiction. Following the on-site interviews, the evaluators are of the opinion that not enough practical assistance on the application of the concept of non-reputable jurisdiction is provided to financial institutions and hence the risk arises that appropriate counter-measures would not be applied.

32. The requirement for financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations is in place. At the time of the on-site visit, there were no branches of Maltese banks outside Malta.

33. The licensing and supervision of the financial institutions is mainly regulated by means of a number of legislative acts and subsidiary legislation issued thereunder. All financial institutions must be licensed and supervised by MFSA. The AML/CFT supervision powers are entrusted to the FIAU for all subject persons. This includes the authority of the FIAU to conduct on-site inspections and carry out off-site compliance monitoring. The FIAU has a newly established compliance department in charge of the supervisory activity of the unit, ranging from off-site supervision to on-site visits. In 2010, 14 on site visits were performed by the FIAU in cooperation with other supervisory authorities (MFSA and the Lottery and Gaming Authority). At the time of the on-site visit the FIAU did not have a written methodology for supervisory activity (off site or on-site).

34. To ensure compliance monitoring and supervision the FIAU can enter into arrangements with other supervisory authorities (such as the MFSA and the LGA) to carry out on site examinations regarding AML/CFT issues on its behalf. The monitoring process is carried out both off-site and on-site to assure that the AML/CFT procedures of the subject persons are being complied with appropriately. Should the MFSA find any AML/CFT breaches during their supervisory work, the matter shall be referred to the FIAU in order to impose the respective sanction. The absence of a national risk assessment to identify the most risky areas for ML/FT, together with a low level of identified compliance infringements, give rise to concerns with regard to the effective implementation of the supervisory activity.

35. The sanctioning regime is contemplated under the PMLFTR. The offences and penalties are applicable to all types of subject persons and range from a fine not exceeding €50,000 or to imprisonment for a term not exceeding two years, to administrative penalities of not less than €1,200 and not more than €5,000. A subject person who fails to comply with the provisions of customer due diligence set out under Regulation 7 or the provisions of Regulation (EC) No. 1781/2006 shall be liable to an administrative penalty of not less than €250 and not more than €2,500. The number of sanctions applied in practice by FIAU for infringements of PMLFTR is quite low in proportion to the number of entities subject to this law. The level of the fines is not at all dissuasive. Moreover the imposed sanctions are not published on the FIAU website. The evaluators recommend that the FIAU should be given power to publish sanctions which it imposes.

36. The recently adopted Implementing Procedures Part I that replace the former Guidance Notes issued by the prudential supervisory authorities or SROs, provide guidance to both financial and non-financial sectors and are meant to assist subject persons in implementing, understanding, interpreting and fulfilling their obligations under the PMLFTR. Specific feedback is not provided to the reporting entities spontaneously. Upon request, the FIAU is required by the Law and, in practice, does provide case by case feedback. There is no formal and transparent methodology on procedures for this feedback. The specific guidelines do not contain feedback on general practical issues related to ML/TF such as methods, trends, examples and typologies.

5. Preventive Measures – Designated Non-Financial Businesses and Professions

37. The AML/CFT reporting obligations regarding financial institutions in Malta apply equally to DNFBP. The reporting obligation set out in Recommendation 13 applies also to DNFBP which are defined as subject persons carrying out relevant activity. "Relevant activity" is defined in the PMLFTR as the activity of the following legal or natural persons when acting in the exercise of their professional activities and covers: auditors, external accountants and tax advisors, real estate agents, notaries and other independent legal professionals, trust and company service providers, nominee companies holding a warrant under the Malta Financial Services Authority Act, any person providing trustee or any other fiduciary service, casino licensee and other 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. Due to the amendments to the legal provisions, a clear increase in the reporting volume of the DNFBP is noticeable since the last MER. However, the uneven level of awareness of reporting obligations and procedures among different parts of the DNFBP sector could negatively impact on the overall reporting behaviour of the DNFBP.

38. The LGA is responsible for licensing, regulating and supervising the activity of casinos in Malta (including the ones that operate on the internet) and in accordance with the arrangement between the LGA and the FIAU in terms of Article 27 of the PMLA, it acts as the agent of the FIAU regarding these entities in order to assure that they comply with their AML/CFT obligations. The FIAU has the necessary powers under the PMLA to carry out compliance monitoring functions, including the power to impose sanctions. The compliance department within the FIAU carries out both on and off-site monitoring of the entities and in the case of casinos a specific questionnaire has been drafted in order to assist the compliance staff in assessing the compliance of the entities. Without prejudice to the steps undertaken to increase the monitoring capabilities of the FIAU, the authorities are encouraged to consider involving SROs in the oversight process while at the same time formalising a risk based approach in order to leverage the available resources.

6. Legal Persons and Arrangements & Non-Profit Organisations

39. Since the 3rd round report, several steps have been taken in order to address FATF requirements described in SR VIII, the most important being the adoption of Voluntary Organisations Act, which regulates the procedure for enrolment of VO and establishes the position of Commissioner of VO, including his duties and functions. Despite the adoption of the new legislation, no domestic review of the activities, size and relevant features of the non-profit sector for the purpose of identifying the features and types of the NPOs that are at risk of being misused for terrorist financing was conducted by the authorities. Also, there are no clear rules for the registration procedure and no form for the constitutive deed and statute of an organisation is required (even no authorized signature is required). Any natural or legal person based in Malta or abroad can be a founder of a voluntary organisation. In practice, no awareness-raising programme has been

initiated which is dedicated to the NPO sector covering the risks of terrorist abuse and the available measures to protect against them. By the time of the on-site visit, no training on AML/CFT issues was provided for the NPOs.

7. National and International Co-operation

40. The PMLA sets out internal cooperation functions of the FIAU as a central authority in the national AML/CFT system. The Board of Governors is composed of four members nominated from the Office of the Attorney General, the Central Bank of Malta, the Malta Police Force and the Malta Financial Services Authority respectively.

41. The PMLA also sets out the general responsibility of the FIAU to co-operate and exchange information with supervisory authorities, where that information is relevant to the processing or analysis of information or to investigations regarding financial transactions related to ML/FT. The definition of 'supervisory authorities' includes a wide range of entities such as the Central Bank of Malta, the MFSA, the Registrar of Companies or the LGA. Additionally, the FIAU is authorised to disclose any document or information relating to the affairs of the FIAU, or information on any person which the FIAU has acquired in the exercise of its duties or its functions under the PMLA to supervisory authorities, whether situated in Malta or outside Malta.

42. Co-ordination and co-operation with the relevant operators in the financial and non-financial sectors in the AML/CFT regime is further achieved through the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism (Joint Committee). The Joint Committee is an ad hoc committee set up to provide a forum for discussion and exchange of views relating to the prevention of money laundering and funding of terrorism with a view to developing common AML/CFT standards and practices in compliance with the PMLFTR.

43. Malta signed and ratified the Vienna Convention, the Palermo Convention and the Terrorist Financing Convention. The Council of Europe Convention on Laundering Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism was ratified on 30th January 2008 and came into force on 1st May 2008. Although the Palermo and TF Conventions are in force, there are still reservations about the effectiveness of implementation in some issues. The United Nations Security Resolutions are implemented through the subsidiary legislation by the National Interest Act (Enabling Powers). UNSC Resolutions 1267 and 1373 are enforceable in Malta by virtue of legal Notice 214 of 1999 and Legal Notice 156 of 2002. As mentioned under SRIII, the procedure of freezing of assets is still not implemented satisfactorily.

44. Malta has a comprehensive legal system to meet the requirements of the Recommendations for mutual legal assistance. The main laws referring to legal assistance are the Criminal Code, the Prevention of Money Laundering Act and the Dangerous Drugs Ordinance. The legal framework allows the judicial authorities to give sufficient assistance in practice in money laundering and terrorism financing cases, including the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets. The system has proved to be effective so far and assistance has been granted in a timely manner.

45. The information exchange with foreign FIUs is regulated as one of the functions of the FIAU and as an exemption from prohibition of disclosure rules. Furthermore, the FIAU plays an active role in the field of overall international information exchange and can obtain financial, law enforcement and administrative information on behalf of foreign counterparts. In respect of law enforcement cooperation, the officers of the International Co-Operation in Criminal Matters Unit of the Attorney General are contact points within the European Judicial Network, and facilitate international co-operation. Personal contacts through participation in conferences and plenary meetings of the network also contribute to the strengthening of relations. The Maltese supervisory authorities can cooperate and exchange information with overseas regulators including those cases

concerning AML issues but in practice it has never been the case that a foreign supervisory authority required AML/CFT related information from MFSA. Therefore, there are no statistics on the number of formal requests for assistance made or received by the MFSA or Central Bank relating to or including AML/CFT.

8. Resources and statistics

46. In general, the human, financial and technical resources allocated by Maltese authorities for AML/CFT matters are satisfactory. The need for analytical software in FIAU activity was apparent as well as the need of more human resources dedicated to supervisory activities.

47. With regard to statistics, the FIAU and the financial sector supervisors were able to provide meaningful and comprehensive statistical data. However a series of shortcomings were identified, especially in relation to the number of confiscation orders in general, criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1. General Information on Malta

To a large extent the information provided in Section 1.1 of the Third Round Mutual Evaluation Report still applies and is therefore not being reproduced. The information provided below includes all the changes which have occurred since the last evaluation.

1. Malta is an island country which lies 93 km away from Sicily to its north and 288 km from Tunisia to its south. The Maltese archipelago consists of three main inhabited islands Malta (the largest), Gozo and Comino. These islands altogether occupy an area of around 316 square kilometres. Malta hosts a total population of 413,000 (2010 figures), and is one of the most densely populated countries in the European Union but also in the world (1,307 people per km^2, with a higher rate on the main island).
2. Malta became a member of the EU with nine other countries on 1 May 2004 and is the smallest Member State of the European Union. On 1 January 2008, Malta adopted the euro and the Central Bank of Malta (CBM) became a member of the Eurosystem.
3. A parliamentary democracy, Malta has been an independent state since 1964 and a constitutional Republic within the commonwealth since 1974. The President is the Head of State and has executive authority. He is elected by the House of Representatives for a period of five years. The President is responsible for appointing the Chief Justice and the judges who sit on the independent Constitutional Court and the Court of Appeal.
4. The Constitution of Malta provides for the establishment of a Cabinet for Malta which shall consist of the Prime Minister and such number of other Ministers as may be appointed in accordance with the provisions of the Constitution. The Cabinet has the general direction and control of the Government of Malta and is collectively responsible therefor to Parliament.
5. The Maltese economy is a very small open economy in absolute terms, with a nominal GDP of EUR 6.2 billion and contributes only 0.05% of EU GDP (2010). Malta nonetheless enjoys a high standard of living, with a GDP per capita in PPS terms of EUR 19,000, which is equivalent to 81% of the EU average (2009).
6. In recent years, economic developments in Malta were heavily driven by those abroad. Real GDP contracted by 3.4% in 2009. The economy, however, rebounded during 2010 and grew by 3.7% in real terms. Annual real GDP growth rates averaged 1.9% between 2001 and 2010, surpassing those of the euro area and the EU, which stood at 1.2% and 1.4%, respectively.
7. With very few natural resources, the economy is highly dependent on foreign trade. Imports and exports, in fact, are each equivalent to more than 95% of domestic output. While the EU still remains Malta's main trading partner, accounting for around 56% of Malta's foreign trade, trade with Asia has increased.
8. The Maltese economy remains largely service-based. In 2010, agriculture and other primary activities, direct production and services each accounted, respectively, for 2%, 20% and 78% of GDP. Within the manufacturing sector, the electronics sector remains the main driver of growth. The pharmaceuticals and rubber & plastic products sectors also contribute positively.

9. In value added terms, growth remains largely driven by various service sectors in particular, financial intermediation, other community, social & personal services, which include remote gaming and other recreational activities, and the real estate, renting & business activities sector. Tourism still remains a significant contributor to the Maltese economy. In 2010, total tourist expenditure amounted to €1.1 billion, after a strong increase over the previous year.

1.2. General Situation of Money Laundering and Financing of Terrorism

10. According to the Maltese authorities, the current risks and vulnerabilities of money laundering and financing of terrorism have not changed considerably since the date of the last evaluation. From information available to the Police and the FIAU, it is apparent that the major proceeds generating offences remain drug trafficking and economic crimes such as fraud and misappropriation. The proceeds generated through such offences are not considered huge and are based on both domestic and foreign predicate offences. The laundering of such proceeds is generally carried out by the offender himself although in a number of cases the money laundering is autonomous.

11. In the large majority of drug trafficking cases the perpetrators use the funds generated by the criminal activity to finance an affluent lifestyle. Another case reveals the use of couriers who are instructed to deliver and sell in Malta drugs from another country and subsequently physically carry the proceeds of such sales to the country of origin.

12. With respect to investigations of money laundering where the predicate offences were economic crimes, the patterns which emerge differ significantly from those relating to drug trafficking. Since in these cases the perpetrators have sufficient knowledge of the financial industry, such cases generally involve a number of complex transactions to conceal the source and nature of the illegally obtained funds.

13. The reporting patterns of reporting entities may also provide some insight on the ML/FT situation in Malta. In recent years reporting from credit institutions appears to have decreased slightly while the diversity of categories of reporting entities filing a report with the FIAU has increased. In fact, an increase in reporting was noted by members of the accountancy profession, regulated markets, investment services licence holders, real estate agents, independent legal professionals, casinos, remote gaming licence holders and supervisory authorities.

14. Although no studies have been conducted on the sources and trends of reporting entities, a number of observations may still be made. The reduction in the number of STRs submitted by credit institutions could be a direct consequence of a greater diligence in internal STR-filtering and higher quality, but might also raise some concerns regarding possible failure to report and effectiveness of the supervisory activity.

15. The eventuality of a progressive tactical move by the money launderers to distance themselves from credit institutions cannot be discarded but the situation should be properly analysed indicating the alternative areas of money laundering risk. The increase in the number of STRs submitted to the FIAU from other sources than the financial sector could be just one indicator that money launderers may be shifting their attention from credit institutions to other areas.

16. The increase in the number of STRs received from other subject persons is a positive signal that awareness of the obligations of subject persons under the PMLFTR to report suspicious transactions is on the increase.

17. Since the last evaluation three cases of suspicions of funding of terrorism were analysed by the FIAU. In all instances the FIAU passed the cases to the police; however following further investigations no charges were brought by the police and all three cases were closed.

1.3. Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

18. On December 31, 2010 there were 26 banks in Malta.

19. Banks remain the main players of the financial market in Malta, holding 49.5 billion euros in assets as at the end of 2010. The total assets for the entire financial sector was 65.55 billion. The bank percentage resulting is 75.5%.

20. As to the securities market there were different types of financial institutions operating in or from Malta in terms of an Investment Services Licence[2] including:

Category 1(a) and (b) Licence Holders - Total Number: 18

These institutions provide investment services consisting of the receipt and transmission of orders and the provision of investment advice in relation to transferable securities and other investment instruments, as well as the placement of instruments without a firm commitment basis. They may not hold or control clients' money or customers' assets. Whereas Category 1(b) Licence Holders may only service Professional Clients and Eligible Counterparties (non-retail customers), Category 1(a) Licence Holders may service all types of customers.

Category 2 Licence Holders – Total Number: 80

This category includes fund management companies. There were 51 companies providing collective (fund) management services. It also includes companies providing stockbroking services. There were 12 companies providing stockbroking services in relation to securities listed and traded on the Malta Stock Exchange. It should be noted that three of the Category 2 Licence Holders are also licensed under Category 4.

Category 3 Licence Holders – Total Number: 7

These are institutions authorised to provide any investment service (other than acting as Custodian for collective investment scheme for which a Category 4 Licence is required) and to hold and control clients' money and customers' assets. This Category is required for firms wishing to deal on their own account in investment instruments. It should be noted that two of the Category 3 Licence Holders are also licensed under Category 4.

Category 4 Licence Holders – Total Number: 6

The Licence Holders under this category are authorized to act as Custodians for collective investment schemes. It should be noted that 5 of the 6 Category 4 Licence Holders are credit institutions.

Collective Investment Schemes

Collective investment schemes (CISs) are set up under Maltese law and operate in/from Malta in terms of a licence issued under Article 4 of the ISA:

[2] Unless otherwise indicated, statistics are as at 23rd March, 2011.

Table 1: Collective investment schemes

Type of CIS	No. of funds (including subfunds)
PIFs	**322**
UCITS	**46**
Non UCITS	**30**
Total funds (including sub funds)	**386**

- ***Net Asset Value as at end December 2010:***

	NAV as at end December 2010
	Euros
PIF	5,196,702,195
Non UCITS	934,896,451
UCITS	1,840,657,082
Total NAV	7,972,255,728

21. The following tables provide the number of insurance undertakings and insurance intermediaries that were authorised, enrolled or registered in terms of the Maltese insurance legislation, as at December 2010.

Table 2: Number of insurance undertakings

	Total licences at end 2008	Total licences at end 2009	Total licences at end 2010
Non-Life	26	30	33
Life	8	8	8
Composite	3	3	2
Reinsurance	4	4	7
Total	**41**	**45**	**50**

Table 3: Number of insurance intermediaries

	Total licences at end 2008	Total licences at end 2009	Total licences at end 2010
Enrolled Insurance Managers	12	13	13

Enrolled Insurance Agents of:			
Local Insurers	10	9	9
Foreign Insurers	11	10	10
Enrolled Insurance Brokers	28	28	28
Tied Insurance Intermediaries	529	500	507*
Registered Insurance Persons	117	120	115

**226 tied insurance intermediaries are enrolled to carry on long term insurance business.*

22. In comparison with the situation at the time of the 3rd round evaluation report financial system has remained more or less the same in terms of numbers.

Designated Non-Financial Businesses and Professions (DNFBP)

23. There have been no significant changes to the composition of the DNFBP sector since the 3rd mutual evaluation. Full details of the sector framework can therefore be found in the 3rd MER. It should, however, be noted that there has been a moderate increase in the number of casinos, real estate agents, legal professionals, notaries, accountants and auditors operating in Malta.

24. It is also worth noting that, as a result of the implementation of the Trusts and Trustees Act (Cap. 331 of the Laws of Malta), the 45 licensed nominees under the old regime who were still in operation at the time of the 3rd MER, have been required to cease operating by the end of 2006. As from 1 July 2005, they have been prohibited from taking on new business. By the end of 2006 they were obliged to surrender their licenses and apply to become authorised under the Trusts and Trustees Act should they wish to carry on providing services as Trustees.

25. Although there is no distinct class of company service providers in Malta, subsidiary legislation has recently been prepared and will soon be published to provide for their registration and a degree of regulation. The number of practitioners who have in recent years started to provide company services only accounts for a small percentage of providers of such services overall.

1.4. Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

26. There have been few significant changes to the commercial laws since the 3rd evaluation, and thus much of the information contained in the 3rd MER remains appropriate.

The NPO sector

27. Regarding the mechanisms in place governing legal persons and arrangements, the most notable change is that associations, foundations, clubs and other NPOs are now governed by the provisions contained in Title III of Schedule 2 of the Civil Code (Cap. 16 of the Laws of Malta). These entities may acquire legal personality only upon registration with the Public Registry. However, the obligation to register only extends to foundations.

28. Whether or not such entities are registered, they may now elect to enrol with the Commissioner of Voluntary Organisations under the Voluntary Organisations Act (Cap. 492 of the Laws of Malta). The Commissioner acts as a regulator for the NPO sector, but enrolment is not compulsory.

Companies and other commercial partnerships

29. The Companies Act 1995, which is compliant with all EU Company Directives, continues to govern the registration of companies and other commercial partnerships in Malta. The Continuation of Companies Regulations 2002 continue to provide for re-domiciliation of companies in and out of Malta.

30. The number of companies registered in Malta has increased from 37,050 at the time of the 3rd evaluation report to 52,000 at the time of the MEQ. The Maltese authorities estimate that approximately 37,000 of these companies are currently active. The number of branches of foreign companies registered in Malta, as at the end of March 2011, was 520.

31. Where shares are held by trustees, they hold information on the beneficial ownership. The Companies Act also allows the Registrar of Companies to request such information where there is good reason to conduct investigations into the beneficial ownership of shares.

1.5. Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

32. The 3rd MER described and analysed the AML/CFT measures in place in Malta at the beginning of 2005, and provided recommendations on how certain aspects of the system could be strengthened. After the adoption of the 3rd MER at the 24th MONEYVAL Plenary meeting on 13 September 2007, the Maltese authorities have given consideration to the recommendations and have taken measures to ensure the compliance of the Maltese AML/CFT regime with international standards.

33. However, no specific national AML/CFT risk assessment was undertaken since the last evaluation.

34. The Maltese authorities have informed the evaluators that they continue to give great importance to the country's AML/CFT regime. To reflect the developments taking place on an international level, legislation has been amended on numerous occasions. Malta has implemented the Third EU Directive by introducing the new PMLFTR, which came into force on 31 July 2008. The old Regulations were repealed.

35. In order to assist subject persons in the implementation of the changes, the FIAU has issued Implementing Procedures as guidance. The Prevention of Money Laundering Act (Cap. 373 of the Laws of Malta) ('PMLA'), which criminalises ML, and Sub-Title IVA of Part II of Book First of the CC, which criminalises the financing of terrorism, have also been amended.

36. Action has also been taken on an institutional level. Since the last evaluation, both the staff and the budget of the FIAU have been increased. The FIAU has set up a compliance section to enable it to take a more active role in monitoring subject persons' compliance with the PMLFTR, particularly in relation to those entities which are not subject to any specific supervisory authority.

37. There is now a greater awareness of the features of ML among judges in the criminal courts. Since the 3rd evaluation, 8 final judgments of ML were delivered by the courts. In 7 of these cases the prosecution was able to secure convictions. The cases have concerned both domestic and foreign predicate offences. In 2011, 4 new ML prosecutions have commenced. In relation to FT, 3 STRs have been filed, all of which were forwarded to the Police for further investigation. In each case the investigations were completed and no charges were brought.

b. The institutional framework for combating money laundering and terrorist financing

38. As there have been various changes within the institutional framework since the last evaluation, it is necessary to provide a brief overview.

The Financial Intelligence Analysis Unit (FIAU)

39. The FIAU remains the central authority for AML/CFT-related reporting. However, since the 3rd evaluation, the scope of its activities has been significantly broadened by law in the sense that the number of entities subject to the PMLFTR increased thereby increasing the FIAU's compliance oversight. Now the FIAU exercises supervisory functions over all reporting entities in the AML/CFT field.

The Malta Financial Services Authority (MFSA)

40. The MFSA remains the single regulator for all banking, securities and insurance businesses in Malta. In January 2010, a new internal structure was adopted to strengthen the regulatory and supervisory process. The new structure combines sector-specific supervision with an integrated approach to authorisation, regulatory development and risk-based supervision.

41. The regulatory structure of the MFSA now comprises the following units:
    - Authorisation Unit (processing of license applications)
    - Regulatory Development Unit (cross-sectoral issues and development)
    - Supervisory Units (overseeing banking, securities & markets and insurance & pensions)

42. As a supervisory authority, the MFSA must maintain internal reporting procedures. These include the appointment of a ML reporting officer under Regulation 15 of the PMLFTR. The MFSA must also disclose to the FIAU any facts or information it obtains that could be related to ML or FT.

Ministry of Foreign Affairs/Sanctions Monitoring Board

43. The Sanctions Monitoring Board continues to monitor the operation and implementation of all UN Security Council Resolutions, EU Restrictive measures and regulations and administrative measures issued under the National Interest (Enabling Powers) Act 1993 by the Prime Minister of Malta.

44. Since the 3rd evaluation report, the Sanctions Monitoring Board is now composed of representatives from the following entities:
    - Ministry of Foreign Affairs (who shall be Chairman)
    - Office of the Attorney General (or the AG himself)
    - Defence Matters Directorate, Office of the Prime Minister
    - Ministry responsible for Finance, the Economy and Investment
    - Central Bank of Malta (CBM)
    - MFSA

- Ministry of Infrastructure, Transport and Communication
- Ministry for Justice and Home Affairs
- Trade Services Directorate (MFEI)
- Customs Department

45. All UN Security Council sanctions, and restrictive measures of the EU imposing the freezing of funds, are transmitted to the MFSA and placed on the "Implementation of Sanctions" section of the MFSA website. This is done in accordance with a standing arrangement with the Sanctions Monitoring Board.

Joint Committee for the Prevention of Money Laundering and Funding of Terrorism

46. In order to reflect the introduction of TF into the new PMLFTR, this Committee has been renamed. Otherwise its duties and functions remain the same as at the time of the 3rd evaluation report.

The Malta Police Force

47. The Police Money Laundering Unit remains part of the Economic Crimes Unit. It now comprises 2 investigating teams, each consisting of 1 Inspector, 1 Sergeant and 1 Constable.

The Customs Department

48. The Customs Department is responsible, *inter alia*, for controlling the movements of cash at the border. Since 2005 the Customs Intelligence Section (CIS) has been responsible for the creation of risk profiles and the targeting of passengers suspected of carrying narcotics and/or undeclared money.

49. According to the MEQ, the CIS keeps records of all declarations. At the time of the 3rd evaluation, this information was regularly forwarded to the Central Bank, the Police and the Malta Security Services. Since 2007, however, the information is transmitted weekly to the FIAU and every three months to the EU Commission.

50. In addition to the above, the Cash Control Regulations ('CCR') (Legal Notice 149 of 2007) were issued in June 2007 to give effect to the provisions of the European Union Regulation No. 1889/2005 laying down rules on the movement of cash on entering or leaving the EU Territory. The CCR impose obligations regarding the declaration and movement of cash on entering or leaving Malta. Persons travelling to or from the EU Member States are also required to make such declarations.

51. The Customs Class Uniformed Unit and the Enforcement Unit (CEU) enforce the CCR at airports, seaports and yacht marinas by carrying out searches of passengers and their luggage. When a passenger is found to exceed his cash allowance, a case is lodged and passed to the Police, who may bring charges against the persons involved.

52. In addition to the records kept by the CIS, all offices at the airport and seaports keep an independent record of declarations made. These records are kept on a computerised system and are available to station employees.

53. The Customs Department regularly assists and co-operates with the Economic Crimes Unit of the Police, the Malta Security Service, Europol, Interpol, Olaf and the Cash control group (DG TAXAUD) within the European Commission.

The Quality Assurance Oversight Committee of the Accountancy Board

54. An important development since the 3rd evaluation report has been the establishment of the Quality Assurance Oversight Committee ('QAOC') by the Accountancy Board. The basic function of the QAOC is to oversee, support and evaluate the work of the Quality Assurance Unit (QAU). The QAOC also follows up the actions taken by audit practitioners in response to any recommendations given by the QAU following an inspection visit. The QAOC also acts as a formal communication link between the QAU, the Accountancy Board and audit practitioners.

55. The QAU is the duly appointed agent of the QAOC. The QAU is responsible for delivering the quality assurance service within the accountancy and auditing profession in Malta by carrying out inspections of firms and preparing reports for consideration by the QAOC. The QAU also monitors the Annual Returns submitted by practitioners.

The Commissioner of Voluntary Organisations

56. The role of the Commissioner was established in 2007 by the Voluntary Organisations Act (Cap. 492 of the Laws of Malta). The Commissioner monitors the activities of the NPO sector. Its duty is to ensure that voluntary organisations operate according to the law. The Commissioner is also responsible for providing guidelines and information to persons performing voluntary work.

c. The approach concerning risk

57. Malta is an international business and financial centre, with a competitive tax regime. The authorities are aware that increasing growth in this sector presents accompanying AML/CFT risks which need guarding against.

58. The financial sector is conscious of the risks from foreign investment, possibly for tax evasion purposes. A distinct risk of inward investment by foreign PEPs from Eastern Europe and North Africa, which require constant vigilance in the application of R6.

59. While many of the accountants and lawyers practising in financial services work in major international firms with strong group-wide AML/CFT procedures in place, the position was less clear in respect of smaller firms and sole practitioners. Formal AML/CFT supervision arrangements for accountants and lawyers still need to be put in place.

60. The overall economic loss from crime appears not to have been routinely quantified.

61. No specific national AML/CFT risk assessment was undertaken since the last evaluation but the authorities consider the TF risk to be low.

62. At the time of the 3rd evaluation, the subsidiary legislation in the Maltese AML/CFT regime did not provide for a risk-based approach in the exercise of CDD. This approach has been included in Regulation 7(8) of the PMLFTR, although its application is not compulsory. Regulations 7 to 12 also provide for simplified CDD and enhanced CDD measures, as well as exemptions from CDD in certain circumstances.

63. At the time of the 4th round evaluation report, compliance monitoring is carried out by the FIAU on a risk-based base. The main tool for the measurement of the level of risk is the information obtained by the FIAU in the course of its functions, including STR-related information, information obtained through off-site monitoring and the conclusions drafted by the prudential supervisory authority (MFSA). However, the absence of a national risk assessment to identify the

most risky areas for ML/FT gives rise to concerns with regard to the effective implementation of the risk based supervisory activity.

64. On the basis of the criteria found in Directive 2006/70/EC, the FIAU can determine additionally, the entities which fall outside the scope of the PMLFTR. These are legal and natural persons who engage in financial activity on an occasional or very limited basis and where there is little risk of ML or FT occurring. The FIAU has not yet exercised this power.

65. With regard to AML procedures, some reporting entities lack a formal risk based approach and perform the same level of customer due diligence on all clients. Some shortcomings may also relate to the ongoing review of CDD records.

66. In order to deal with the current risks, the scope of the PMLFTR has been extended in 2009 to include in the definition of 'relevant financial business' captive insurance licence holders and protected cell companies. Although these entities are not covered by the Third EU Directive, they were included within the definition of 'relevant financial business' in the Regulations due to a risk identified by the MFSA.

d. Progress since the last mutual evaluation

Developments in the legal framework

67. Money laundering remains criminalised under the same principal laws as described in the 3rd round report: the Prevention of Money Laundering Act (PMLA), the Dangerous Drugs Ordinance (DDO) and the Medical and Kindred Professions Ordinance (MKPO). However, since 2005, there have been major developments as a result of the various amendments made to the PMLA and the PMLFTR.

68. In Article 2 of the PMLA, the mental element of the ML offence has been extended to cover 'suspicion', as well as knowledge, about the unlawful origin of funds. Sub-paragraph (iii) of Article 2 was also amended to include 'possession' and 'use', in addition to 'acquisition'.

69. As noted in the 3rd MER, Article 2(2)(a) of the PMLA provides that a person may be convicted of money laundering even if he or she is not judicially found guilty of the underlying criminal activity. The existence of the predicate offence can be established on the basis of circumstantial and other evidence, without any requirement on the prosecution to prove a conviction in respect of it. Since the 3rd evaluation, Article 2(2)(a) has been amended to bring the Maltese AML regime into compliance with the Warsaw Convention. As a result, it is no longer necessary to establish the precise nature of the predicate offence that generated the proceeds laundered.

70. In proceedings for ML under the PMLA, reverse onus provisions in terms of Article 3 (3)of the PMLA which renders applicable Article 22(1c)(b) of the Dangerous Drugs Ordinance) are now available to the prosecution. The burden of proof falls on the defendant when the prosecution provides evidence that the defendant has given no reasonable explanation showing that money, property or proceeds are not the proceeds of crime.

71. Sub-Article (2A) has been inserted into Article 3 of the PMLA, giving the AG the power to decide before which criminal courts ML-related offences are to be tried. Article 3(5), which deals with forfeiture of property, has also been amended to harmonise it with similar provisions contained in the CC and the DDO. Article 3(5)(b) and (c) contain new provisions strengthening the forfeiture of proceeds.

72. Article 4 PMLA, concerning penalties for breaches of freezing and attachment orders, has been amended. Article 4(10) has been inserted to strengthen the effect of attachments orders. Article 4B has been added to implement Article 19 of the CETS 198. This extends the power to issue

monitoring orders for ML offences (a regime which was already in place under Article 35AA of the CC).

73. Part II of the PMLA has been amended to vest the FIAU with powers and functions over transactions suspected to involve funding of terrorism.

74. In 2006 the PMLFTR 2003 were amended, by Legal Notice 42, to include an obligation to report knowledge or suspicion of transactions that could be related to FT. Further developments occurred in July 2008, when 2006 Regulations were repealed and replaced by new Regulations to implement the Third EU Directive and the Implementation Directive. The new PMLFTR were then amended by Legal Notice 328 of 2009, to extend the scope of the regulations to cover captive insurance licence holders and protected cell companies.

75. Regulation 7(12) of the PMLFTR reflects Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006, which provides rules on transactions related to domestic or cross-border money transfer or remittance in amounts of €1,000 or more. In any case, the Regulation is directly applicable in Maltese law due to EU membership.

76. Regulation 15(6) PMLFTR now requires subject persons to report knowledge or suspicion of transactions that could be linked to the funding of terrorism. Since the introduction of this obligation, 3 STRs have been filed.

77. A number of international conventions have been ratified since the last evaluation. These include the Convention on Mutual legal Assistance in Criminal Matters between the Member States of the European Union; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and of the Financing of Terrorism (CETS 198) and the Convention on the Protection of the European Communities' Financial Instruments. As a result, a number of amendments have been made to the CC and other legislation. Malta signed the Merida Convention on 12 May 2005 and ratified it on 11 April 2008.

78. Finally, with regard to the Maltese NPO sector, the Voluntary Organisations Act (Cap. 492 of the Laws of Malta) and the Second Schedule of the Civil Code (Cap. 16 of the Laws of Malta) came into effect in 2007 and introduced a new regulatory regime. The VOA sets out the enrolment procedure for voluntary organisations, although such enrolment is not currently compulsory. The Act also provides for the appointment, as well as the functions and responsibilities of, the Commissioner of Voluntary Organisations.

Institutional developments

79. In January 2010 the MFSA adopted a new internal structure, as described above, to strengthen the regulatory and supervisory process. The Various Financial Services Laws (Amendment) Act 2010 also incorporated changes aimed at strengthening the MFSA's investigative and supervisory powers.

80. As a result of legislative amendments, the scope of the activities of the FIAU has been broadened. The main change since the last evaluation report in the FIAU's organisation is that it received supervisory functions over additional reporting entities in the AML/CFT area. As mentioned previously, the FIAU's responsibilities have been extended to cover the financing of terrorism.

81. The Voluntay Organisations Act of 2007 established a regulatory framework for NPOs and provides for the appointment of the Commissioner of Voluntary Organisations. The Commissioner monitors the activities of the NPO sector and ensures that organisations operate according to the law, and is also responsible for providing guidelines and information to persons performing voluntary work.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

1.6. Criminalisation of Money Laundering (R.1)

1.6.1. Description and analysis

Recommendation 1 (rated LC in the 3rd round report)

Legal Framework

82. Malta had signed and ratified both the United Nations Convention (1988) against illicit Traffic in narcotic Drugs and Psychotropic Substances (Vienna Convention) and the United Nations Transnational Organised Crime Convention Palermo Convention), at the time of the third round evaluation.

83. The deficiencies identified in the third round report were related to the lack of final money laundering convictions, although the legal basis to prosecute money laundering was already quite sound. There were then 10 cases before the courts – some of which were autonomous cases. The evaluation team had also pointed out the need for a greater willingness to draw inferences from objective facts and circumstances to secure many laundering convictions.

84. At the time of the fourth round on-site visit, money laundering continued to be criminalised under the same principal laws as described in the 3rd MER: Prevention of Money Laundering Act, Chapter 373, Laws of Malta (PMLA), the Dangerous Drugs Ordinance (DDO) and the Medical and Kindred Professions Ordinance (MKPO).

85. Articles 3 to 11 of PMLA regulate investigation and prosecution of the general offences of money laundering. ML is defined by reference to the language of the Vienna and Palermo Conventions.

86. 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 the majority of investigations of ML relate to self laundering. However, as indicated in this report there have also been a number of autonomous ML cases. (see paragraph 89) They also indicated that a substantial number of the cases involved foreign predicate offences, though precise figures could not be provided.

87. Since the last evaluation the mental element of money laundering has been extended to cover 'suspicion' as well as the pre-existing knowledge standard, which is anticipated to increase the possibility of convictions. According to PMLA a person can be prosecuted for money laundering if he/she knows or suspects that the property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity. It could be noted that the definition provided by Maltese legislation has an even broader scope than the United Nations Conventions, as it refers to knowledge or suspicion regarding the origin of the property.

88. Concerning the level of proof of the predicate offence in ML prosecutions and trials, as the previous report noted, Art. 2 (2) (a) helpfully and explicitly provided that a person might be convicted of a ML offence 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. However, since the last evaluation, the Maltese authorities have also introduced further useful statutory provision, in line with the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Warsaw Convention), that it is also unnecessary to establish precisely the underlying criminal activity.

89. Since the last evaluation, senior experts advised that these legal provisions have been applied in practice. Similarly in proceedings under PMLA for ML, reverse onus provisions are now available to the prosecution. Thus, under the PMLA, Article 3(3) (which cross-refers to Article 22 (1c) (b) of the DDO) applies when the prosecution produces evidence that no reasonable explanation was given by the accused showing that money, property or proceeds was not the proceeds of crime the burden of showing the lawful origin of the money, property or proceeds falls on the accused.

90. Judicial decisions that draw inferences of underlying predicate criminality from other objective facts in ML cases is an important step and confirms an earlier decision in a wholly autonomous ML case.

Criminalisation of money laundering (c.1.1 – Physical and material elements of the offence)

91. The article 2 of the PMLA, money laundering offence is defined as:-

"(i) the conversion or transfer of property knowing or suspecting that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code, Chapter 9 of the Laws of Malta;

(vi) acting as an accomplice (aiding, abetting, facilitating and counselling the commission of money laundering) within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub- paragraphs (i), (ii), (iii), (iv) and (v)."

92. The physical elements of the offence comply with the Palermo and Vienna conventions as they refer to *the conversion or transfer/ the concealment or disguise/ acquisition, possession and use* go even beyond their requirements and include *retention without reasonable excuse.*

93. Criminal Activity is defined in the Art.2 of PMLA as any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: (*a*) a crime or crimes specified in Article 3 (1) (*a*) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and

Psychotropic Substances adopted on the 19th December 1988 in Vienna reproduced in the First Schedule to this Act; or (*b*) one of the offences listed in the Second Schedule to this Act.

94. Since the last MER, criminalisation of money laundering in the Maltese legislation has been enhanced, and helpful judgements in the Courts should encourage prosecutors to pursue serious autonomous ML cases more frequently. At the time of the on-site visit there appeared to be a considerable number of ongoing ML investigations, some of which have been quite protracted. 4 new money laundering prosecutions have commenced in 2011.

The laundered property (c.1.2) & Proving property is the proceeds of crime (c.1.2.1)

95. According to Maltese legislation, "property" is defined as follow:

- DDO and the MKPO define property as the things being either movable or immovable,
- PMLA defines "property" as:

"*property of every kind, nature and description, whether movable or immovable, tangible or intangible and, without derogation from the generality of the foregoing, shall include*

(a) any currency, whether or not the same is legal tender in Malta, bills, securities, bonds, negotiable instruments or any instrument capable of being negotiable including one payable to bearer or endorsed payable to bearer whether expressed in euro or any other foreign currency;

(b) cash or currency deposits or accounts with any bank, credit or other institution as may be prescribed which carries or has carried on business in Malta;

(c) cash or items of value including but not limited to works of art or jewellery or precious metals; and

(d) land or any interest therein"

96. Article 3(5) PMLA defines "proceeds" as meaning any economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property which covers the definition required by the Palermo Convention.

The scope of the predicate offence (c.1.3) & Threshold approach for predicate offences (c.1.4)

97. The predicate offences for money laundering are considered all activities within in the meaning of "criminal activity" according the Art.2 (1) of the PMLA. All serious offences, which are designated categories of predicate offence, and all the designated categories of offences based on the FATF Methodology are covered by the national legislation (Annex 1).

Extraterritorially committed predicate offences (c.1.5)

98. As noted, under the PMLA the definition of "criminal activity" means any activity, whenever or wherever carried out, which allows the law enforcement authorities to successfully prosecute, judge and convict money laundering deriving from an extraterritorially committed predicate offence. Moreover, at the onsite visit it was indicated that the most ML cases were generated by crimes committed abroad.

99. However, it was pointed out that in some situations investigation and prosecution of such cases could be difficult and time consuming.

Laundering one's own illicit funds (c.1.6)

100. Article 2(2) (b) PMLA states that a person can be separately charged and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.

101. According to the available information presented to the evaluation team, it seems that most cases (convictions and prosecutions) are self-laundering cases.

Ancillary offences (c.1.7)

102. Conspiracy is provided in article 48A of the Maltese Criminal Code and extends to all crimes carrying a punishment of imprisonment and therefore applies to the ML offence.

103. The scope of complicity is stated in article 42 of the Criminal Code: "*A person shall be deemed to be an accomplice in a crime (a) commands another to commit the crime; or (b) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or (c) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or (d) not being one of the persons mentioned in paragraphs (a), (b) and (c), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or (e) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.*"

Additional element – If an act overseas which does not constitute an offence overseas but would be a predicate offence if occurred domestically leads to an offence of ML (c.1.8)

104. The PMLA defines "criminal activity" as any activity whenever o wherever carried out which, under the law of Malta or any other law, amounts to a predicate offence. Thus, if the offence is a predicate offence in Malta, it does not matter whether it is a predicate offence in the country where the conduct took place, it constitutes a money laundering offence in Malta.

105. The Maltese authorities indicated that in practice, all money laundering cases, irrespective of the country where the predicate offence has been committed, are thoroughly investigated and prosecuted.

106. Some of the convictions achieved concerned foreign nationals with the predicate offence. 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.

107. It was pointed 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.

108. 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.

Recommendation 32 (money laundering investigation/prosecution data)

109. The Maltese authorities accept, however, that the majority of 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.

110. According to part II, art. 16 (f) of the PMLA, the FIAU maintains statistics on ML convictions. Since the last MER, 8 money laundering cases were sent to courts of which, in 7 cases the defendants were found guilty.

Table 4: Money laundering convictions

Date	Conviction	Court	Imprisonment	Fine	Confiscation
29th March 2007	Republic of Malta vs Maria Abela	Criminal Court	6 years	-	-
15th February 2008	Republic of Malta vs Carmen Butler and Stephanie Butler (Carmen Butler was found guilty of money laundering whereas Stephanie Butler was acquitted)	Criminal Court	2 years suspended for 4 years	€5,679.34	Confiscation of the *corpus delicti* amounting to circa €57,500
27th November 2008	Police vs Ariam Edilberto Lore	Court of Magistrates as a Court of Criminal Judicature	2 years and 9 months	-	-
21st May 2009	The Police vs Emmanuel Bajada	Court of Magistrates as a Court of Criminal Judicature	2 years suspended for 4 years	€50,000	Confiscation of the laundered proceeds, amounting to €4,200, as well as all the other movable and immovable property of the defendant (on appeal)
12th October 2009	The Republic of Malta vs Noor Faizura Azura Binti Md Lias	Criminal Court	15 years	€70,000 (converted into a further 2 years imprisonment in default of payment)	-
23rd November 2009	The Police vs Dayang Sakienah Binti Mat Lazin	Court of Magistrates as a Court of Criminal Judicature	6 years	€42,000 (converted into a further 18 months imprisonment if not paid within 6 months)	-

16th December 2009	The Republic of Malta vs Vincenzo Stivala	Criminal Court	*The jury found the defendant not guilty*		
5th November 2010	The Police vs Elton Brincat	Court of Magistrate as a Court of Criminal Judicature	4 years	€3,000	Confiscation of the sum of €19,300 which were found in the possession of the accused

Statistics on prosecutions are maintained (the prosecuted cases are named "arraignments" in the table):

Table 5: On going prosecutions

	FIAU reports	Police Initiated Investigations	Arraignments (Cases)	Arraignments (Persons)	Cases Decided	Confiscations (cases)	Investigation Orders	Attachment Orders	Frozen Assets (value in €)
2005	19	8	3	3	*nil*	*nil*	4	2	€553 814
2006	21	6	4	9	*nil*	*nil*	9	6	€279 525
2007	24	13	8	11	1	1	12	9	€759 942
2008	41	5	2	3	2	1	8	4	€318 716
2009	17	4	9	10	3	1	7	7	€2 670 811
2010	20	5	4	7	1	1	6	6	€2 278 099
2011 *	9	5	4	5	*nil*	*nil*	3	3	€87 059 186

** up till 31.05.2011*

Statistics on on-going investigations are maintained by police units:

Table 6: On-going money laundering investigations

	2005	2006	2007	2008	2009	2010	2011
Pending Investigations[3]	9	10	16	18	7	9	7
Suspect/ Entities away from Malta[4]	5	5	11	14	6	7	4
No case[5]	10	8	7	9	4	6	3
Total	24	23	34	41	17	22	14

Statistics concerning the suspected predicate offences were also available:

Table 7: Suspected predicate offences

Suspected Predicate Criminality	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**Total**
Drug Trafficking	2	4	0	4	5	7	1	2	25
Fraud	2	4	3	2	1	0	5	7	24
Forgery	0	1	1	3	0	0	0	0	5
Misappropriation	0	0	0	0	0	0	0	2	2
Corruption	0	0	0	0	0	0	1	0	1
Usury	1	2	2	5	1	4	0	0	15
Undeclared Income	0	2	4	0	0	4	0	0	10
Unlicensed Financial Services	4	4	1	0	3	3	0	3	18
General Crime	5	2	1	0	2	2	1	0	13
Human Trafficking	0	0	1	0	1	2	0	0	4
Theft	0	0	4	0	0	0	0	0	4
Illegal Gambling	0	0	1	2	0	1	0	1	5
Identity Theft	0	0	0	2	1	0	0	0	3
Living off the earnings of Prostitution	0	0	0	2	0	0	1	0	3
Funding of Terrorism	1	0	1	0	1	0	1	0	4
Phishing	0	0	0	0	1	0	0	0	1
Not specified	2	1	3	1	6	16	7	5	41
Total	17	20	22	21	22	39	17	20	178

Effectiveness and efficiency

111. The national legislation is broadly in line with the international standards.

[3] *"Pending investigations" means that the case/investigation is not yet completely concluded. Pending issues might range from obtaining information or evidence from foreign jurisdictions through letters of request or on a police to police exchange basis, to interviewing persons currently away from the country*

[4] *"Suspect/Entities away from Malta" relates to all those cases/investigations in which either a suspect/s or a company are not physically or legally present in Malta but who have effected suspicious transactions through a Maltese financial institution. For example, a foreign registered company having a local bank account and funds might have been directed to this local account and out again, or as in the case where a bank acts as a correspondent bank.*

[5] *"No case" means that the case has been investigated and concluded and an explanation and supporting evidence was provided to explain the suspicious transactions. No evidence of either money laundering or any type of other predicate offence was unearthed.*

112. Article 2(2)(a) of the PMLA stipulates that a person may be convicted of a money laundering offence 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. A significant enhancement of the AML/CFT regime since the last MER is found in the provision added to this article which 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 interpret and apply these enhanced statutory provisions in practice.

113. The Maltese authorities drew attention to one particular 2009 case where the defendant was alleged to be a drug courier and part of an international organization which existed to traffic drugs, based on circumstantial evidence. She was charged with being part of a criminal organization, conspiracy and money laundering (taking proceeds out of Malta and sending proceeds via Western Union). She was convicted on all three counts. The court found from 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.

114. 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. These cases confirmed the earlier decision in 2008 in a wholly autonomous case where a mother and a 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, now to have been well demonstrated.

115. However, the money laundering prosecutions and convictions remain in majority focused on self laundering from crimes committed abroad.

116. Senior representatives of judiciary indicated at the time of the on-site visit that the next step would be to prosecute without pointing out the actual criminal offence that generated the dirty money.[6]

117. Also, it was noted that since the last MER, there is a greater awareness on the money laundering offence elements among judges in criminal courts.

1.6.2. Recommendations and comments

Recommendation 1

118. A significant enhancement has been achieved in respect of Malta's legislation concerning money laundering since the last evaluation in clarifying that a person may be convicted of a ML offence in the absence of a conviction for any predicate offence.

119. As noted above, a person may be convicted of a money laundering offence even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of

[6] *The Maltese authorities indicated that an autonomous ML conviction has recently been achieved on Appeal where the charge did not specify the predicate offence but that the Appeal Court accepted that the proceeds came from crime.*

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.

120. The provision also goes on to say "and without it being necessary to establish which underlying activity", but this provision has not been fully tested in practice yet.

121. The mental element of the ML offence (relevant primarily to Recommendation 2, but mentioned in the overall context of ML prosecution) was extended to include suspicion about the unlawful origin of the funds (the Art. 2 of the PMLA). The ML legislation can be considered as broadly meeting the relevant international standards.

122. In terms of effectiveness, since the last MER (where there were no final convictions), 9 money laundering cases were brought to courts involving 9 persons since 2007 and resulting in 7 convictions. The Maltese authorities indicated that the completed cases with money laundering convictions should encourage prosecutors to pursue serious autonomous ML cases more frequently.

123. The length of sentences in the mentioned cases also suggests a strict approach to money laundering, which is encouraging to prosecutors.

124. Nonetheless, the length of the investigations and prosecutions in some of the cases has been quite prolonged, and this impacts on the effectiveness.

Recommendation 32

125. In general the statistics kept by the Maltese authorities are in line with the recommendation 32.

126. Collated and comprehensive statistics could be further used in the general risk assessment of the country and in the analysis of the effective application of the AML/CFT provisions. The collated statistic should be made available to all agencies involved in AML/CFT area.

1.6.3. Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating[7]
R.1	**C**	

1.7. Criminalisation of Terrorist Financing (SR.II)

1.7.1. Description and analysis

Special Recommendation II (rated LC in the 3rd round report)

Legal framework

127. Malta had ratified the International Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention) at the time of the 3rd round report. The Act VI of

[7] *Note to assessors: for all Recommendations, the description and analysis section should include the analysis of effectiveness and should contain any relevant statistical data*

2005 introduced a new sub-title in the Criminal Code that deals with "Acts of Terrorism, Funding of Terrorism and Ancillary Offences".

128. The evaluators of the previous round pointed out that Maltese legislation should clearly include in the definition of terrorism financing the collection of funds for any purpose (including a legitimate activity) for a terrorist group. It also noted a level of uncertainty as to how the courts would interpret the legal provisions concerning "legitimate" activities furthering terrorism and if provision or collection of funds can be done directly and indirectly.

129. The offences that might be considered as "*terrorism financing*" are provided in a series of articles of the Criminal Code.

Criminalisation of financing of terrorism (c.II.1)

130. Article 328B(3) of the Criminal Code, added in June 2005 provides that "*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; (b) in any other case, to the punishment of imprisonment not exceeding eight years*."

131. Article 328F of the Criminal Code provides: "*whosoever receives, provides or invites another person to provide, money or other property intending 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 not exceeding 4 years or to a fine not exceeding 11.646,87 euro or to both such fine and imprisonment*".

132. Article 328G may also have relevance since it states that "*whosoever uses money or other property for the purposes of terrorism shall, on conviction, be liable to the punishment of imprisonment not exceeding twelve years. It adds, that whosoever is in possession of money or other property intending it to be used, or having reasonable cause to suspect that it may be used, for the purposes of terrorism shall, on conviction, be liable to the punishment laid down in article 328F(1)*".

133. Further to the above, Article 328H provides that "*whosoever (a) enters into or becomes concerned in an arrangement as a result of which money or other property is made available or is to be made available to another, and (b) 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 be liable to the punishment laid down in article 328F(1)*".

134. Moreover Article 328I, provides that "*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)".

135. For the purpose of the above articles, "act of terrorism" is referred to in Article 328A(1) as *"any act listed in sub-article (2), committed wilfully, which may seriously damage a country or an international organization where committed with the aim of:*

(a) seriously intimidating a population, or
(b) unduly compelling a Government or international organization to perform or abstain from performing any act, or
(c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization.
(2) The acts to which reference is made in subarticle (1) are the following:

(a) taking away of the life or liberty of a person; (b) endangering the life of a person by bodily harm; (c) bodily harm; (d) causing extensive destruction to a state or government facility, a public transportation system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property likely to endanger the life or to cause serious injury to the property of any other person or to result in serious economic loss; (e) seizure of aircraft, ships or other means of public or goods transport; (f) manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons; (g) research into or development of biological and chemical weapons; (h) release of dangerous substances, or causing fires, floods or explosions endangering the life of any person; (i) interfering with or disrupting the supply of water, power or any other fundamental natural resource endangering the life of any person; (j) threatening to commit any of the acts in paragraphs (a) to (i).”

136. Analysing the legal provisions, it can be observed that the material element of the terrorism financing described in the Maltese legislation could leave room for interpretation in one respect required by the Terrorism Financing Convention.

137. The articles of the Criminal Code make reference to *receiving, providing, financing, using, entering into or becoming concerned in an arrangement and inviting another to provide.* The Maltese authorities consider that this language is wide enough to encompass all acts of collection. Nonetheless for the clarification the Maltese authorities have indicated that they are prepared to propose amendments to the legislation to make this even clearer

138. It is still unclear if this provision also covers legitimate activities furthering terrorism.

139. Due to the broad language used, it is clear that the terrorism financing offence covers any funds whether from legitimate or illegitimate source.

140. Also, the terrorist financing offences, as described by Maltese legislation, do not require that the money or property is actually used to carry out a terrorist act or to attempt to carry out a terrorist act nor is it necessary for the money or property to be linked to a specific terrorist act. Article 328F and 328H merely refer to the possible use of the money or property for the generic purposes of terrorism.

141. However, the concerns related to the legitimate or illegitimate purpose of the funds remain, as considered by the evaluators in the 3rd MER. The evaluators’ noted 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 law may not be wide enough to properly cover contributions used for any purpose (including a legitimate activity) by a terrorist group or an individual terrorist (such as supporting families while a member of the group is in prison). The quoted article appears to exclude the use of the financing for legal purposes.

142. The Maltese authorities maintain that in this respect, Article 328B(3), which amongst other things, criminalises the financing of a terrorist group, is broad enough and merely requires such financing to contribute towards activities of the group and therefore any financing which in any manner whatsoever would help, assist or support a terrorist group is criminalised under this Article.

143. The Maltese authorities, considered 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). There have been no FT investigations and thus no cases in which either of the above provisions could be tested in practice.

144. In any event, the evaluators were advised that amendments are being considered to ensure that the wording of the law does not leave any room for a different interpretation. At the time of the on site visit those amendments were not in place8.

145. As to the provision relating to whether or not the provision of funds can be done directly or indirectly, at the time of the 3rd round report, the examiners accepted 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 pointed, understandably, to 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 the offence in A.328H (funding arrangements) noted above which carries the same penalties as the general FT offence (funding of terrorism) in A.328F. While either of these Articles might be apt for some types of indirect provision, the Maltese authorities had prepared a draft amendment 9 to add "directly and indirectly" into A.328F.

146. Regarding the definition of "property", the Maltese CC defines it in the Article 23B(3) as "assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets" and therefore, the scope is broad enough and meets the standards set out in the Convention.

147. The provisions regulating attempts also apply to terrorist financing since Article 41 of the Criminal Code speaks of offences in general and thus also embraces offences under the terrorism and terrorist financing sub-title.

148. Articles 5(a) and (b) of the Convention are covered by the offence of complicity under Article 42 of the Criminal Code. Article 5(c) of the Convention is covered by Article 83A of the Criminal Code.

Predicate offence for money laundering (c.II.2)

149. The PMLA predicate criminal activity covers all criminal offences and terrorism financing offences are also predicate offences for money laundering.

Jurisdiction for Terrorist financing offence (c.II.3)

150. For the purposes of the offences of terrorist financing, Maltese law does not require that the terrorist act should have been committed or the terrorist organisations should be in the same place where the financing of terrorism took place. Moreover, Article 328M of the Criminal Code provides that without prejudice to the general provisions on jurisdiction, the courts in Malta shall also have jurisdiction over the offences of terrorism and funding of terrorism when:

"(a) the offence is committed even if only in part in the territory of Malta or on the sea in any place within the territorial jurisdiction of Malta;
(b) the offender is a Maltese national or permanent resident in Malta;

[8] *A Bill has since been tabled in parliament with a proposed amendment to A.328.B, which 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".*
[9] *A Bill has since been tabled in parliament with a proposed amendment to A.328.F, to expressly include the words "direct" and "indirect" funding*

(c) the offender is a person suspected or convicted of an offence laid down in this sub-title and whose surrender or extradition to another country for such an offence is refused by Malta even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;
(d) the offence is committed for the benefit of a legal person established in Malta;
(e) the offence is an offence under article 328B or an offence under article 328D which involves a terrorist group even if the terrorist group is based or pursues its criminal activities outside Malta;
(f) the offence is committed against the institutions or people of Malta or against an institution of the European Union or a body set up in accordance with the Treaties and based in Malta."

The mental element of the FT (applying c.2.2 in R.2)

151. The mental element of the TF is expressed in the Article 328F, 328H of the Maltese Criminal Code (whosoever has a reasonable cause to suspect that money or property provided by him is to be used for the purposes of terrorism, shall be guilty of an offence).

152. A difficulty arises from the language of Article 328A which limits the financing of terrorism acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328 A (1) a), b) and c). Financing the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention.

Liability of legal persons (applying c.2.3 & c.2.4 in R.2)

153. There is a criminal liability of legal persons under the Maltese law, explicitly expressed in the Article 328J of the Criminal Code.

Sanctions for FT (applying c.2.5 in R.2)

154. The sanctions for terrorism financing relating to legal persons are stated in the Article 328K and 328L of the Criminal Code:

328K: *"Without prejudice to any other punishment to which the offence may be liable under this Code or any other law, where the offender is a body corporate liable to punishment under the provisions of article 328J the Court may, at the request of the prosecution, order -*
(a the suspension or cancellation of any license, permit or other authority to engage in any trade, business or other commercial activity;
(b the temporary or permanent closure of any establishment which may have been used for the commission of the offence;
(c) the compulsory winding up of the body corporate."

328L. *"(1) an offence under any of articles 328F to 328I may make a forfeiture order in accordance with the provisions of this article.*
(2) Where a person is convicted of an offence under articles 328F or 328G the court may order the forfeiture of any money or other property -
(a) which, at the time of the offence, he had in his possession or under his control and,
(b) which, at that time, he intended should be used, or which he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism.
(3) Where a person is convicted of an offence under article 328H the court may order the forfeiture of the money or other property -
(a) to which the arrangement in question related, and
(b) which, at the time of the offence, he knew or had reasonable cause to suspect would or might be used, for the purposes of terrorism"

155. Given the variety of offences with different sanctions from which a prosecutor can choose depending on the gravity of the situation and in the absence of cases, the evaluators consider the

sanctions concerning natural and legal persons regulated by the Articles 328B, 328F, 328H, 328I (as the text is mentioned above) broadly proportionate and dissuasive and potentially effective.

Recommendation 32 (terrorist financing investigation/prosecution data)

156. There were 4 suspicious transaction reports related to FT at the time of the on site visit, 3 of which had been passed to the police for further investigation.

157. 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.

158. 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.

Additional elements

159. The existing legislative framework has not yet been tested before judiciary (not even at the level of the prosecutors), but if the situation would occur, there are sufficient grounds for believing that an efficient system of statistics would be available.

Effectiveness and efficiency

160. Due to the absence of cases before the prosecutors or the courts, it is not possible to assess the effectiveness of the procedures. However, apart from the points made below, the legislative base is largely in place.

161. The evaluators are of the view that collectively the legal provisions Article 328B, 328F of the CC still do not exhaustively cover all the essential criteria, though accept that in some cases this may be a matter of interpretation for the courts to decide.

1.7.2. Recommendations and comments

162. The main development since the last evaluation is the extension of the scope of the mental element of terrorist financing from "*knowledge*" to "*suspicion*".

163. The evaluators are not completely satisfied with the clarity of the legal provisions concerning the criminalisation as terrorist financing offence an act of financing regardless of the licit or illicit purpose of the property. Clearer legal provisions should be adopted to clarify that the terrorism financing offences cover contributions used for any purpose (including a legitimate activity) by a terrorist group.

164. While the courts may interpret the provision widely, it would assist if this were 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.

165. Express provision stating that of terrorism financing can be done *directly or indirectly*, should be introduced into the legislation.

166. Professional continuous training at the judiciary and prosecutorial level on terrorist financing cases is recommended.

1.7.3. Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**LC**	• Unclear whether the interpretation of A328F covers financing of "legitimate" activities furthering terrorism • No clear provision to cover direct and indirect financing of terrorism. • The financing of offences covered in the annex to the TF Convention has, in the Maltese law, additional mental element not required by TF Convention for offences under A 2 (1) (a).

1.8. Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

1.8.1. Description and analysis

Recommendation 3 (rated LC in the 3rd round report)

Legal framework

167. The four main laws providing for the attachment, freezing and confiscation of proceeds of crime are the Prevention of Money Laundering Act, Dangerous Drugs Ordinance, Medical and Kindred Professions Act and the Criminal Code.

168. Under Maltese Law, seizure as a preventive measure is obtained by means of an attachment order, whilst upon arraignment, the measure employed to block a suspect's funds and other property is referred to as a freezing order. Confiscation and forfeiture are enforced upon conviction.

169. The Criminal Code regulates the general regime of confiscation.

170. The Criminal Code defines property as assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible and legal documents or instruments, evidencing title to or interest in such assets.

171. The PMLA definition of property also includes currency, securities, bonds, negotiable instruments, cash or currency deposits, cash or items of value and land or any interest.

172. The DDO distinguishes property as being either movable or immovable.

173. The amended Article 23 of the CC states, that:
"*(1) The forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.*
(2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly

stated in the law.
(3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused."

174. An attachment order may be issued upon an application of the Attorney General to that effect. Upon being issued, the order attaches in the hands of third parties (garnishees) all moneys and other movable property (including negotiable instruments, cash or currency deposits or accounts with any bank, credit or other institution) due or pertaining or belonging to the suspect and prohibits the suspect from transferring or otherwise disposing of any movable or immovable property. This order is served on the garnishees and the suspect and is valid for a period of 30 days which can be extended further for another 30 days if new evidence comes to light. If the suspect person is away from Malta the period of 30 days is held in abeyance and the attachment order continues indefinitely.

175. When an investigation or an attachment order has been made or applied for, whosoever, knowing or suspecting that such an order has been made or applied for, makes a disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it, shall be guilty of an offence which carries a punishment of imprisonment of up to 12 months and/or a fine of five thousand liri (12,000 Euros circa) (Article 435A(1), Criminal Code; Section 4 Prevention of Money Laundering Act; Section 24A Dangerous Drugs Ordinance).

Confiscation of property (c.3.1)

176. Articles 23, 23B and 23C of the Criminal Code and Articles 3(5) and 7 of The PMLA and Article 22 (3A) of the DDO regulate the confiscation of proceeds of crime.

177. Confiscation is not considered as an alternative to the applicable penalty but is imposed in addition as a means to deprive the offender of the benefit of the crime. Forfeiture in favour of the government takes effect on the proceeds of or of such property the value of which corresponds to the value of such proceeds.

178. In the Criminal Code forfeiture of the instrumentalities used in or intended to be used in the commission of a crime is covered under Article 23, whilst in terms of article 23B provision is made for the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by a body corporate for whose benefit the offence may have been committed by virtue of article 121D of the Criminal Code.

179. Additionally, Article 23C states that, where it is established that the value of the property of the person found guilty of a relevant offence, is disproportionate to his lawful income and the court, based on specific facts, is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

180. "*Relevant offence*" means any offence not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year.

181. Article 3(5) (b) PMLA defines forfeiture of proceeds - where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds, the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate *in solidum*, as the case may be, to the payment of a fine (*multa*) which is the equivalent of the amount of the proceeds of the offence. The said fine shall be recoverable as a civil debt and for this purpose the sentence of the court shall constitute an executive title pursuant to the Code of Organization and Civil Procedure.

182. Article 3(5)(c) of the same act defines forfeiture of property derived from criminal activity where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

183. The term "proceeds" here means economic advantage and any property derived from or obtained, directly or indirectly, through criminal activity and includes any income or other benefit derived from such property.

Provisional measures to prevent any dealing, transfer or disposal of property subject to confiscation (c.3.2)

184. The important provisional measures are considered the attachment and freezing orders (as noted above).

185. Furthermore by virtue of article 4(10) and article 6 of the PMLA, if any person acts in contravention of an attachment order (issued upon suspicion) or a freezing order (i.e. issued once a person/s is/are arraigned under that Act) he shall be guilty of an offence and shall, on conviction, be liable to a fine (*multa*) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law.

186. Any property transferred as a result of such act would then be liable to confiscation. The same provision applies to persons charged with a relevant offence under the Criminal Code. Articles 22A and 22B, DDO contain similar provisions by providing that the Court may order the person found guilty to deposit in a bank to the credit of the accused the amount of moneys or the value of other movable property paid or delivered in contravention of that court order.

187. Moreover if the said transfer was used to conceal or disguise the origin of that property in such a manner that the transfer qualifies as a money laundering act, then the transferees if proven to have acted knowingly, may also be found guilty of money laundering.

Initial application of provisional measures ex-parte or without prior notice (c.3.3)

188. The attachment order is obtained *ex parte* without prior notice during the investigatory period but once granted must be notified in writing to the suspect so as not to dispose of the property.

189. The attachment order prohibits the suspect from transferring or otherwise disposing of any movable or immovable property by virtue of Article 4(6)(c) of the PMLA. A freezing order is requested upon arraignment in proceedings and starts to operate in respect of a person charged with a ML offence.

190. The defendant is present during such proceedings and the freezing order prohibits the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property. The court shall in such an order determine what money may be paid to or received by the accused during the subsistence of such an order, specifying the sources, manner and other modalities of payment, including salary, wages, pension and social security benefits payable to the accused to allow him and his family a decent living in terms of article 5 of the PMLA.

Adequate powers to identify and trace property that is or may become subject to confiscation (c.3.4)

191. The powers to identify and trace property that is or may become subject to confiscation or is suspected of being the proceeds of crime primarily turn on Article 4 of the PMLA. Under this provision, where the Attorney General has reasonable cause to suspect that a person is guilty of an offence of money laundering, he may apply to the court for an "investigation order" requiring the

person named in the order who appears to be in possession of material which is likely to be of substantial value to the investigation of, or in connection with the suspect to produce or grant access to such material. An attachment order can be requested at the same time in accordance with Article 4 PMLA and Article 24A of the DDO.

192. The investigation order enables access to material which is likely to be of substantial value to the investigation. This order enables the police to override all confidentiality and professional secrecy provisions. The order is issued by the Criminal Court after the application of the Attorney General. The Criminal Court will issue such orders if it concurs with the Attorney General's request.

193. The investigation order can be issued in relation to any relevant offence, to any offence subject to more than one year imprisonment (the Article 435A of the CC).

194. The evaluation team understood that these regulations had not been changed since the last evaluation. There are wide rules regulating the attachment and investigation order regime.

Protection of bona fide third parties (c.3.5)

195. Article 7 of the PMLA regulates special court proceedings as follow:

"(1) Where an order of forfeiture is made under Article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

(3) The applicant shall attach to the application all such documents in support of his claim as it may be in his power to produce and shall indicate in his application the names of all the witnesses he intends to produce, stating in respect of each the proof which he intends to make.

(4) The court shall, without delay, set down the application for hearing at an early date, which date shall in no case be later than thirty days from the date of the filing of the application.

(5) The application and the notice of the date fixed for hearing shall be served on the Commissioner of Police without delay, and the said Commissioner shall file his reply thereto within fifteen days after the date of the service of the application.

(6) The court shall hear the application to a conclusion within twenty working days from the date fixed for the original hearing of the application, and no adjournment shall be granted except either with the consent of both parties or for an exceptional reason to be recorded by the court, and such adjourned date shall not be later than that justified by any such reason.

(7) Saving the preceding provisions of this article, the provisions of the Code of Organization and Civil Procedure relating to proceedings before the Civil Court, First Hall, shall apply in relation to any such application.

(8) Any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favor of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

196. Article 8 of the same law states that when the court allows the demand for a declaration in respect of any property forfeited, such property shall cease to be forfeited and shall revert to the applicant in virtue of the judgment upon its becoming definite, and the applicant shall thereupon be entitled to the recovery of the income received by the Government from such property during the period of its forfeiture.

197. The same regulation contains the Article 22C of the DDO.

198. The evaluation team was informed that there are no problems with the fixed period of time mentioned in the Articles, as the Court always observes the time limit.

Power to void actions (c.3.6)

199. Article 4(10) of the PMLA states that "*Any person who acts in contravention of an attachment order shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months or to both such fine and imprisonment: Provided that where the offence consists in the payment or delivery to any person by the garnishee of any moneys or other movable property attached as provided in subarticle (6)(a) or in the transfer or disposal by the suspect of any movable or immovable property in contravention of subarticle (6)(c), the fine shall always be at least twice the value of the money or property in question: Provided further that any act so made in contravention of that court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the suspect the amount of moneys or the value of other movable property paid or delivered in contravention of that court order."*

200. Article 6 of the PMLA stipulates that "*any person who acts in contravention of a court order mentioned in article 5 shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law and the court may, where such person is the garnishee, order the said person to deposit in a bank to the credit of the person charged the amount of moneys or the value of other movable property paid or delivered in contravention of that court order*."

201. Article 22B of the DDO stipulates the same regime.

Additional elements (c.3.7)

202. Maltese law applies generally to property of persons convicted of a crime as stated in the preceding replies.

203. Civil forfeiture apart from a conviction is not provided for by law.

204. Article 3(3) of the PMLA provides: "*In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall mutatis mutandis apply*."

205. Article 22(1C)(b) states: "*In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused."*

206. Article 3(5) of the PMLA, *inter alia*, states that "*any property of the person found guilty shall unless proved to the contrary be deemed to be derived from the offence of money laundering and liable to confiscation or forefeiture by the court even if in the case of immovable property such property has since the offender was charged passed into the hands of third parties and even if the proceeds of property, moveable or immoveable are situated in any place outside Malta."*

Recommendation 32 (statistics)

207. The statistics on attachment orders are kept by the Attorney General Office:

Table 8: Statistics on attachment orders

	2005	2006	2007	2008	2009	2010
AO in domestic ML cases	nil	1	1	nil	1	3
AO followed by Freezing Orders	nil	nil	1	nil	nil	1
Freezing Orders in ML cases	3	9	11	2	10	7
AO in proceeds generating crime	nil	nil	nil	nil	nil	nil
AO issued on foreign request	2	5	8	4	6	3

Postponement order statistics:

208. The evaluators have not been provided with detailed statistic of the number of confiscations and confiscation orders in general.

Effectiveness and efficiency

209. The main progress on effectiveness of the provisional measures and confiscation regime in Malta since the last MER appear to be its application in practice in prosecuted ML cases.

210. However, some issues still raise concerns such as the extent to which the confiscation is applied beyond drugs and ML cases.

211. At the time of the on-site visit, several senior interlocutors with whom the team met considered confiscation underused, particularly in fraud and economic crimes.

212. The procedures for quantification, realisation and coordination of the follow-up of those confiscation orders which are currently made, appeared to be fragmented and ad-hoc and require an overhaul.

213. A proper overall assessment of the effectiveness of the freezing and confiscation regime is considerably impeded by the lack of statistics and thus the continued adequacy of the court appointed expert to search for property and other assets is questioned. This parallel law enforcement financial investigation in major proceeds generating cases and modern system used by other jurisdictions for effective assets tracing could usefully be explored to improve the effectiveness of the system.

1.8.2. Recommendations and comments

214. The Maltese legal regime for provisional measures and confiscation is very carefully constructed. It is expressed in mandatory terms and applies to all proceeds generating offences. The terms property and proceeds are properly defined.

215. The main progress since the last MER consists in the application of provisional measures on money laundering cases.

216. Value confiscation is possible and in some cases the provision on the reversal of the burden of the proof was used in practice. According to the Maltese authorities, there were cases where the defendant was required to demonstrate in court the lawful origin of the alleged proceeds and since he/she failed to do so, the proceeds were confiscated.

217. The attachment order procedures allows for provisional measures to be taken ex parte pre charge for 30 days, with the possibility of an extension for a further 30 days where there is substantially new information, and can apply indefinitely where the suspect is outside Malta. It appears to the evaluators that it is likely that insufficient time periods are a factor in the use of the attachment order in domestic cases.

218. That said, due to its short duration in most domestic cases, an application for such an order is a difficult tactical decision. Though it has been used in some ML and other cases, the extent of its use pre charge or on arraignment was unclear for the evaluating team. It is not considered by the evaluators that this provides an adequate basis for a fully effective freezing regime.

219. Freezing orders on charge were said to be routinely made in some proceeds- generating cases but the only statistics received apply to ML cases so these assertions could not be tested in practice. It would assist if there was clearer prosecutorial guidance on this point. No statistics on confiscations were made available for the assessment team.

220. As noted above, the extent to which confiscation is applied beyond drugs and money laundering cases was unclear. While shortcomings on maintaining statistics on confiscation negatively affects the system, the problem is not simply lack of statistics but a real concern that the freezing and confiscation regime is underused.

221. The examiners consider that a review of the adequacy of the legislative base for provisional measures in domestic cases and of the use and realisation of confiscation orders (including the continued adequacy of the court appointed expert to search for property and other assets) needs to be undertaken to ensure a more effective asset recovery strategy for proceeds generating crime generally.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	PC	• The lack of information on freezing orders made in proceeds generating predicate offences coupled with lack of evidence of use of attachment orders in proceed generating cases raises doubts as to the effectiveness of freezing and attachment regime. • The lack of information on confiscation orders on laundered property raises doubts about the effectiveness of the confiscation regime overall. • Effectiveness of attachment order regime is questioned in domestic cases.

1.9. Freezing of Funds Used for Terrorist Financing (SR.III)

1.9.1. Description and analysis

Special Recommendation III (rated LC in the 3rd round report)
Freezing assets under S/Res/1267 (c.III.1) and under S/Res/1373 (c.III.2)

222. The UN Security Council Resolutions (UNSCRs) are implemented in Malta by domestic and EU legislation. Domestic legislation constitutes a separate (not complementary) system of implementation that works alongside the EU implementation.

223. Within the domestic legislation, subsidiary regulations[10] were issued under the National Interest (Enabling Powers) Act. These regulations are effected by Legal Notices.

224. UNSCR 1267 and 1373 are enforceable in Malta by virtue of Legal Notice 214 of 1999 and Legal Notice 156 of 2002 respectively. They are also enforceable by virtue of the European Union Council Regulations N° 881/2002 and N° 2580/2001 which are binding in their entirety and are directly applicable.

225. On the basis of both domestic and EU legislation freezing would be automatically applied without any additional national measures.

226. Compliance with Legal Notice 214 is mandatory and failure to comply constitutes a criminal offence subject to the imposition of a fine or imprisonment. Article 5 of Legal Notice 214 of 1999 states that any person found guilty of an offence against the regulations, shall on conviction be liable to fine not exceeding 116,468.67 EUR or to a term of imprisonment not exceeding five years, or to both such fine and imprisonment. However, there are no enforcement provisions in place dealing with infringements and penalties in respect of obligations emanating from EU Council Regulations and 156/2002 Legal Notice concerning UNSCR 1373.

227. The evaluation team was advised that no freezing measure has been applied in Malta in the context of combating FT as no assets were identified as belonging to listed persons. At the same time the authorities referred onsite that assets were frozen on the basis of other UN and EU financial sanctions that have no FT subject. Having such assets frozen indicates that the financial sanctions regime in Malta has already been tested.

UNSCR 1267 (1999)

228. The EU has implemented UNSCR 1267 (1999) and its successor resolutions under EU Regulation 881/2002, which provides for measures against Al-Qaeda and the Taliban. The EU Regulations have direct effect and applicability in the jurisdiction of the EU. EU Regulation 881/2002 requires the freezing of funds and economic resources belonging to, owned or held by listed individuals or entities and prohibits making available any funds or economic resources to, or for the benefit of listed individuals or entities. The lists (annexes) are updated regularly by the EU via Commission regulations.

229. Albeit the EU implementation follows the listing procedure of Sanctions Committee of UNSCR 1267, a certain delay of time is apparent between the UN listing and the subsequent EU implementation. In this regard it must be noted that the domestic subsidiary legislation (Legal Notice 214 of 1999) against the Taliban, provides a legal basis for more timely freezing of funds and economic resources in compliance with the changes of UN list. As a consequence the time gap between the listing of UN and the subsequent listing of EU Commission has – in theory –no relevance in Malta.

230. Similarly, the fact that EC Regulation 881/2002 does not expressly extend to funds and assets that are owned and controlled indirectly by a designated individual, entity or organisation is less relevant in practice here as Legal Notice 214/1999 (implementing UNSCR 1267 in its entirety) is wider.

[10] *SUBSIDIARY LEGISLATION 365.07 UNITED NATIONS SANCTIONS (TALIBAN) REGULATIONS 21st December, 1999 LEGAL NOTICE 214 of 1999, as amended by Legal Notices 22 of 2001, 72 and 212 of 2002, and 425 of 2007.; SUBSIDIARY LEGISLATION 365.14 SECURITY COUNCIL RESOLUTIONS (TERRORISM) REGULATIONS, 21st June, 2002, LEGAL NOTICE 156 of 2002.*

UNSCR 1373 (2001)

231. The UNSCR 1373 provides a general obligation for states to freeze funds and economic resources of terrorists. The UNSCR 1373 itself is not a targeted financial sanction (no list is annexed), but it obliges states to adopt domestic targeted financial sanctions, or to have appropriate mechanisms for adopting such domestic targeted sanctions.

232. Turning to the relevant EU legislation, the obligation of UNSCR 1373 to freeze the assets of terrorists and terrorist entities is implemented jointly by Council Common Positions 2001/930/CFSP and 2001/931/CFSP, and EU Regulation 2580/2001. The EU Regulation 2580/2001 requires the freezing of all funds and economic resources that belong to the listed terrorists and prohibits making available any funds or economic resources for listed individuals and entities. The definition of funds, financial assets and economic resources determined by directly applicable EU Regulation 2580/2001 is in compliance with the scope of UNSCR 1373.

233. The Council of the EU has the authority for designating individuals or entities. Any member state may put forward names for the list and the Council ascertains, amends and reviews this autonomous EU list. This list does not include persons, groups and entities having their roots, main activities and objectives within the EU (EU internals).11 Domestic legislation is required to deal with European Union internals.

EU internals

234. As noted above, the EU implemented UNSCR 1373 by producing a list of persons and entities known or suspected to be involved in terrorist activities. With respect of non EU internals the EU Regulation 2580/2001 requires the freezing of assets. The EU internals who are only covered by the extended list of Common position 2001/931/CFSP are marked with an asterisk indicating that they are not subject to freezing obligations under EU measures, but only by increased police and judicial co-operation between the member states. EU internals therefore have to be dealt with through domestic measures.

235. On the 15th January 2002 the MFSA issued a circular to all licence holders, (available on the MFSA website) referring to another circular issued previously on 28th September 2001, in connection with Malta's alignment with anti-terrorist measures adopted by the EU. This circular referred to the Common Position 2001/931/CFSP, to EU Regulation 2580/2001 and to the UNSCR 1373. Licence holders were required to immediately verify their records for the names of the individuals and entities on the list or for any information, transactions or connection whatsoever, in whatever form, whether direct or indirect, relating to the individuals and entities in question. Licence holders were also required to inform without delay the MFSA should they identify any information held by them known or suspected to be connected or related in any manner whatsoever with any of the mentioned individuals or entities. The MFSA is then bound to pass the relevant information to the Sanctions Monitoring Board, set up the Sanctions (Monitoring Board) Regulations 2010[12].

236. In addition to the above, UNSCR 1373 was implemented in Malta by virtue of Legal Notice 156 of 2002 thereby introducing into Maltese law the obligations arising out of this Security Council resolution, including the freezing without delay of funds and economic resources of terrorists. This Legal Notice does not provide for sanctions in relation to breaches of the

[11] EU internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only by an increased police and judicial co-operation by the member states.

[12] SUBSIDIARY LEGISLATION 365.08 SANCTIONS (MONITORING BOARD) REGULATIONS, 31st December 2010, LEGAL NOTICE 562 of 2010.

obligations arising under UNSCR 1373. It is, of course, recalled that UNSCR 1373 does not have lists of persons and entities attached to it.

237. UNSCR 1373 requires the freezing of assets of all known or suspected terrorists. The EU lists clearly indicates the names of individuals and entities which are involved in terrorism (including EU internals) and therefore Maltese authorities state that in Malta there is a legal obligation to freeze (by virtue of Legal Notice 156 of 2002 which implements UNSCR 1373) the assets of the persons and entities on the EU list, including EU internals.

238. All updates of the EU list have been communicated by the MFSA to licence holders by means of notices and circulars and also published on the website of the MFSA. Furthermore, the MFSA has regularly issued notices to licence holders reminding them of their ongoing duties under UNSCRs and the various EU instruments, including their duty to identify any terrorist assets, to freeze such assets and to report accordingly to the MFSA.

239. Further to the above, the Maltese authorities indicated that the freezing of terrorist assets as required under UNSCR 1373, particularly the assets of EU internals, can also be achieved by means of legal notices issued under the National Interest (Enabling Powers) Act, which legal notices would include lists of EU internals identified as being related to terrorism. Penalties for breaches of freezing obligations can also be provided for in such legal notices. Concerning any freezing of funds under the National Interest (Enabling Powers) Act, the situation has changed since the 3rd round report. The above mentioned law would constitute the legal basis for freezing of assets without the need to apply for a court order. However, no EU internals have been the subject of legal notices under the National Interest (Enabling Powers) Act.

240. The Maltese authorities also referred to the power of the MFSA in Article 16(1)(a) of the MFSA Act which, *inter alia*, provides the following:

"The Authority shall also have the right to issue orders for the freezing of funds and, or other assets including bank accounts in the name of the licence holder or any other third party or parties as may be indicated and for such time and under such conditions as the Authority may set out in writing. The order may also prohibit a licence holder from transferring, disposing or losing possession of any such funds or assets. These orders may also be issued at the request of a foreign enforcement or supervisory authority".

241. Thus this additional power of the MFSA could be used for the freezing of funds and accounts held by license holders of the MFSA, though this provision would not cover the wider obligations addressed to persons generally prohibiting the making available of economic resources or other related services to persons associated with terrorism.

242. The Maltese authorities also noted that the above-mentioned legal possibilities do not exclude the use of judicial procedures to freeze the assets of EU internals or any other person or entity should the Maltese authorities have reason to believe that such EU internals, persons or entities are involved in any terrorist-related activities. The Maltese authorities indicated that the identification by the EU or by the authorities of any State, of any person or entity as being involved in terrorist-related activities is enough to trigger the judicial procedure for freezing (see below).

Procedures

243. When tracing whether assets of any persons on lists are held in Malta, enquiries are made with the following entities: financial and non-financial institutions, public and land registries, the inland revenue department, the VAT and Customs Departments, Malta Transport (compromising the maritime, aviation and land transport registries), the social services department, the

Employment Corporation, the Trade and Commerce departments, Malta Financial Services Authority and the Malta Stock Exchange.

244. In practice, the relevant UNSC lists are sent by the Ministry of Foreign Affairs, which is also responsible for the updating of lists, to the MFSA and the Central Bank of Malta.

245. The MFSA, as part of its responsibilities as the single financial regulator, issues and communicates notices to all its license-holders bringing to their attention the entry into force of the EU regulations, their most relevant provisions and obligations, including lists of designated persons and requires all license holders to comply therewith. The EU regulations including the lists, as well as the notices, are published on the MFSA website.

246. The UNSC Resolution listings and the EU Regulation listings are coordinated by the Ministry of Foreign Affairs and sent to all Ministries and entities concerned amongst which are the Immigration Police and the Central Visa Unit. All Ministries represented on the Sanctions Monitoring Board have the opportunity to send feedback in this regard. This is also forwarded to the Permanent Representation to the EU. The Sanctions Monitoring Board is also copied with all updates.

247. The evaluators were informed that there is an established administrative practice and procedure for all the other requests for listing and delisting under the EU and UN mechanisms which is always followed.

Freezing actions taken by other countries (c.III.3)

248. In practice, most EU member states would generally opt to propose a specific person or entity for EU wide designation through EU regulations, rather than propose a person or entity to Malta for designation. As noted above, Malta has the legal mechanisms to designate EU internals through the National Interest (Enabling Powers) Act, but has not done so. Similarly, that Act could be used for non EU residents not integrated onto the lists under the EU Regulations.

249. As also noted above, the Maltese authorities also pointed to court-based mechanisms. The procedure applicable to requests to freeze assets of terrorists is the same as for any requests for mutual legal assistance request to freeze assets in Malta of an offender being proceeded against for criminal proceedings in third countries.

250. For persons and entities that do not appear on any EU list, but for which Malta receives a direct freezing request from other jurisdictions, Malta advised it could also use a judicial-based mechanism for seizure and confiscation of terrorist funds, though this has not yet been tested in practice in the context of UNSCR 1267 and 1373.The judicial procedure was successfully used in relation to criminal cases related to financial sanctions associated with the recent events in Tunisia and Libya.

251. In such cases, seizure and confiscation of terrorist funds can be applied according to the criminal procedures as described under Recommendation 3. In case of national proceedings such procedure would be initiated under the Criminal Code procedures or mutual legal assistance, as described under Recommendation 36. The evaluators noted in this regard, however, that if the attachment order procedure is used, the attachment order, once granted, can remain in abeyance for as long as the person remains outside of Malta. So it is understood that this may be of some practical utility in certain circumstances where speed is of the essence, but it is unlikely to provide a permanent solution to the freezing of assets under UNSCRs 1267 and 1373.

252. Consequently, applying judicial-based mechanisms (within the criminal procedures) in executing foreign requests of freezing the funds or economic resources of certain individuals or entities, which are either EU internals, or non-EU residents, but not listed by EU or UN, does not

correspond with the FATF Interpretative Note to Special Recommendation III. And in any event may be too slow.

Extension of c.III.3 to funds or assets controlled by designated persons (c.III.4)

253. The third round evaluation report identified that the scope of EU Regulation 881/2002 does not extend to funds or other assets that are owned or controlled jointly by designated persons or entities and to those funds or other assets neither that are derived or are generated from funds or other assets owned or controlled by such persons or entities. In the third round report the evaluators indicated that '*the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881/2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)].*'

254. The examiners noted that the Council of the EU adopted the EU Regulation 1286/2009[13] to widen the scope of the freezing measures to any 'funds and economic resources belonging to, owned, held or controlled' by designated individuals or entities. Hence, this evaluation team concluded that funds and economic resources owned or controlled jointly by a designated and a non-designated person, entity or organization are also subject to freezing measures due to directly applicable EU regulations.

255. Authorities pointed out that in respect of companies where some of the shareholders (owners) are designated individuals or entities, the freezing by all means would cover their shares, but not necessarily the entire assets of the company. The effect of the freezing measure on a company would be considered on a case-by-case basis.

256. UNSCR 1267 explicitly requires the freezing of funds or other assets owned or controlled directly or indirectly by designated persons or entities. The EU legislation (neither EU Regulation 881/2002, nor the amending EU regulations) does not explicitly cover indirect ownership or control over funds or economic resources that might prevent the application of freezing measures under EU legislation in these particular cases. Nevertheless this particular gap appears to be covered by Legal Notice 214/1999 since the freezing measure of Article 4 para 4 explicitly refers to '*funds either derived or generated from property owned or controlled directly or indirectly by Usama bin Laden and individuals and entities associated with him'* (as designated by the 1267 Sanctions Committee of UNSCR 1267). In addition to that, domestic legislation also implements UNSCR 1267 (1999) by Article 4 para 4-5 and this implementation appears to have similar domestic effect as the EU Regulation 881/2002.

257. The definition of funds, financial assets and economic resources determined by directly applicable EU Regulation 2580/2001 is in compliance with the scope of UNSCR 1373.

Communication to the financial sector (c.III.5)(c.III.6)

258. The Sanctions Monitoring Board is established by Sanctions (Monitoring Board) regulations – Legal Notice 562 of 2010. The Maltese authorities expressed the view that the Board's functions are not restricted to the implementation of UNSCR 1267, but that it carries out a key co-ordination role in the field of restrictive measures generally including financial sanctions, economic embargos or travel bans. The Sanctions Monitoring Board is composed of a representative of the Ministry of Foreign Affairs who shall be Chairman, the Attorney General or his representative, a representative of the Office of the Prime Minister, a representative of the Ministry responsible for

[13] COUNCIL REGULATION (EU) No 1286/2009 of 22 December 2009 amending Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Usama bin Laden, the Al-Qaida network and the Taliban

Home Affairs, a representative of the Ministry responsible for Finance, the Economy and Investment, a representative of the Ministry responsible for Trade Services, a representative of the Customs Department, a representative of the Central Bank of Malta, representative of the Malta Financial Services Authority and a representative of the Ministry of Infrastructure, Transport and Communications.

259. Any regulations issued under the National Interest (Enabling Powers) Act are published in the Government Gazette. Moreover, Legal Notices, EU regulations and notices issued in relation to sanctions are posted on the website of the MFSA. The MFSA brings to the attention of the financial sector (licence holders) any changes in directly applicable EU regulations through notices and circulars. The MFSA communicates with the financial services licence holders concerning guidance on freezing and other obligations under the regulations.

260. As the third round evaluation also pointed out, it is still unclear whether there is any communication between the authorities and DNFBP, or other persons and the public at large, on their obligations in this area. Some of the categories of reporting entities met on the occasion of the on site visit did not seem to be very clear on the obligations deriving from the legal provisions implementing the UNSCR resolutions, or the manner in which the lists could be consulted. Not all the reporting entities had instruments to verify all their clients against the lists in a timely manner.

261. There is no Guidance Note issued by the authorities for the subject persons which constitute most DNFBP (other than the Trustees), or to the public at large to explain their obligations in this area.

De-listing requests and unfreezing funds of de-listed persons (c.III.7)

262. As a member state of the EU Malta relies on the formal de-listing procedures which exist under the European Union mechanisms, both in relation to funds frozen under UNSCR 1267 and UNSCR 1373. EU Regulation 881/002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). EU Regulation 2580/2001 provides that the competent authorities of each member state may grant specific authorizations to unfreeze funds after consultations with other member states and the Commission (Article 6). In practice, therefore a person wishing to have funds unfrozen in Malta would have to take the matter up with the Maltese competent authorities who, if satisfied, would take the case up with the Commission and/or the United Nations.

263. Relevant EU Regulations do not provide for a national autonomous decision for considering de-listing requests and unfreezing as a whole. As such, any freezing shall remain in effect until otherwise decided by the EU. Common Position 2001/931/CFSP of the European Union along with the EU Regulation 2580/2001 implements UNSCR 1373 (2001) and provides for a regular review of the sanctions list which it has established. Moreover, listed individuals and entities are informed about the listing, its reasons and legal consequences. If the EU maintains the person or entity on its list, the latter can lodge an appeal before the European Court of First Instance in order to contest the listing decision. Delisting from the EC Regulations may only be pursued before the EU courts.

264. The authorities indicated that Malta does not issue unilateral sanctions which involve national listings. In view of this, the need for the setting up of listing and de-listing procedures has not arisen.

265. However, in order to ensure procedural fairness, Malta should have a publicly-available procedure in place for any individual or entity to apply for a review of the designation The Maltese authorities were not able to advise the evaluators about the existence of any effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international

standards. At the time of the on-site visit, there had not been any cases in Malta requesting de-listing.

266. The evaluators are concerned that there is no clear Maltese authority responsible for advising individuals as to the procedures necessary for requesting delisting or related matters.

267. However, there is no procedure for domestic de-listing requests and for unfreezing the funds or other assets of de-listed persons with regard to EU internals. In light of the above, it was not clear to the evaluators that there are procedures or guidance at the disposal of a Maltese resident or citizen who finds himself erroneously listed or Maltese authority to which such an individual could refer. Therefore, essential criterion c.III.7 is not met.

Unfreezing procedures of funds of persons inadvertently affected by freezing mechanisms (c.III.8)

268. Essential criterion III.8 requires that countries should have effective and publicly-known procedures for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. The freezing as such would be automatically applied without any national measures. Financial institutions, which hold the funds or other assets, are required to inform the MFSA about the freezing applied.

269. Some interviewees indicated that they would probably file an STR on FT, if the customer's data seemed to be a close hit with the data of terrorist list.

270. The Maltese authorities stated that in practice, unfreezing procedures should be initiated by a person wishing to unfreeze his/her frozen funds through the court, if the court had issued the freezing as part of judicial proceedings. That said, there is no specific procedure which deals with unfreezing in a timely manner of funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. Reference to the court is a general human right and is not sufficient of itself to meet this requirement.

271. If such a situation arose as a result of sanctions imposed under the National Interest (Enabling Powers) Act, the evaluators were advised that this issue could be dealt with by the competent authority – the Sanctions Monitoring Board, which would seem to the evaluators to be more appropriate.

272. Examiners could not identify any mechanisms for unfreezing of the funds of those persons, who are inadvertently affected by the freezing measure. Therefore, essential criterion c.III.8 is not met.

Access to frozen funds for expenses and other purposes (c.III.9)

273. With regard to releasing funds that are necessary for basic expenses (humanitarian exemptions), the UNSCR 1452 (2002) provides that the freezing measures under UNSCR 1267 do not apply to funds and economic resources that have been determined by the relevant state (Malta) necessary for basic expenses, including payments for foodstuff, rent, etc.

274. Neither EU Regulation 881/2002, nor the subsidiary regulation against Taliban provides specific provisions on humanitarian exemptions. There is a specific procedure in EU Regulation 2580/2001 for humanitarian exemptions and application must be made to the competent authority of the member state in whose territory the funds have been frozen. The competent authority in Malta is understood to be the Sanctions Monitoring Board (as notified by Malta to the European Commission).

Review of freezing decisions (c.III.10)

275. The Maltese authorities stated that unfreezing procedures should be initiated by a person wishing to unfreeze his/her frozen funds through the court, if the court had issued the freezing as part of judicial proceedings. On the basis of successful handling of the matter at the court, the Maltese authorities understand that the decision of the court shall further be delivered to the Commission to deal with the matter at the EU level.

276. However, it is unclear what kind of procedure would be applied in those cases, where the freezing is not part of judicial proceeding, but automatically applied freezing without any national measures.

Freezing, seizing and confiscation in other circumstances (applying c.3.1-3.4 and 3.6 in R.3, c.III.11)

277. The Criminal Code criminalises all terrorist related activities and all measures applicable to the criminal offences under the CC are applicable.

278. If a person has been prosecuted for terrorist financing, the Maltese authorities indicated that they would follow the provisions described earlier in respect of freezing, seizing and confiscating. Attachment orders would apply during the investigative stage, with all the attendant difficulties of the 30 day period before extension on the basis of new evidence. On arraignment freezing orders could be obtained. So far as confiscation / forfeiture is concerned, given that terrorist funds may be from a lawful origin, it is insufficient that there is in place a system to confiscate "proceeds" as the term is defined in Maltese Law. If the funds were not proceeds, then the Maltese authorities indicated that they would rely on Article 23 (1) CC which requires forfeiture of the corpus delicti, or the instruments used or intended to be used in the commission of any crime.

279. Maltese law relating to confiscation and seizure are of general application; consequently, the measures in place pursuant to Recommendation 3 apply to funds or other assets relating to terrorism other than those targeted by Resolutions 1267 and 1373. The loopholes identified in Recommendation 3 therefore concern freezing, seizure and confiscation of funds or other assets relating to terrorism cascade on the application of Resolutions 1267 and 1373.

Protection of rights of third parties (c.III.12)

280. Third parties can use civil legislation rules for remedy. But in the absence of jurisprudence, it is difficult to assess whether freezing orders can be sustained or maintained for any length of time in the absence of criminal proceedings against a person whose assets are frozen. While the Best Practices Paper contemplates the adoption of judicial, as well as executive or administrative procedures for freezing funds under the UNSCRs, the Maltese authorities may wish to consider, as they develop these procedures and in the light of experience with the court based system, the merits of a more general administrative procedure for handling SR.III in its entirety, subject to proper safeguards (especially with regard to *bona fide* third parties).

Enforcing obligations under SR.III (c.III.13)

281. The Sanctions Board and the MFSA are responsible for supervising the compliance with the Special Recommendation III. The Maltese authorities indicated that there is a mechanism for sanctioning breaches of the relevant legislation; however it has never been used as no breaches have been indentified. It was also stated that the Sanctions Monitoring Board does monitor the compliance with the legislation (which provides for criminal sanctions in cases of breaches), nevertheless the evaluation team does not consider those procedure to be effective enough. The Maltese authorities did not provide any examples or specific procedure.

282. In terms of sanctioning, the Maltese Implementing Legal Notice 214/1999 provides sanctions for breaching UNSCR 1267.

283. Concerning UNSCR 1373, Legal Notice 156/2002 does not contain an offence for breaches and penalties. MFSA could sanction the licence holder under the general compliance and sanctioning regime.

284. Where a regulation enacted under the National Interest (Enabling Powers) Act requires a person or an entity to carry out the identification of funds or assets belonging to or in the possession of persons or entities as may be identified or identifiable under the regulation, or where a regulation requires the freezing or blocking of such funds or assets, any person or entity whose activities are subject to a license, shall without delay notify in writing any relevant information in hand to its licensing authority. Such licensing authority is then bound to pass such relevant information to the Sanctions Monitoring Board established under the National Interest (Enabling Powers) Act.

285. On the occasion of the on-site visit Maltese authorities stated that there were no sanctions imposed to the subject persons for breaching the UN sanctioning regime as no breaches were identified.

Additional element – Implementation of measures in Best Practices Paper for SR.III (c.III.14) & Implementation of procedures to access frozen funds (c.III.15)

286. The authorities need to give the non-financial institutions, DNFBP and the general public guidance as to the obligations under these provisions. The mechanisms for unfreezing relating to the basic living expenses, which exist within the European Union framework, need clear and detailed explanation.

Recommendation 32 (terrorist financing freezing data)

287. There were no freezing of assets in Malta based on UNSCRs as no terrorist assets were identified.

Effectiveness and efficiency

288. According to the Maltese authorities, there has not yet been a case of freezing of assets under the UNSC Resolutions. The fact that there have no freezing of assets under SRIII makes it difficult for the assessors to evaluate the effectiveness of the system. The evaluators were advised that the MFSA had not found examples of non-compliance by their licence holders.

289. Authorities pointed out that no freezing measure has been applied yet in the field of combating financing of terrorism. It was also emphasised that Malta's financial sanctions regime is operational and financial restrictive measures not subject to FT have been applied efficiently.

290. The examiners perceived onsite that practitioners were not clear with regard to the procedure that has to be followed in order to freeze identified funds on the basis of UNSCR 1267 or 1373. A number of interlocutors pointed out that in case of a hit against UN or EU lists they would block the account/transfer and file an STR to the FIAU.

2.4.2 Recommendations and comments

291. Implementation of SR.III appears to be formally done as Malta has basic legal provisions for implementing action against European Union internals under domestic procedures.

292. While there is a system in place for freezing the assets of EU internals, the circulation of the EU lists pursuant to Common Position 2001/931/CFSP with asterisked names on them (not requiring freezing to be instituted) may not be sufficient for financial institutions and others to recall the terms of Legal Notice 156 of 2002 generally implementing UNSCR 1373 which has no lists attached to it. Furthermore, as no internal designations have been made against EU internals under the National Interest (Enabling Powers) Act, it is unclear whether any EU internals who should have had assets frozen may have slipped through the net. It is advised that the procedures which are available under the National Interest (Enabling Powers) Act should be used in the future in respect of EU internals and that the need to freeze the assets of identified EU internals should be clarified for financial institutions and DNFBP, and the public at large.

293. The sanctioning mechanism in respect of UNSCR 1267 is set out in Legal Notice 214/1999 and provides for criminal sanctions. There is no formal sanctioning provision in relation to UNSCR 1373 under Legal Notice 156/2002 or under any other legal act.

294. The Maltese authorities need to develop guidance and communication mechanisms with DNFBP (other than Trustees) and a clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner.

295. Currently, except for the financial sector and trustees, there is no monitoring for compliance regarding these obligations.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	PC	• There is not any clear and publicly known procedure for de-listing and unfreezing. • No evidence that designation of EU internals have been converted into the Maltese legal framework • Concerns over effectiveness of freezing system at the request of another country that relies on judicial proceedings. • Insufficient guidance and communication mechanisms with DNFBP (except Trustees) regarding designations and instructions including asset freezing. • Insufficient monitoring for compliance of the DNFBPs. • The effectiveness concerns on Recommendation 3 might affect the effective application of criterion III. 11

Authorities

1.10. The Financial Intelligence Unit and its functions (R.26)

1.10.1. Description and analysis

Recommendation 26 (rated C in the 3rd round report)

Legal framework

296. The FIAU was established as an administrative FIU in 2002 and is composed of the Board of Governors, the Director and its permanent staff (four financial analysts, three compliance officers, one legal & international relations officer and two administration/support officers)[14]. The law also provides for a police liaison officer to enable the Unit to gain access to police information and intelligence but he does not form part of the staff complement of the FIAU

297. The powers and functions of the FIAU are set out under Part II of the PMLA. The core function of FIAU is 'the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism'.

298. Since the 3rd evaluation, the scope of the FIAU activities has been significantly broadened by law in the sense that the number of entities subject to the PMLFTR increased thereby increasing the FIAU's compliance oversight. The FIAU exercises supervisory functions over all reporting entities in the AML/CFT field.

Establishment of an FIU as national centre (c.26.1)

299. The core functions[15] of the FIAU are as follows:

- to receive STRs, to supplement STRs by requesting additional information, to analyse STRs and the demanded additional information, to draw up an analytical report on the result of such analysis;
- to disseminate analytical reports (including subsequent dissemination of information) to the Police for investigation;
- to exchange information with any foreign body, authority or agency which it considers to have functions equivalent or analogous to functions of FIAU, and to conclude MoUs, if it is required by the other party;
- to report to the Police any activity which it suspects involves money laundering or funding of terrorism and of which it may become aware in the course of the discharge of any of its functions.

300. The functions of the FIAU connected to supervisory tasks[16] are as follows:

- to act as a supervisory authority for AML/CFT purposes (to monitor compliance) and to cooperate and liaise with supervisory authorities to ensure the compliance of subject persons;

[14] *Additional recruitment is underway*
[15] *Article 16(1) points (a); (b); (d); (k); (l) of PMLA*
[16] *Article 16(1) points (c); (k) of PMLA*

- to exchange information with any supervisory authority in Malta or with any supervisory authority outside Malta which it deems to have equivalent or analogous functions as a supervisory authority in Malta, and to conclude MoUs, if it is required by the other party.

301. The functions of the FIAU as a central authority in AML/CFT system[17] are:

- to instruct any subject person to take such steps as it may deem appropriate to facilitate any money laundering or funding of terrorism investigation in general or the investigation of any particular suspicious transaction report;
- to gather information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;
- to compile statistics and records, to disseminate information, to make recommendations, to issue guidelines and advice the Minister on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering or funding of terrorism offences;
- to promote the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
- to consult with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
- to advise and to assist persons, whether physical or legal, to put in place and to develop effective measures and programs for the prevention of money laundering and funding of terrorism.

Guidance to financial institutions and other reporting parties on reporting STR-s (c.26.2)

302. Applying Article 16(1)(g) of PMLA and Article 17 of PMLFTR, with the support of relevant supervisory authorities, the FIAU issued the Implementing Procedures Part I, a binding document consisting in general mandatory procedures relevant for both the financial and the non-financial sectors. This document is meant to assist subject persons in implementing, understanding, interpreting and fulfilling their obligations under the PMLFTR (including the manner of reporting).

303. During the on site interviews, the authorities and representatives of private sector advised the evaluation team that the Implementing Procedure Part I will be followed by the sector-specific implementing procedures documents which shall be prepared by all bodies and/or associations representing subject persons and shall be endorsed by the FIAU. The sector-specific implementing procedures will be annexed to Part I and form part of a comprehensive Implementing Procedure document[18].

304. The Implementing Procedure Part I document was issued a week before the onsite visit. The authorities have clarified that the Implementing Procedures Part I document incorporates all previous Guidance Notes issued by the supervisory authorities (which were considered as other enforceable means for the purposes of the 3rd evaluation) into the new document and updates them accordingly in terms of the new PMLFTR, taking account of practices. In spite of the comprehensive rules of these procedures, assessing the effective implementation of new provisions in this document is difficult if not impossible.

[17] *Article 16(1) points (e); (f); (g); (h); (i); (j) of PMLA*
[18] *Since the on-site visit, Part II of the Implementing Procedures containing sector-specific implementing procedures for banks has been published*

305. The examiners noted that the former Guidance Notes (the so-called sector specific guidance) were no longer in force at the time of the onsite visit, as they were replaced by the new Implementing Procedures Part I document.

306. The Implementing Procedures Part I document has been issued under Article 17 of the PMLFTR and they are therefore binding and mandatory. Subject persons who fail to comply with the Implementing Procedures Part I will be liable to an administrative penalty under PMLFTR. Additionally, the court shall take into consideration the Implementing Procedures in determining whether a subject person has complied with the obligations emanating from the PMLFTR. Consequently, for the purposes of this evaluation these procedures should be considered as other enforceable means.

Access to information on timely basis by the FIU (c.26.3); obtaining additional information from reporting parties (c.26.4)

Analytical work

307. The analytical work of the FIAU is generally regulated by the PMLA and PMLFTR. At the time of the on site visit no written internal methodology/procedures for financial analysis were in place although this is being done in practice. The Maltese authorities stated that such a methodology was still under preparation documenting the practices developed and applied since the establishment of the Unit.

308. The assessment team was advised that in practice, in order to start an analysis in a case, the FIAU does not necessarily require to be in receipt of an STR sent by one of the subject persons, but may also carry out an analysis where it is in possession of information which indicates knowledge or suspicion of ML or FT. Accordingly, the FIAU can commence the analytical work on the basis of an STR received, or on the basis of any information in the FIAU's possession, if the FIAU suspects that any subject person may have been used for any transaction suspected to involve ML or FT. The latter way of starting analytical work extends to FIAU generated cases as well as cases generated by the request of a foreign FIU.

309. Examiners were informed onsite that the analytical work lasts approximately 2-3 weeks. The financial analyst in charge with a certain case draws up a preliminary report that is presented to the 'Financial Analysis Committee' an internal body composed of the director of the FIAU, the members of the Financial Analysis Section and the legal and international relations officer. The Committee's ultimate task is assessing the content of the report and reaching a determination as to whether a reasonable suspicion of ML/FT subsists in terms of law in which case the analytical report is transmitted to the police for investigation.

Access to information

310. The FIAU has direct access to a very limited number of databases. Authorities advised examiners onsite that the FIAU has direct access only to its own STR database and two open source databases: company registry and risk/business intelligence database (such as World Check)[19].

[19] The FIAU gained access to the Common Government Database (civil registry database) after the on-site visit. This database contains civil data such as official names, address, ID card number, civil and family status of physical persons.

- The STRs are received in paper format and inputted into the STR database. The STR database contains the incoming STR (including the CDD data of the customer, information on the product, the detailed description of the case and the suspicion, attachments, financial information) as well as the copy of the analytical report made by the FIAU.

- The commercial databases structure up-to-date open source business intelligence and information.

- The company registry contains data on the companies and commercial partnerships[20]. Authorities referred that the access having disposal at the FIAU provides a broader availability than the service available for the general public since the FIAU can search for both companies and persons.

Table 9: Statistical data on STRs (ML&FT) received by the FIAU

	2005	2006	2007	2008	2009	2010	First five months of 2011
Credit Institutions (Commercial Banks)	39	43	38	40 (1 FT)	26	38 (1 FT)	9
Financial Institutions (Currency Exchange)	18	13	10 (1 FT)	13	6	4	3
Investment Services Licensees	-	-	4	2	2	2	2
Insurance Licensees	10	2	-	-	1	4	1
Lawyers	-	-	1	1	2	3	-
Notaries	-	-	-	-	1	-	-
Remote Gaming Companies	-	-	-	2	3	4	5
Casino Licensees	-	-	-	-	1	2	3
Trustees & Fiduciaries	1	5	2	2	2	4	2
Real Estate Agents	-	1	-	-	2	-	-
Accounting Professionals (Accountants, Auditors)	1	2	4	-	4	3	-
Regulated Markets	-	-	-	-	3	-	-
Company Service Providers	-	-	-	-	3	5	1
Supervisory Authorities	6	12	2	-	3	3	2
Others	-	-	-	-	4	1	-
Total	75	78	61	60	63	73	28

311. As far as the indirect gateways to information are concerned, the Article 30 and 30A provide the legal basis for obtaining indirectly (upon request) information. On the basis of Article 30(1) the FIAU may demand (in relation to suspicion of ML or FT) any additional information from

- subject person that submitted the STR;
- subject person which is suspected of having been used for any transaction suspected to involve ML or FT;
- any other subject person;
- any authorities[21]; or
- any other physical or legal person.

[20] *The company registry covers the names, addresses and official identification document numbers of all shareholders, partners, directors and company secretaries. In the case of legal entities acting as shareholders, partners or directors, the name, registered address, registration number and also a copy of the certificate of registration or certificate of good standing is submitted to the Registrar of Companies. All transfers of shares, changes in shareholders, directors, company secretaries and legal representation occurring throughout the lifetime of a company or partnership are also notified to the Registrar of Companies by means of prescribed forms or notices.*

[21] *Police, Government Ministry, department, agency, supervisory authority or other public authority (Article 30 of PMLA)*

312. In addition to Article 30, Article 30A provides the general authority for the FIAU to demand any information from the abovementioned persons, authorities and entities that is deemed by the FIAU relevant and useful for the purpose of pursuing its functions under Article 16 of PMLA. Examiners noted that this latter authorisation is not limited to analytical work.

313. Responding to such requests is exempted from breaching any secrecy or confidentiality rules.[22] In addition to the fact that the Professional Secrecy Act shall not apply when a request for information is made by the FIAU, the disclosure of such information shall also be considered to be a disclosure to a public authority compelled by law as stated under Article 257 of the CC.

314. Requests for information sent by the FIAU to those physical and legal persons that are not subject persons, and are therefore not subject to the provisions on prohibition of disclosure laid down in the PMLFTR, are subject to confidentiality obligations. In this respect authorities referred to the applicability of Professional Secrecy Act. Article 5 of the Professional Secrecy Act stipulates that any person who receives or acquires secret information by virtue of any enactment which requires information to be communicated [such as the Article 30(1) of PMLA] shall be deemed to have become the depositary of such information by virtue of his calling, profession or office. Under Article 257 of Criminal Code any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, be guilty of an offence if he discloses such secret.. At the same time it also has to be mentioned that the FIAU sent only one request to a person (Maltapost Plc.) other than subject persons in the assessed period.

315. The requested subject person is required to respond the request 'as soon as reasonably practicable but not later than five working days'.[23] However, the five working days deadline does not apply to requests sent by the FIAU to authorities having disposal of administrative and law enforcement information.

316. Nevertheless, the essential criterion 26.3 demands that FIU should have access, directly or indirectly, on a timely basis to the administrative, financial and law enforcement information that it requires to properly undertake its functions, including the analysis of STR. As it was described, the FIAU has indirect access to additional financial information, as well as law enforcement and administrative information. The FIAU collects statistics on domestic request for information broken down by receiving entities/authorities. The Table 9 illustrates the volume of requests for administrative and law enforcement information. Accordingly, 189 requests were forwarded to different Maltese authorities in 2010 (out of which 69 were sent to the Police) and 55 (24 to the Police) in the first five months of 2011. Apparently enormous numbers of requests are posted to subject persons (where timeframe is in place by virtue of the PMLA). At the same time, the figures of requests sent towards the Police and other authorities are also considered relatively significant.

317. The absence of any reference in law or guidance to the need for law enforcement and administrative authorities to respond on a timely basis was noted by the evaluators. The Maltese authorities indicated that this was not a problem in practice, but the evaluators nonetheless consider that this issue should be taken into consideration by the Maltese authorities. This concern was noted in the context of the low number of databases to which the FIAU has direct access.

318. The recent connection to FIU-Net has increased the level and the speed of access to the information from the EU FIUs.

[22] *Article 30(2) and 30A(2) of PMLA, Article 257 of the Criminal Code, Article 15(12) of PMLFTR*
[23] *Article 15(11) of PMLFTR*

Access to law enforcement information, liaison officer

319. Turning in particular to the access to law enforcement information 'the Commissioner of Police shall detail a police officer not below the rank of Inspector to act as liaison officer to liaise' with the FIAU.[24] FIAU representatives outlined that the liaison officer constitutes a physical link between the FIAU and the Police, whereby the knowledge on police information is brought into the FIAU. Pursuant to the PMLA the primary functions of liaison officer are to provide and to facilitate access to law enforcement information for the FIAU and to serve as a channel for dissemination. The evaluation team was informed that the liaison officer does not work in the premises/offices of the FIAU, but he is located at the Police.

320. Law enforcement authorities informed the evaluation team that the designated (detailed) liaison officer is the Assistant Commissioner of Police in charge of administration. It has to be noted that the Board member appointed by the Commissioner of Police is the Assistant Commissioner in charge of criminal investigations.) Authorities explained that the reason for appointing the Assistant Commissioner in charge of administration as the liaison officer was the high rank he has as police official, authorised to demand information from all of the units of the Police in order to gain relevant information for answering requests made by the FIAU.

321. The examiners were advised onsite that the Police runs two centralised databases: the first one contains information on convictions (database of criminal records) and the second one stores data on ongoing criminal investigations[25].There is no list of types of information that is stored in the second database. The information on criminal investigations does not extend to that intelligence that is stored by the Malta Security Service. Authorities explained that all available information for the Malta Police Force can be transmitted to the FIAU upon request.

322. Whenever the FIAU needs to obtain law enforcement information, it sends a request to the liaison officer (Assistant Commissioner of Police in charge of Administration). After receiving the information request, the liaison officer orders a search in the two databases. Subsequently he spreads the FIAU request to the police officers, who have detailed information on ongoing criminal investigations at their disposal. It was stated by the Maltese authorities that obtaining full written information from the police forces in such way is a matter of a few weeks.

323. It was also pointed out that – depending on the nature and the pressure of the case – the analysts of the FIAU may communicate directly with the officer of Money Laundering Unit of Police who makes a preliminary search in the two databases and sends a preliminary answer on the basis of the result of the search.

324. No legal provisions or other procedural rules between the FIAU and the Police provide time limits for answering the FIAU request. In the view of the examiners the establishment of the liaison officer position (as a physical link) solely does not assist as a safeguard for the access to law enforcement information on a timely basis.

Table 10: Statistical data on domestic requests for information sent by the FIAU from 2010 to 31st May 2011

Type of requested party	2010	2011 to 31st May
Subject persons		
Credit Institutions	**1272**	**293**
Financial Institutions	**131**	**11**
Investment Services Licensees	**22**	**-**
Insurance Licensees	**-**	**1**

[24] *Article 24 of PMLA*
[25] *The powers of the Police are laid down in Book Second, Part I, Title 1 of Criminal Code.*

Regulated Markets	**1**	**-**
Remote Gaming Companies	**6**	**248**
Accounting Professionals	**3**	**-**
Trustees & Fiduciaries	**1**	**110**
Company Service Providers	**1**	**-**
Independent Legal Professionals	**1**	**1**
Maltapost Plc.	**-**	**1**
Total:	**1438**	**665**
Law enforcement and administrative authorities		
Police	**69**	**24**
MFSA – Supervisory Authority	**39**	**11**
Commissioner of Inland Revenue	**21**	**2**
Employment & Training Corporation (ETC)	**17**	**7**
Transport Malta – Vehicles	**12**	**3**
VAT Department	**12**	**1**
Transport Malta – Maritime	**8**	**1**
Land Registry	**5**	**2**
LGA – Supervisory Authority	**3**	**1**
Comptroller of Customs	**1**	**2**
Commissioner of Voluntary Organisations	**1**	**-**
Attorney General	**1**	**-**
Passport Office	**-**	**1**
Total:	**189**	**55**
Grand total:	**1627**	**720**

325. Most frequently, the FIAU requested information from credit and financial institutions. The Police and MFSA were also approached constantly according to the statistical data. Concerning the figures of requests sent to remote gaming companies and trusts & fiduciaries, the authorities explained that the high numbers in 2011 are the results of certain complex case-analysis carried out by the FIAU.

326. The examiners noted the high volume of requests for additional information sent to subject persons – in particular credit institutions – in 2010 and in the first 5 months of 2011 if compared with the low volume of STRs. 73 STRs (37 from credit institutions) were sent in 2010, and 33 STRs (9 from credit institutions) were sent in the first 5 months of 2011. Whilst in 2010, 1627 requests were sent to subject persons (1272 to credit institutions) and in the first five months of 2011 the number of request reached 720 (293 to credit institutions). The analysis of these figures is elaborated under Recommendation 13.

Information on Customs cross border cash declaration

327. Pursuant to the subsidiary legislation on cash control regulations (Legal Notice 149 of 2007, as amended by Legal Notice 411 of 2007) any person entering or leaving Malta, or transiting through Malta and carrying a sum equivalent to 10 000 EUR or more is obliged to declare it. The Customs Authority compiles and maintains a database containing the details of the cash declarations and details of breaches of these regulations. The Customs Authority sends the information registered in the database to the FIAU on a weekly basis.

328. The FIAU utilizes the custom's information in the course of its analytical work as well as by reviewing it and assessing the potential suspicion of ML or FT. It has to be mentioned that such proactive assessments are not carried out regularly. Statistics provided by the FIAU show that annual assessments were conducted in 2006 and 2009. At the time of the onsite visit a new assessment on cross border was carried out for years 2007-2010.

329. Following the analysis performed on customs' cross border cash declarations, only 3 cases were disseminated to the Police.

Table 11: Statistical data on FIAU's assessments on Customs cross border cash declarations

Assessed year(s) of cross border cash declarations	Number of individuals analysed	Disseminated to Police	No further actions (no reasonable suspicion on ML or FT)	Ongoing analysis
Annual assessment covering 2006	8	-	1	-
Annual assessment covering 2009	21	3	18	-
Annual assessment covering 2007-2010	33	-	10	23

330. Since 2005 the Customs Intelligence Section (CIS) has been responsible for the creation of risk profiles and the targeting of passengers suspected of carrying narcotics and/or undeclared money. The representatives of Customs Authorities stated that the controls are performed based on the risk based approach/assessment. It was also mentioned that Customs Authorities had few cases where Malta Customs assisted in investigations of carousel frauds (customs procedure 4200), but in these cases the VAT fraud was committed in a foreign jurisdiction and ML was not investigated in Malta.

Monitoring order

331. The FIAU has the tool of issuing monitoring order if it suspects that

- any subject person may have been used for any transaction suspected to involve ML or FT; or
- the property is being held by a subject person may have derived directly or indirectly from, or constitutes the proceeds of criminal activity, or from an act of participation in criminal activity.

332. The monitoring order appears to be an effective tool for the FIAU and to facilitate obtaining structured financial information for a longer period of time. When the monitoring order is issued, the subject person is required to monitor for a specific period the transaction or banking operations and to transmit the information obtained during the monitoring activity to the FIAU.[26] The monitoring order is a relatively new provision of the PMLA and at the time of the on-site visit it has not been tested in practice[27].

Dissemination of information (c.26.5)

333. According to PMLA and PMLFTR the FIAU is authorised to disseminate information to the Police.

334. On the basis of Article 31 of PMLA the FIAU shall disseminate information to the Police for further investigation, if the FIAU is of the opinion that a reasonable suspicion of ML or of FT

[26] *Article 30B of PMLA*
[27] The FIAU has since issued a number of monitoring orders.

persists. The dissemination does not require the existence of a prior STR submitted by a subject person: information without having any STR-link can be also disseminated provided that the suspicion of ML or FT persists in the opinion of FIAU.[28]

335. It has to be pointed out that the information disclosed under the PMLFTR (the FIAU's analysis based on STRs sent by subject persons) shall be used only in connection with investigations of ML and, or FT activities. Authorities informed the evaluation team that in case the Police launch a criminal investigation on the basis of the disseminated FIAU analytical report, the criminal investigation must involve investigation in ML or FT offences.

336. The FIAU runs comprehensive statistics on the result of its analysis until the dissemination. The Table 11 on the outcome of STRs and cases provides the number of STRs and cases subject to dissemination, the STRs and cases where no reasonable suspicion have been established during the analysis, the STRs which were not analysed due to the lack of ML/FT suspicion and the STRs/cases where the analysis has not been finished yet.

Table 12: Statistical data on outcomes of STRs and cases

	2005		2006		2007		2008		2009		2010		First five months of 2011	
	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases	STRs	Cases
Disseminated to the Police	28	22	24	21	24	22	41	39	20	16	34	19	10	6
No further actions (no reasonable suspicion on ML or FT)	42	34	36	34	26	25	30	29	21	20	40	37	26	25
STRs unrelated to ML or FT (no analysis carried out)	-	-	1	1	4	4	2	2	-	-	-	-	-	-
Ongoing analysis	24	21	23	21	30	27	27	25	48	41	47	39	40	33

337. According to the statistics, the number of disseminated cases in the period of 2005-2007 was constantly 21-22. However, a significant increase (39 cases) in 2008 is evident. That was followed by a drop in 2009 and 2010 (16 cases and 19 cases).

338. The FIAU pointed out that no particular factor could be attributed to the decrease in disseminated cases. Cases are discussed and determined on a case-by-case basis, and the decision on their outcome is not in any way influenced by any previous unrelated cases or statistics.

[28] *Article 31(2) of PMLA*

Table 13: Statistical data on suspected predicate offences (ML) and FT in disseminated cases

Suspected predicate offences	2005	2006	2007	2008	2009	2010	First five months of 2011	Total	% of grand total
Drug trafficking	-	4	5	7	1	2	-	19	12,75%
Fraud	3	2	1	-	5	6	2	19	12,75%
Forgery	1	3	-	-	-	-	-	4	2,68%
Usury	2	5	1	4	-	-	1	13	8,72%
Undeclared income	4	-	-	4	-	1	3	12	8,05%
Unlicensed financial services	1	-	3	3	-	3	-	10	6,71%
Organised crime	1	-	2	2	1	1	-	7	4,7%
Human trafficking	1	-	1	2	-	-	-	4	2,68%
Theft	4	-	-	-	-	-	1	5	3,36%
Illegal gambling	1	2	-	1	-	-	-	4	2,68%
Identity theft	-	2	1	-	-	-	-	3	2,01%
Living off the earnings of prostitution	-	2	-	-	1	-	-	3	2,01%
Phishing	-	-	1	-	-	-	-	1	0,67%
Corruption	-	-	-	-	-	1	-	1	0,67%
Unknown	3	1	6	16	7	4	3	40	26,85%
Total	21	21	21	39	15	18	10	145	97,32%
Financing of Terrorism	1	-	1	-	1	1	-	4	2,68%
Grand total	22	21	22	39	16	19	10	149	100%

339. The Table 12 demonstrates the figures of dissemination broken down by the suspected predicate offences concerning ML. It also shows the disseminated cases relating to TF. In the assessed period the most frequent predicate crimes were drug trafficking (12,75%), fraud (12,75%), usury (8,72%), undeclared income (8,05%), unlicensed financial services (6,71%) and organised crime (4,7%). The FIAU can also forward analytical reports without indicating the possible underlying criminal activity ('unknown'). This figure was the highest in the year of 2008.

340. There are cases in which the suspected predicate offence which gave rise to the alleged proceeds of funds is either unknown, has not yet been identified specifically or where suspicion may lie on more than one predicate offence. This scenario often arises when either the suspected subject is known to be involved in numerous illicit activities or where the provenance of funds could not be identified.

341. As it was highlighted above, the FIAU can generate cases on the basis of any information in the FIAU's possession other than an STR, if the FIAU suspects that any subject person may have been used for any transaction suspected to involve ML or FT. The Table 13 gives figures on FIAU generated cases broken down by their procedural status.

Table 14: Statistical data on cases generated by the FIAU from 2006 to 31st May 2011

Year	Total	Disseminated to Police	Closed cases (no reasonable suspicion of ML or FT)	Ongoing analysis
2005	6	0	5	1
2006	10	4	6	-
2007	13	4	9	-
2008	3	-	3	-
2009	13	5	-	-
2010	8	2	3	3
2011 to 31st May	5	-	-	5

342. FIAU generated cases can be initiated on the basis of information gained from other authorities (Police, Attorney General, supervisory authorities), media reports, intelligence received from foreign FIUs. Authorities referred that in a number of cases the FIAU came to know information from media reports on predicate offences that triggered a financial analysis within the FIAU. The cases generated by the FIAU are not included neither in the figures of Table 11 on outcome of STRs and cases nor in the Table 12 on suspected predicate offences in ML cases.

343. The following data refers to the number of cases generated by the FIAU which resulted from an international request for information or the provision of spontaneous information from FIUs:

Table 15: Statistical data on money laundering cases generated by an international request for information or the provision of spontaneous information from FIUs

	2006	2007	2008	2009	2010	2011
Cases	1	1	-	1	4	2

Table 16: Statistical data on money laundering criminal investigations led by the Police

	ML investigations generated by the FIAU	ML investigations generated by the Police	Arraignments (cases)	Arraignments (persons)
2005	19	8	3	3
2006	35	6	4	9

2007	24	13	8	11
2008	41	5	2	2
2009	17	4	9	10
2010	20	5	4	7
2011 to 31st May	9	5	4	5

344. The Police statistics reveal the dominance of criminal investigations of ML that were generated by the FIAU. The year of 2007 shows a slight change of this general tendency. The most cases were launched in 2008, when the highest volume of disseminated cases was forwarded by the FIAU for criminal investigations.

345. As regards statistics, there is a clear link between the statistics of FIAU on disseminated cases and the statistics of the Police on ML criminal investigations.

Table 17: Statistics on disseminated cases by the FIAU and ML investigations resulted from FIAU dissemination

	Disseminated cases by the FIAU with STR-basis	Disseminated cases in FIAU generated cases	ML investigations of the Police resulted from FIAU dissemination
2005	22	-	19
2006	21	4	35
2007	22	4	24
2008	39	2	41
2009	16	5	17
2010	19	2	20
2011	33	1	9

Table 18: Statistics on arraigned ML cases in Court broken down by predicate offences (Police statistics)

Suspected Predicate Criminality	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	First five months of **2011**	**Total**
Drug Trafficking			**6**	**2**		**2**		**10**
Fraud	**2**	**3**				**1**	**2**	**8**
Misappropriation			**1**		**1**		**1**	**3**
Corruption					**2**			**2**
Usury							**1**	**1**
Undeclared Income		**1**	**1**		**2**	**1**		**5**
Unlicensed Financial Services							**1**	**1**
Human Trafficking	**1**				**1**			**2**
Theft					**2**		**1**	**3**
Not specified					**1**			**1**
Total	**3**	**4**	**8**	**2**	**9**	**4**	**6**	**36**

Table 19: Statistics on convictions on ML cases broken down by the predicate offences (Police statistics)

Suspected Predicate Criminality	2005	2006	2007	2008	2009	2010	First five months of 2011
Drug Trafficking				1	2	1	
Human Trafficking					1		
Theft			1	1			
Total	**0**	**0**	**1**	**2**	**3**	**1**	**0**

346. Evaluators noted that besides the common related ML crimes tax related offences (undeclared income) also appear in statistics on dissemination. A couple of cases also have been disseminated to the Police referring to FT. On these cases investigations were carried out and no charges were brought by the Police.

347. When the FIAU disseminates its analytical report to the Police forces for criminal investigation, the FIAU is required to inform simultaneously the supervisory authority, provided any subject person is involved into the disseminated case.[29]

348. Following the dissemination the FIAU is obliged to send thereafter any further relevant information in respect of the disseminated case.[30]

Delay of the execution of a suspicious transaction

349. According to the PMLA subject persons are required to send an STR and to request for a postponement order from the FIAU, if they are aware or suspect that the transaction may be linked to ML or FT. In such cases subject persons shall indicate the period within which the transaction shall be executed. The FIAU within this period of time may issue a postponement order – if it considers it necessary – against the transaction at stake. The postponement order lasts 24 hours. Within the 24 hours the FIAU promptly disseminates the STR to the Police, if it establishes reasonable suspicion of ML. Moreover, the 24 hours period has to be sufficient for the application for an attachment order by the Police before the court, and for issuing the attachment order by the court.

Dissemination of information to foreign FIUs

350. The information exchange with foreign FIUs is regulated as one of the functions of the FIAU and as an exemption from prohibition of disclosure rules. The PMLA gives the authority for the FIAU – as a function – to exchange information for AML/CFT purposes either upon request or on its own motion with any foreign body, authority or agency which it considers to have equivalent or analogous functions to the FIAU. The exchange of information is not restricted to the existence of international agreement or MoU, but the FIAU has the authority to conclude such an agreement, if the other party requires or the FIAU decides so.

351. Approaching the FIU-FIU co-operation as an exemption from prohibition of disclosure the PMLA stipulates that FIAU might disclose any information or document to an organisation outside Malta which has functions similar to FIAU's functions and has similar duties of secrecy and confidentiality as FIAU's duties. This provision does not use the same wording as it is laid

[29] *Article 31(3) of PMLA*
[30] *Article 31(4) of PMLA*

down in previous provisions ('similar' instead of 'equivalent or analogous'), but authorities confirmed that this difference has no legal or practical impact on information exchange.

352. No express references are made to the Egmont Group Charter or the Principles of Information Exchange in legal texts due to their informal nature, but authorities stated that members of the Egmont Group are considered as organisations having equivalent or analogous/similar functions and duties of secrecy and confidentiality.

Table 20: Statistical data on international requests received and sent by the FIAU

Year	Request received by the FIAU	Requests sent by the FIAU
2005	37	41
2006	23	43
2007	29	29
2008	44	28
2009	46	83
2010	45	75
First five months of 2011	43	43

353. The figures demonstrate the active participation of the FIAU in the field of international information exchange. Nevertheless, in 2007 the number of requests sent by the FIAU was halved and remained the same volume until 2009. In this year the number of outgoing requests grew to four times larger number than in the previous year.

354. According to Maltese authorities, the increase of the number of requests for information sent in 2009 was not due to any changes in trends or the existence of new threats. Rather, it is attributable to the fact that the majority of cases analysed during that year necessitated the request of information from multiple jurisdictions. Another factor influencing such increase was the decision at management level to be more proactive in seeking information from foreign counterparts.

355. It has to be noted that the FIAU has statistics on requests that were denied by the FIAU. In one case, the request was denied as the requesting FIU failed to explain the connection of the request to an ML/FT case. In another case, the requesting FIU, which was not a member of the Egmont Group, failed to satisfy the FIAU that it had duties of secrecy and confidentiality similar to those of the FIAU.

Operational independence and autonomy (c.26.6)

356. The FIAU is an independent government agency established on the basis of the PMLA. It has separate legal personality. It is capable of entering into contracts, of acquiring, holding, and disposing of properties for the purposes of its functions, of suing and being sued.

357. The FIAU falls within the structure of Ministry of Finance, Economy and Investment. The FIAU is required to submit a report to the Minister on its activities in general on an annual basis and a copy of its annual accounts certified by auditors along with a report on the operations of the FIAU. The report is then laid on the table of the House of Representatives by the Minister.

358. The FIAU is composed of the Board of Governors, Director and its permanent staff.

The Board

359. The Board is appointed by the Minister from a panel of persons nominated by the Attorney General, the Governor of the Central Bank of Malta, the Chairman of the Malta Financial Services

Authority and the Commissioner of Police respectively. The Minister might appoint two additional members upon the request of the Board, however no additional members were appointed at the time of the onsite visit.

360. Board-members are appointed for a term of three years and can be re-appointed on the basis of the same procedure. The Chairman and Deputy Chairman are appointed by the Prime Minister from the members of the Board after consultation with the Minister. The Attorney General was appointed as a member of the Board and is the Chairman. The Deputy Chairman is a Director of the MFSA, the Police representative is the Assistant Commissioner of the Police in charge of criminal investigations, and the Central Bank is represented in the Board by a senior lawyer. The legal and judicial representation of the FIAU vests in the Chairman (in his absence in the Deputy Chairman). The remuneration of Board members is determined by the Minister.

361. According to the detailed incompatibility rules laid down by PMLA a person shall not be qualified to be appointed, or to hold office, as a member of the Board if he/she:

- is legally incapacitated;
- has been declared bankrupt or has made a composition or scheme of arrangement with his creditors;
- has been convicted of specific offences;
- is not a salaried official by the authority by whom he is/was recommended for appointment; or
- is employed with a subject person or is in any other manner professionally connected to a subject person.

362. After consulting with the nominating official, the Minister may relieve the Board-member of its office (1) on the ground of inability to perform the Board functions (due to infirmity of mind, of body or to any other cause) or (2) on the ground of misbehaviour. The PMLA specifies that the 'repeated unjustified non-attendance of Board meetings may be deemed to amount to misbehaviour'. The member of the Board may also resign by addressing a letter to the Minister.

363. According to Article 19(5) of PMLA the members of the Board shall discharge their duties in their own individual judgement and are not subject to direction or control of any other person or authority.

364. The Board meets as often as may be necessary, but at least ten times in each year. In 2010 the Board had ten meetings. The meetings are called by the Chairman or at the request of at least two other members of the Board or the Director. Decision-making requires the presence of three members (one of them being the Chairman or the Deputy Chairman). Decisions are adopted by simple majority voting. In the event of equality of votes the member chairing the meeting exercises a second vote. The Director is entitled to attend meetings, to take part in discussions, but has no voting right. The absence of the Director from Board meeting does not invalidate the proceedings of the meeting.[31]

Division of powers between the Board and the Director

365. The Board is responsible for FIAU policy-making and ensuring the execution of the adopted policy. The Board members have no direct access to the STR database and do not decide upon the case by case dissemination. According to PMLA and information gathered from Maltese authorities at the time of the on-site visit, the Board's responsibilities covers general policies on staffing, training, financial and budgetary issues, steps for IT developments, security measures, decisions on representation in international fora, accepting a foreign organisation as a foreign FIU and other cases that might arise as policy issues.

[31] *Article 21(5) of PMLA*

366. The decision to consider a foreign FIU as an equivalent FIU and to conclude on MoU is taken by the Board of Governors on the basis of research and information provided by the Director and the officers of the FIAU. The decision upon sending feedback to a subject person is taken by the Director of the FIAU.

367. The evaluation team was advised that the Director who also acts as secretary to the Board is involved in preparing the Board's agenda in collaboration with the Chairman. It is not excluded that the Director himself can propose to discuss issues like new trends, reports from specific sectors, cases disseminated to police for investigation with the concurrence of the Chairman.

368. According to the PMLA the Board acts also as an advisory body for the Minister '*on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering or funding of terrorism offences'*.[32]

369. By virtue of the PMLA, the Chairman (or in his absence the Deputy Chairman) '*shall be the Head of the Unit*', however the meaning of '*head*' is not defined in the law. Authorities stated that the Board was very close to executive matters in the past, but at present it remains as the policy-making body of the FIAU itself that is open to discuss issues presented by the Director without being involved into operational work. Decision on dissemination or sending feedback to subject persons belongs to executive decisions along with measures applied in the course of the analysis. However, subsequent coverage on disseminated cases for the Board is common. Nevertheless, as far as cases of emergency are concerned the PMLA stipulates that decisions shall be taken by at least two members of the Board one of whom shall be the Chairman or the Deputy Chairman.

370. The Director and the officials of the FIAU are recruited by the Board. The procedure of recruitment is determined by the Board. The Director of the FIAU carries out operational works and makes executive decisions.

Protection of information held by the FIU (c.26.7)

371. The FIAU and its staff as well as its agents shall not disclose any information relating to the affairs of the FIAU and its cases. The PMLA permits to disclose such information, when the PMLA authorises, or for the purpose of carrying out the functions of the FIAU, or when the specifically and expressly required to do so under the provisions of any other law.

372. Nevertheless, the FIAU is authorised to refuse the disclosure in the following cases: such disclosure could lead to causing prejudice to a criminal investigation in course in Malta; such disclosure would be clearly disproportionate to the legitimate interest of Malta or of a natural or legal person; such disclosure would not be in accordance with fundamental principles of Maltese law.

373. The FIAU's staff and its Board of Governors are subject to the provisions of the Professional Secrecy Act (Cap. 377 of the Laws of Malta). Any breach of the non-disclosure obligations by an officer or employee of the FIAU gives rise to a criminal offence punishable by a fine not exceeding €116,468.67 or to imprisonment for a term not exceeding five years or to both such fine and imprisonment.

374. A number of security measures have been implemented by the FIAU to protect the information held within its premises. The security measures include physical control on the windows, doors, intruders' alarms, CCTV with the recording module protected in a safe. In addition, there is a special safe for particular sensitive documents in a separate room. IT security, e-mail encryptions, and firewalls are also put in place. Only the Director of the FIAU and the financial analysts have access to STR database. The members of the Board of Governors of the

[32] *Article 16(1)(g) and Article 18(2) of PMLA*

FIAU have no access to any of the databases of the FIAU. The rights to access the segments of the FIAU's server that contain intelligence and STR information have only been conferred to the financial analysts and the Director.

375. Weekly back-ups are performed for the information stored by the FIAU on hard-disks deposited on different location. The FIAU has multiple servers dedicated for external communication (Egmont secure web) and for internal data bases.

Publication of periodic reports (c.26.8)

376. The FIAU produces annual reports including information on its operations and activities, comprehensive statistics and typologies. At the time of the onsite visit (May 2011), the 2010 Annual Report had not been issued yet. Past reports are found on the website of the FIAU (http://www.fiumalta.org/Annual-Report).

Membership of Egmont Group & Egmont Principles of Exchange of Information among FIUs (c.26.9 & 26.10)

377. The FIAU has been a member of the Egmont Group since June 2003. On the basis of the respective provision of PMLA and the information gained from authorities, it was determined that the FIAU adheres to the Principles of Information Exchange in international information exchange with foreign FIUs. See detailed description and analysis under para 348-353 and 1048-1063. The international information exchange of the FIAU regulated by the PMLA and EU Council Decision 2000/642/JHA is in line with the Egmont Principles of Information Exchange. The PMLA gives the authority for the FIAU to exchange information for AML/CFT purposes, either upon request or on its own motion with any foreign body, authority or agency which it considers to have equivalent or analogous functions to the FIAU. Authorities indicated that the members FIUs of the Egmont Group are considered as equivalent authorities. The law does not require the existence of an international agreement or an MoU.

Recommendation 30 (FIU)

Adequacy of resources to FIU (c.30.1)

378. At the time of the third round evaluation onsite visit the FIAU consisted of the Director, two analysts and one support officer.

379. Since the third round report, the FIAU has gone through a thorough restructuring exercise with a new compliance section being set up which is now fully operational. The developments do also include the enhancing of financial analysis and administrative capacity.

Table 21: Figures on the changes of FIAU's staff

	2006	2007	2008	2009	2010	2011 (forecast)
Total number of staff[33]	4	4,5	5,5	7	10	13

380. An increase is apparent in the total number of FIAU's staff, which provides relatively adequate human resources in the context of the FIUs responsibilities.. On the supervisory side, although the FIAU has two MoUs in place for the supervision of the financial sector (with the

[33] *Average number of persons employed by the FIAU during the financial period*

MFSA) and for Casinos (with the Gaming Authority), additional staff dedicated to supervisory duties would be useful.

381. The FIU staff is assigned by means of a selection process that includes a public application process. The Director is responsible for operational management. The permanent staff is structured into four section: 1. Financial Analysis Section (four financial analysts), 2. Compliance Section (three compliance officers), 3. Legal and International Relations Section (one legal & international relations officer), 4. Administration and IT Section (two administration/support officers).

382. The FIAU receives funding from the Ministry of Finance, the Economy and Investment which allocates an annual budget for the operations of the FIAU as stipulated in the agency performance agreement between the FIAU and the Minister. The PMLA lays down detailed provisions on the revenue of FIAU, the power of the FIAU in respect of financial management as well as the budgetary planning.

383. A separate budget covers the salaries of the Director and the permanent staff as well as the remuneration payable to the Board. Additionally, funds are allocated for the running of the FIAU, training of staff, and other operational matters.

384. The budget of the FIAU has also increased considerably since 2006. The growth of salaries is in line with the expansion of the staff. Since 2009 relevant resources were afforded to training expenditures.

385. However, the FIAU has not had any analytical software since its establishment. Authorities outlined that the objective of the FIAU is to purchase an integrated software that was developed under the umbrella of an international organisation and involves inter alia STR database, case management, analysis function, statistics producing applications. The current STR database appears to adequately fulfil the demands of the FIAU with the exception of the software based analysis. Although the FIAU receives relatively low number of STRs, in the opinion of examiners, the volume of incoming information might become significantly higher. [In particular the financial information sent by subject persons as responds to FIAU requests remarkably exceeded in 2010 and 2011]. Thus, the examiners consider that introducing either a separate analytical tool into the current procedures of the FIAU, or a single, integrated, analytical software would contribute to exploit the incoming information more effectively.

386. On the financial analysis side, the FIAU appears to be adequately staffed and funded. As far as the technical resources are concerned, introducing analytical software is highly recommended[34].

387. With regards to the newly introduced supervisory and control duties, the FIAU still needs to adjust the number of staff members within the context of its co-operation with the MFSA and the LGA.

Integrity of FIU authorities (c.30.2)

388. Article 23 of the PMLA provides for the terms on which the Director of the unit and its staff will be recruited by the Board.

389. The process shall guarantee that each employee is qualified for the respective position and it also includes a vetting process by the National Security Authority. The law does also provide for reasons of disqualification. The permanent staff of the FIAU, except for the administrative support officer, is required to be in possession of a University Degree or equivalent qualification in an appropriate area of expertise and/or experience in AML/CFT related work.

[34] *Following the on-site visit, the FIAU purchased analytical software which was installed*

390. The staff seems to be generally young with different professional backgrounds and skill (including three lawyers, a graduate in economics, a graduate in forensic accounting, a graduate in banking and finance with experience in AML/CFT consultancy, a graduate in business administration with vast experience in the banking sector and a former superintendent of police In accordance with the Article 23 of PMLA the Director and other officers and staff of the Unit shall be appointed or recruited by the Board on such terms and conditions and in such numbers as the Board may determine. Confidentiality rules of PMLA cover the officials, employees and agents of the FIAU and the police liaison officer.[35]

Training of FIU staff (c.30.3)

391. FIAU employees have attended regular training both in Malta and overseas in order to stay abreast of the latest developments in the AML/CFT sphere.

392. During 2010 the two senior financial analysts each attended a training course organised by the United Kingdom National Policing Improvement Agency. One of these courses consisted of a training programme intended to assist financial investigators in the use of the Internet as an effective intelligence gathering and investigative research tool. The other course provided training in advanced financial intelligence gathering.

393. The two newly-recruited analysts of the FIAU attended a basic financial analysis training course organised by the Egmont Group. The aim of the course was to assist analysts in developing knowledge and skills to improve the analysis of suspicious transaction reports that are received by an FIU, and to produce both written and oral assessments. The compliance, legal and international sections regularly attend training courses which are organised by supervisory authorities and other entities in Malta.

394. Additionally, two compliance officers attended a training seminar on AML/CFT compliance issues and supervision organized by the Central Bank of Cyprus in collaboration with the Central Bank of Netherlands.

395. The evaluation team consider that the range of domestic and international trainings provided for FIAU staff on combating money laundering and terrorist financing, seems to be adequate.

Recommendation 32 (FIU)

396. The Article 14 of PMLFTR requires comprehensive statistical data to be maintained on matters relevant to the effectiveness of the national system. The FIU presently collects available statistics on inter alia, incoming STRs, domestic requests, disseminated cases and STRs, and international information exchange.

397. However, insufficient statistical data is routinely collected on criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML. Having mentioned that the FIAU plays a key role in AML/CFT system, it has also specific duty on collecting statistics in accordance with the PMLA. This duty is not restricted to FIAU statistics that is regarded appropriate, but as an overarching task it covers the whole AML/CFT regime.

398. Taken into account the relatively small size of Malta, collecting more reliable and accurate statistics on criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML would enable and motivate authorities (in particular the FIAU) to review the effectiveness of the national system.

[35] *Article 24, 33, 34 of PMLA*

399. The Board members cover a wide range of portfolios at very senior levels and therefore comprise an important national resource for assessing the threats to the Maltese AML/CFT system. The evaluators were advised that the Board does initiate major policy discussions (such as on the appropriate levels of control on the use of cash). Equally, the Maltese authorities indicated that the Board does regularly assess the effectiveness of the system, based on available statistics. The evaluators nonetheless found problems in obtaining complete and comprehensive statistics on money laundering cases and the use of confiscation. The evaluators consider that the expertise of the Board should be employed in the future design of the statistical data that needs to be regularly kept and routinely analysed in order to better facilitate the Board's overview of the effectiveness of the system. Similarly, the evaluators experienced difficulties in obtaining meaningful information on gross financial loss from economic crime. It is noted, with approval, that a national risk assessment is to be undertaken in 2012. The evaluators strongly advise that the Board should be directly involved in the construction of the Methodology for this risk assessment in order to ensure that the results of it will meet the Board's needs to review the system as a whole effectively. In this way it appears there is still room to further exploit the experience and seniority of the Board members in the analyses of the effectiveness of the Maltese system as a whole.

Effectiveness and efficiency

400. The FIAU issued mandatory procedures for the reporting entities (the Implementing Procedures Part I) replacing the former Guidance Notes, a week before the onsite visit and thus, in spite of the comprehensive rules of these procedures, assessing the effective implementation of the new provisions in this document is difficult if not impossible.

401. The financial analysis on ML/FT cases seems to be effective and well conducted. The FIAU can start the analytical work on the basis of an STR received, but also based on any information in its possession, if there is a suspicion that any subject person may have been used for any transaction suspected to involve ML or FT, including the request of a foreign FIU.

402. Examiners were informed onsite that the analytical work lasts approximately 2-3 weeks and the procedure of the decision on the case is still informal.

403. The FIAU has direct access to its own database, the publicly available company registrar database and to a commercial public database. The evaluators consider that the number of databases to which the FIAU has direct access to is limited. However, the PMLA empowers the FIAU to request and obtain various types of financial and non financial information upon request.

404. As far as the suspected predicate criminality of disseminated cases are concerned the most frequent predicate crimes were drug trafficking, fraud, usury, undeclared income, unlicensed financial services and organised crime. The FIAU can also forward analytical reports without indicating the possible underlying criminal activity by classifying predicate offences of these cases as 'unknown'. Statistical data collected by the Police on arraigned ML cases show the preponderance of drug trafficking and fraud cases that are followed by the undeclared income and the theft predicate crimes.

405. The evaluation team welcomed that 4 final convictions in ML out of the total 8 final convictions were initiated by the FIAU on the basis of STR analysis.

406. Examiners noted that the tool of postponing certain transaction is bound to a request for a postponement order submitted by the subject person. The procedure provides a period of 24 hours following the postponement order issued by the FIAU for disseminating the information to the Police, for applying to an attachment order by the Police before the court, and for issuing the attachment order by the court. Authorities noted, that in postponement cases the analysis starts immediately by examining the factors justifying the urgency, conducting a preliminary analysis by searching in the STR database, the World Check and communication promptly with the Police, in some cases with foreign FIUs.

407. As regards the statistics in this respect 7 requests for postponement were sent by subject persons in the period from 2006 until 31st May 2011 out of which the FIAU applied postponement order in 5 cases and the court issued attachment orders in 4 cases. It has to be pointed out that two requests for postponement orders were filed by subject persons in 2010-2011, but no postponement order was issued by the FIAU.

408. The FIAU transmitted 4 FT related cases, but after the investigation no charges were brought by the Police.

409. The monitoring order is a relatively new provision of the PMLA and it has not been tested yet.

410. On the financial analysis side, the FIAU appears to be adequately staffed and funded. As far as the technical resources are concerned introducing analytical software is highly recommended.

411. With regards to the newly introduced supervisory and control duties, the FIAU still needs to adjust the number of staff members and to demonstrate effectiveness.

1.10.2. Recommendations and comments

Recommendation 26

412. At the time of the on-site visit, the FIAU has direct access to its STR database, the publicly available company registry database and commercial databases such as World Check[36]. However, the law empowers it to request case by case information from any source it may deem necessary. The evaluators consider that the number of databases to which the FIAU has direct access to is limited, therefore, the authorities should consider extending the direct availability of information for the FIAU.

413. As regards indirect gateways, the legislation provides solid basis for demanding additional information. Examiners positively regarded that this authorisation goes beyond the criteria 26.3, 26.4 since the FIAU may demand information from any physical or legal persons in the jurisdiction. However, the absence of any reference in law or guidance to the need for law enforcement and administrative authorities to respond on a timely basis was noted by the evaluators. The Maltese authorities indicated that this was not a problem in practice, but the evaluators nonetheless consider that this issue should be taken into consideration by the Maltese authorities. This concern was noted in the context of the low number of databases to which the FIAU has direct access.

414. The monitoring order appears to be an effective tool for the FIAU and to facilitate gaining structured financial information but the provision has not been yet tested in practice.

415. The legal provisions specify explicitly the operational independence and autonomy of the FIAU. The evaluation team considers these provisions sufficient for ensuring that the FIAU is free from any undue influence or interference.

Recommendation 30

416. The resources for the FIAU have been increased in the past years. The staff is trained and motivated.

[36] *At present, the FIAU also has access to the civil registry database*

417. Introducing analytical software is highly recommended [37].

Recommendation 32

418. The FIAU should put an emphasis on collecting statistics on the whole AML/CFT system in accordance with the legal requirements.

419. Maltese authorities indicated that the Board does regularly assess the effectiveness of the system. Nevertheless, it appears there is still room to further exploit the experience and seniority of the Board members in the analyses of the effectiveness of the Maltese system as a whole.

1.10.3. Compliance with Recommendation 26

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**C**	

[37] *Following the on-site visit, the FIAU purchased analytical software which was installed*

2. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Customer Due Diligence and Record Keeping

2.1. Risk of money laundering / financing of terrorism

420. The evaluators were not informed that there was any specific national AML/CFT risk assessment undertaken since the last evaluation.

421. From the authorities with whom the issue was discussed, it was not clear if they are fully aware of the overall AML/CFT risk specifics in Malta. Some of the interviewees mentioned increase of foreign investments with possible tax evasion purposes as presenting some AML/CFT risk to Malta.

422. The evaluators did not receive an answer to question on the estimations on the overall economic loss or damage from all proceeds generating offences that might have impacted the Maltese economy. The Maltese authorities considered the risk of money laundering to be low but it was not clear on what assessment this statement was made.

2.2. Customer due diligence, including enhanced or reduced measures (R.5, R.6 and R7)

2.2.1. Description and analysis

Recommendation 5 (rated LC in the 3rd round report)

423. In the 3rd round evaluation report it was noted that the obligations under the PMLR, did not address the risk based approach and that this issue was supposed to be included in the amended version of the Regulations. The evaluators also noted that in Regulation 8 there were some exemptions from customer identifications provided, which could put the system at risk.

424. The possible misinterpretation of obligation to identify trust principals and beneficiaries was another deficiency identified on the 3rd MER. It was noted that for life and other investment linked to insurance, the beneficiary under the policy was identified but not verified. Besides, the general identification limit of MTL 5000 (Euro 11 650) applied to occasional wire transfers which was higher than the exception for the purposes of SR VII (Euro 1000).

425. Among other deficiencies mentioned in the 3rd round evaluation report was the absence of the requirement for ongoing scrutiny of transactions or the requirement to ensure the CDD process is kept up to date.

426. Following the recommendations formulated in the 3rd round evaluation report, Maltese authorities have introduced a new set of regulations in July 2008.

427. An important development is that the PMLFTR introduced the concept of the risk-based approach into the Maltese AML/CFT regime. The 2008 Regulations now 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 (amongst others) on an occasional or very limited basis.

428. Thus Regulation 7(8) of the PMLFTR states that subject persons may determine the extent of the application of CDD requirements on a risk-sensitive basis, depending on the type of customer, business relationship, product or transaction.

429. The Implementing Procedures introduced on May 20, 2011 now dedicate a whole chapter to the risk-based approach to assist subject persons in its implementation. The risk-based approach is not compulsory and subject persons may choose to apply the mandatory risk procedures only.

430. Customer Due Diligence obligations are now set out under Regulations 7 to 12 of the PMLFTR, which include measures on identification and the verification of identity of applicants for business and beneficial owners, the requirement to obtain information on the purpose and intended nature of the business relationship, ongoing monitoring, simplified due diligence measures, enhanced due diligence measures, specific measures to be applied by casinos and measures on reliance on third parties for specified parts of the CDD process.

Anonymous accounts and accounts in fictitious names (c.5.1)

431. As noted in the 3rd Round Evaluation Report, customer identification obligation requires that no business relationship can be established and no transaction can be carried out unless a proper customer identification process was in place. Although there was no explicit prohibition of operating anonymous accounts or accounts in fictitious names in the PML Regulations 2003, the Maltese authorities considered that it was a logical consequence of the said act and that anonymous/fictitious accounts cannot be kept. The examiners were advised that numbered accounts have not been used in Maltese banks, though there was no explicit prohibition on this point.

432. At the time of the 4th round evaluation, the PMLFTR was amended and the Article 7(4) expressly prohibits subject persons from maintaining anonymous accounts or accounts in fictitious names.

Customer due diligence

When CDD is required (c.5.2)*

433. Customer Due Diligence obligations are set out under Regulations 7 to 12 of the PMLFTR, which include measures on identification and the verification of identity of applicants for business and beneficial owners, the requirement to obtain information on the purpose and intended nature of the business relationship, ongoing monitoring, simplified due diligence measures, enhanced due diligence measures, specific measures to be applied by casinos and measures on reliance on third parties for specified parts of the CDD process.

434. In accordance with Regulation 4(1)(a)(i) and (b) of the PMLFTR, subject persons are forbidden to establish a business relationship or carry out an occasional transaction unless subject persons apply customer due diligence measures.

435. In accordance with Regulation 7(5), customer due diligence measures are deemed to be in accordance with the provisions of the PMLFTR if such measures are applied in relation to Cases 1 to 4 as defined in Regulation 2.

436. Case 1 covers the obligation to undertake the CDD measures when establishing a business relationship:
"*Case 1 (negotiations) means any case where negotiations take place between the parties with a view to the formation of a business relationship between them.*"

437. Case 2 obliges for undertaking the CDD measures when there is a suspicion of money laundering or terrorist financing:

"*Case 2 (suspicion) means any case where, regardless of any exemption or threshold, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding of terrorism, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism*".

438. Case 3 covers the situations for undertaking the CDD measures when carrying out occasional transactions above the applicable designated threshold and when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII. This provision includes situations where the transaction is carried out in a single operation:

"*Case 3 (single large transaction) means any case where, in respect of any transaction, payment is to be made by or to the applicant for business of the amount of €15,000 or more and where an occasional transaction involves a money transfer or remittance of the amount of €1,000 or more. Money transfers or remittances of the amount of €1,000 are subject to the provisions of Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006 on information on the payer accompanying transfer of funds. This Regulation is directly applicable in Malta, since Malta is a member of the European Union."*

439. Case 4 in its turn covers series of transactions and applies to situations when *(a) it appears at "the outset to a person dealing with any of the transactions that (i) the transactions are carried out by the same person and are of a similar character, and (ii) the total amount in respect of all of the transactions, which is payable by or to the applicant for business is €15,000 or more or; (b) at any later stage it appears to such a person that the provisions of paragraph (a)(i) and (ii) are satisfied"*.

440. When the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data it is obliged to repeat the CDD measures as provided in the Regulation 7(7):

"*where following the application of customer due diligence measures doubts have arisen about the veracity or adequacy of the previously obtained customer identification information, or changes have occurred in the circumstances surrounding that business relationship, then customer due diligence measures shall be repeated in accordance with these regulations"*.

Identification measures and verification sources (c.5.3)*

441. Regulation 7(1)(a) of the PMLFTR obliges the financial institutions to identify the applicant for business and verify his/her identity on the basis of documents, data or information obtained from a reliable and independent source.

442. The PMLFTR define an applicant for business as a legal or natural person, whether acting as principal or agent, who seeks to form a business relationship, or carries out an occasional transaction with a subject person.

443. Regulation 7(1) (a) of the PMLFTR requires identification of the applicants for business and the verification of such identification against independent sourced documents both for natural persons as well as legal persons, in accordance with criterion 5.3 The Implementing Procedures, which are considered other enforceable means further explain the details on the information and verification documents that should be obtained in respect to all applicants for business.

444. During the on-site interviews, the representatives of financial institutions stated that they are usually verifying natural person's identity according to passport, identification card or driver's licence. For legal persons they verify power of attorney of the natural person/persons who

represent the company, incorporation documents and others (such as international databases, publicly available company registers…).,

Identification of legal persons or other arrangements (c.5.4)

445. Identification requirement for the applicant for business is provided in the Regulation 7(1)(a) of the PLMTFR along with the verification obligation for such persons.

446. Requirement to verify that any person purporting to act on behalf of the customer is so authorised is set forth in the Regulation 7(3)(a) and (b) of the PMLFTR.

"*where an applicant for business is or appears to be acting otherwise than as principal, in addition to the identification and the verification of identity of the applicant for business, subject persons shall ensure that the applicant for business is duly authorised in writing by the principal and shall establish and verify the identity of the person on whose behalf the applicant for business is acting"*.

447. The verification procedures of a body corporate, body of persons, or any other form of legal entity or arrangement are set out in Regulation 7(3), paragraphs (c) to (e) and complemented by the Implementing Procedures Section 3.1.3 of Chapter 3. That includes verification of the legal status of the legal person *by viewing one or more of the following documents, as the case may be:*

a. the certificate of incorporation;

b. a company registry search, including confirmation that the public company has not been, and is not in the process of being dissolved, struck off, wound up or terminated;

c. the most recent version of the Memorandum and Articles of Association or other statutory document.

448. The Implementing Procedures also provide further guidance for identification and verification of all the directors including the case of directors who are natural persons or directors who are corporate directors. In the first case it is advised to be done by *referring to the list of directors contained in the most recent version of the Memorandum and Articles of Association, by performing a company registry search provided that the officers of the company are listed therein or by obtaining a copy of the directors' register of the company*. Identification of the directors who are corporate directors is done by *referring to the list of directors contained in the most recent version of the Memorandum and Articles of Association, by performing a company registry search provided that the officers of the company are listed therein or by obtaining a copy of the directors' register of the company*.

Requirement to identify beneficial owners (c.5.5)

449. A beneficial owner is defined in the Regulation 2 of the PMLFTR as *the natural person or persons who ultimately own or control the customer and, or the natural person or persons on whose behalf a transaction is being conducted.*

450. The expansion of the definition in Regulation 2 provides further details for identifying the beneficial owner in case of a body corporate or a body of persons and also the case of legal entity or legal arrangement which administers and distributes funds (and in the case of a life-insurance policy).

451. Regulation 2(1) defines the beneficial owner in the case of body corporate or a body of persons as "any natural person who owns or controls, whether through direct or indirect ownership or control, more than 25% of the shares or voting rights in that body corporate or body of persons or who exercise control over the management of that body corporate or body of persons. In the case of other legal entities or arrangement when the beneficiaries have been

determined, the beneficial owner is a natural person who is the beneficiary of or controls at least 25% of the property of the legal entity or arrangement. In cases where the beneficiaries have not been determined, the class of persons in whose main interest the legal entity or arrangement is set up is considered the beneficial owner.

452. All of the above include natural persons acting on behalf of beneficial owners who themselves are natural persons and therefore the definition of Beneficial Ownership is broad enough to be in line with the FATF Glossary.

453. As regards the requirement for financial institutions to determine whether the customer is acting on behalf of another person, Regulation 7(3) provides for necessity to identify the situations where *an applicant for business is or appears to be acting otherwise than as principal*. Furthermore, *in addition to the identification and the verification of the identity of the applicant for business* financial institutions are required to *establish and verify the identity of the person on whose behalf the applicant for business is acting* (Regulation 7(3)(b)).

454. For customers that are legal persons or legal arrangements, financial institutions in Malta are required by Regulation 7(3)(c) to establish the ownership and control structure in addition to the verification of the legal status of the principal and the identification of all directors.

455. In addition to the above, PMLTFR contains provisions for situations *where the principal is a body corporate, a body of persons, trust or any other form of legal entity or arrangement in which there is a shareholding, or any other form of ownership interest or assets held under a trustee or 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*. Further on, the Implementing Procedures advises on the manner in which subject persons are expected to meet the requirements of this obligation, which includes measures to be adopted in relation to public companies, partnerships, foundations, trusts, etc.

456. Therefore the obligation to take reasonable measures to understand the ownership and control structure of the customer as well as to determine who are the natural persons that ultimately own or control the customer is in place and includes those persons who exercise ultimate effective control over a legal person or arrangement.

Information on purpose and nature of business relationship (c.5.6)

457. The requirement to obtain information on the purpose and intended nature of the business relationship is provided by Regulation 7(1)(c) and contains obligation to obtain *information on the purpose and intended nature of the business relationship, such that a subject person is able to establish the business and risk profile of the customer*.

458. In addition to the above, more detailed guidance is provided in Section 3.1.4 of the Implementing Procedures.

Ongoing due diligence on business relationship (c.5.7, 5.7.1 & 5.7.2)*

459. As regards the requirement to conduct ongoing due diligence on business relationship, PMLTFR sets forth the requirement in the Regulation 7(1)(d) stating that as part of the CDD measures, the subject person shall conduct ongoing monitoring of the business relationship. Further on, the Regulation 7(2) defines this process as including *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 *ensuring that the documents, data or information held by the subject person are kept up to date*.

460. The 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.

461. It should also be noted that in addition to the above, Regulation 7(6) and Regulation 7(7) require the ongoing or repeated customer due diligence process to ensure that applied to all new customers and, at appropriate times, to existing customers on a risk-sensitive basis as well as to an already established business relationship when doubts have arisen about the veracity or adequacy of the previously obtained customer identification information.

462. At the meetings held on the on-site visit, the representatives of the financial institutions showed a broad knowledge of the practical application of the above described provisions.

Risk – enhanced due diligence for higher risk customers (c.5.8)

463. Financial institutions should be required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

464. Regulation 7(9) of the PMLTFR requires subject persons to have in place a customer acceptance policy, based on a number of specified criteria, in order to determine whether the applicant for business is a politically exposed person or is likely to pose a higher risk of ML/FT.

465. The Implementing Procedures in Section 4.1 include provisions for applying risk based approach and suggest four main risk areas which should be taken into consideration when identifying and assessing its ML/FT risks, including customer risk, product/service risk, interface risk and geographical risk. Where higher risk situations arise it is required to apply enhanced customer due diligence in accordance with the provisions of Regulation 11 both generally and for a number of specific instances where enhanced due diligence is to be applied which include: non face-to-face customers, PEPs, cross-border correspondent banking relationships and in relation to new and developing technologies or from products or transactions that might favour anonymity.

466. The application of the ECDD is further explained in Section 3.5 of the Implementing Procedures where these different higher risk situations are explained and include applicable enhanced due diligence measures for each of them.

467. Due to the fact that the Implementing Procedures Part I were put in force shortly before the evaluation visit, the possibility to evaluate the effectiveness of the new provisions in this document related to ECDD is quite limited.

Risk – application of simplified/reduced CDD measures when appropriate (c.5.9)

468. Where there are low risks, countries may decide that financial institutions can apply reduced or simplified CDD measures.

469. PMLTFR in Regulation 10 provides a comprehensive list of applicants for business in relation to which simplified due diligence may be applied. Subject persons are obliged to gather sufficient information to establish that the applicant for business qualifies accordingly. It is not disclosed anywhere what should be understood by "sufficient information" but the authorities explained that such information includes information obtained by the subject persons which proves that the applicant for business qualifies under one of the categories set out in Regulation 10.

470. Regulation 10 also provides that in determining whether the applicant qualifies for simplified due diligence where there is information that suggests that the risk of ML/FT may not be low such applicant shall not qualify for simplified due diligence.

471. At the same time, it is provided by the PMLTFR that of requirements of Regulation 7 and Regulation 8(1) are not to be applied in certain cases as set forth by Regulation 10. That includes customer due diligence measures (Reg. 7) and obligation to *verify the identity of the applicant for business and, where applicable, the identity of the beneficial owner, before the establishment of a business relationship* (Reg. 8(1)).

472. The application procedures for simplified due diligence is further explained in the Implementing Procedures in Section 3.4 where it is inter alia stated that "s*ubject persons are only required to maintain a minimal amount of information about the applicant for business or the beneficial owner as explained hereunder"*.

473. In the mentioned section of the Implementing Procedures Part I it is also explained that in some specific circumstances, subject persons don't need to apply any CDD measures beyond simple identification nor the verification of the applicant for business or beneficial owner, do not need to obtain information relating to the purpose or intended nature of the business relationship and do not need to carry out ongoing monitoring of that relationship. This does not explain the mere concept of the simplified or reduced due diligence, but rather provides for the possibility not to apply all CDD measures beyond mere identification. However, this particular provision is in line with the EU Directive.

474. Customers who qualify for simplified due diligence under Regulation 10 are exempt from on-going monitoring. However, the Implementing Procedure Part I, Section 3.4.2 requires the carrying out of periodical monitoring to ensure that they continue to qualify as such. The Implementing Procedures do not explain how often such periodical monitoring is to be carried out.

Risk – simplification/ reduction of CDD measures relating to overseas residents (c.5.10)

475. Where financial institutions are permitted to apply simplified or reduced CDD measures to customers resident in another country, this should be limited to countries that the original country is satisfied are in compliance with and have effectively implemented the FATF Recommendations.

476. The limitation to the countries that are not in compliance with and have not effectively implemented the FATF Recommendations is based on the concept of "*reputable jurisdiction*" introduced in PMLTFR in Regulation 2(1) and is defined as:

"reputable jurisdiction" means any country having appropriate legislative measures for the prevention of money laundering and the funding of terrorism, taking into account that country's membership of, or any declaration or accreditation by, any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering and for combating the funding of terrorism, and which supervises natural and legal persons subject to such legislative measures for compliance therewith.

477. As regards the application of the concept of "*non-reputable*" jurisdiction (as opposed to "*reputable*"), the authorities are invited to continue providing guidance to the subject persons as practice shows that the perception of this concept slightly differs across the sectors and sometimes seems not to be applied correctly.

478. The definition of the "*reputable jurisdiction*" is provided by the Guidance Note prepared by the Financial Intelligence Analysis Unit ("FIAU") using the interpretation provide by the Prevention of Money Laundering and Funding of Terrorism Regulations. The Guidance Note was released pursuant to the issuance by the Committee on the Prevention of Money laundering and

Financing Terrorism of a Common Understanding on third party equivalence on 18th April 2008. This Guidance Notes has now been incorporated within the text of the newly issued Implementing Procedures – Part I.

479. The list of "*equivalent countries*" provided by FIAU has not been updated since 2008 [38]. The Maltese authorities clarified that only definitive changes agreed upon in CPMLTF are reflected in the Implementing Procedures.

480. Turning to the countries that FATF has listed as undergoing regular review, some of interviewees from private sector (financial institutions) were not aware of such statements. Country risk should be recognized as one component of risk assessment mechanism.

481. In accordance with Regulation 10(7), if the Financial Intelligence Analysis Unit determines that a particular jurisdiction does not meet the criteria of a "*reputable jurisdiction*" as defined in regulation 2, or where the Financial Intelligence Analysis Unit 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 for simplified customer due diligence under this regulation to all business relationships and transactions from that particular jurisdiction.

Risk – simplified/ reduced CDD measures not to apply when suspicions of ML/FT or other risk scenarios exist (c.5.11)

482. Simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply.

483. Regulation 10(5) states that the provisions dealing with simplified due diligence shall not apply where regardless of any exemption or threshold, in respect of any transaction, any person handling the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding of terrorism, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism.

484. Regulation 10(6) states that in determining whether an applicant for business or a product or related transactions represent a low risk of money laundering or the funding of terrorism, subject persons shall pay special attention to the activities of that applicant for business or to any type of product or transaction that, by its nature, may be used or abused for money laundering or the funding of terrorism, and where there is information that suggests that this risk may not be low, that applicant for business or that product and related transactions shall not be considered as representing a low risk of money laundering or the funding of terrorism.

485. Thus it can be concluded from the above Regulations that criterion 5.11 seems to be fully covered by these obligations.

Risk Based application of CDD to be consistent with guidelines (c.5.12)

486. Where financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, this should be consistent with guidelines issued by the competent authorities.

487. The FIAU in its Implementing Procedures has included a chapter (Chapter 4 "Mandatory risk procedures and the risk based approach") containing procedures for application of the risk-based

[38] The relevant Annex to the Implementing Procedures was updated in July 2011 as result of discussion within the CPMLTF.

approach. This document provides guidance for applying risk assessment procedures which should be adequate and appropriate to prevent ML/FT and should at least include identification and assessment of customers risk, product/service risk, interface risk and geographical risk in relation to every business relationship or occasional transaction. This chapter also provides explanations on the manner in which customers are to be classified as high or low risk.

488. The Implementing Procedures state that where it is necessary to apply the risk-based approach, subject persons should implement a framework. The manner in which such framework is to be implemented is explained in detail in the chapter. Additionally, the Implementing Procedures state that subject persons should be able to show that reasonable business judgement has been exercised with respect to its customers and the determinations reached in the application of the risk-based approach are justified in the light of the ML/FT risks identified.

489. The manner financial institutions apply Chapter 4 of the Implementing Procedures is difficult to assess due to recent adoption of the said procedures.

Timing of verification of identity – general rule (c.5.13)

490. Financial institutions should be required to verify the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

491. Regulation 8(1) of the PMLFTR requires subject persons to verify the identity of the applicant for business and, where applicable, the identity of the beneficial owner, before the establishment of a business relationship or the carrying out of an occasional transaction.

492. Additionally, Regulation 7(5) states that customer due diligence measures, including verification of identity, shall be considered to be in accordance with the PMLFTR if subject persons require their application to all new applicants for business when contact is first made between the subject person and the applicant for business concerning any business relationship or occasional transaction.

Timing of verification of identity – treatment of exceptional circumstances (c.5.14 & 5.14.1)

493. Countries may permit financial institutions to complete the verification of the identity of the customer and beneficial owner following the establishment of the business relationship.

494. Regulation 8(2) of the PMLFTR states that subject persons may complete the verification during the establishment of a business relationship where this is necessary for the continued normal conduct of business provided that the risk of money laundering or the funding of terrorism is low and, provided further, that the verification procedures be completed as soon as is reasonable practicable.

495. Regulations 8(3) and (4) of the PMLFTR provide other exceptions to the general rule set out in Regulation 8(1). Regulation 8(3) states that, in relation to life insurance, subject persons may complete the verification of the identity of the beneficiary under the policy after the business relationship has been established but prior to or at the time of payout or at or before the time the beneficiary intends to exercise any of his rights vested under the policy.

496. Regulation 8(4) states that subject persons may open a bank account as may be required by the applicant for business provided that adequate measures are put in place such that no transactions are carried out through the account until the verification procedures have been satisfactorily completed.

497. The Implementing Procedures deals with this matter under Section 3.2.1. This document provides particular guidance for exceptions when CDD may be carried out after the establishment

of a business relationship including exceptions in relation to life insurance business, certain legal entities and legal arrangements which administer and distribute funds as well as possible other situations, particularly in the area of trusts and similar legal arrangements.

498. Where a customer is permitted to utilise the business relationship prior to verification, financial institutions should be required to adopt risk management procedures concerning the conditions under which this may occur.

499. PMLTFR prescribes as one of the conditions for the verification to take place after the establishment of the business relationship is that the assessment of money laundering or terrorism financing risk results in being low. The prerequisites for determining such situations are referred to in regulation 4(1)(c) and 7(9) and as further outlined in section 4.1 of Chapter 4 of the Implementing Procedures.

Failure to satisfactorily complete CDD before commencing the business relationship (c.5.15) and after commencing the business relationship (c.5.16)

500. The PMLTFR in Regulation 8(5) prohibits starting or continuing business relationship in cases when a customer fails to provide information or documents necessary for completion of CDD measures. In such cases a subject person is obliged to consider making a report to the FIAU. In case of an occasional customer it is prohibited to carry out any transaction and report to the FIAU should be filed.

501. Notwithstanding the clear obligations set forth in the legislative acts in this regard, the particular interviewees from private sector told the evaluation team that up to the on-site visit, they had not filed any such reports to the FIAU. Statistics provided do not clearly distinguish such reports, but the authorities explained that there have been instances where such reports were received.

Existing customers – (c.5.17 & 5.18)

502. Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

503. Regulation 7(6) of the PMLFTR states that customer due diligence measures shall be applied to all new customers and, at appropriate times, to existing customers on a risk-sensitive basis.

504. This provision is further elaborated in the Implementing Procedures where an obligation to review all customer files on a risk-sensitive basis is set forth. That includes those being present upon the entry into force of the PMLFTR. At the same time the meaning "*at appropriate times*" is explained as not imposing an obligation on subject persons to update all CDD documentation of all existing customers prior to 31st July 2008 when the PMLFTR came into force.

505. However, the evaluators were told that since the PMLFTR require subject persons to update documentation of existing clients at appropriate times on a risk-sensitive basis, subject persons are required to update the documentation of high risk customers, determined on the basis of the subject persons' procedures for risk-assessment and risk-management referred to in Section 4.1 of the Implementing procedures or as soon as reasonably practicable.

506. With respect to other customers, subject persons should update CDD documentation when certain trigger events occur, such as when an existing customer applies to open a new bank account or to establish a new relationship, or where an existing relationship changes. Moreover, it should be noted that ongoing monitoring obligations should assist subject persons in identifying the instances where additional or updated CDD documentation is needed.

507. Furthermore, if a lower risk customer wishes to acquire a high-risk product, his risk-profile will change accordingly. In such circumstances, the subject person would be required to obtain additional information from the respective customer, or to update the CDD documentation maintained, in order to satisfy the standards set for the new risk level associated to the client due to the acquisition of a high-risk product.

508. Financial institutions should be required to perform CDD measures on existing customers if they are customers to whom Criterion 5.1 (anonymous accounts or accounts in fictitious names) applies.

509. As stated under Criterion 5.1, regulation 7(4) of the PMLFTR imposes a blanket prohibition on subject persons from maintaining anonymous accounts or accounts in fictitious names.

510. Evaluators were assured that there are no anonymous accounts or accounts in fictitious names exist in Malta.

Effectiveness and efficiency

511. All financial institutions in Malta appeared to be generally aware of the identification obligations. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation.

512. The CDD regulation system is broadly very sound. All banks including investment banks impressed as knowledgeable on the preventive standards.

513. However, understanding of the standards differs across the financial sector and it appeared that sometimes the practical application of the standards was unclear to some financial sector participants, particularly foreign exchange houses and money remitters.

514. Financial sector representatives showed a certain level of understanding of the concept, if not the application of the recently introduced and described by Implementing Procedures, risk based approach. While there is some understanding of high risk situations in practice, the risk management process was generally weak.

515. Though Regulation 8 (5) of the PMLFTR clearly states that subject persons shall not establish a business relationship if among other things, they are unable to identify and verify the beneficial owner, a number of interviewed institutions expressed difficulties in identifying and verifying such owners and they were uncertain as to the extent to which they are required to delve in order to establish who the beneficial owners are. During the onsite visit, some of the interviewees in certain specific sectors appeared not to be entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence. The latter related to the exemption granted by the PMLTFR in respect of low-risk customers.

516. In order to ensure that AML/CFT obligations are being adhered to by subject persons, the FIAU has drawn up a detailed checklist to be used as a guide in the course of on-site compliance visits, which includes reference to the customer due diligence measures set out in the PMLFTR. The part in the checklist dealing with customer due diligence reflects every measure which is set out under Recommendation 5.

517. The FIAU compliance officer conducting the on-site visit makes reference to such checklist when interviewing the MLRO, to ensure that none of the measures set out in the PMLFTR are overlooked. The MLRO is required to explain in detail the manner in which CDD obligations are adhered to and an affirmative or negative answer is not sufficient. The replies provided by the MLRO are recorded and the compliance officer confirms the validity of such replies by inspecting client files, examining systems and conducting interviews with the employees of the subject person.

518. Apart from the compliance check-list subject persons are required to provide a copy of their procedures manual including the customer due diligence measures adopted by the subject person, as well as an annual compliance report on the procedures and activities of the subject person. These two documents further assist the FIAU in ensuring that customer due diligence requirements are being implemented effectively by subject persons.

Recommendation 6 (rated PC in the 3rd round report)

Risk management systems, senior management approval, requirement to determine source of wealth and funds and on-going monitoring

519. Regulation 7(9) requires subject persons to develop and establish customer acceptance policies and procedures that are, *inter alia*, conducive to determine whether an applicant for business is a politically exposed person (this includes also domestic PEPs).

520. The aforementioned regulation sets forth a minimum requirements for such situations including:

(*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; and

(c) the requirement for an enhanced customer due diligence for higher risk customers.

521. Section 3.5.3 of the Implementing Procedures provides that in determining whether the applicant for business or a beneficial owner is a PEP, subject persons are required to request such information directly from the applicant for business and, on the basis of the mandatory risk procedures, determine whether the use of commercial databases to confirm the information provided by the applicant for business is necessary.

522. It is advised in the Implementing Procedures that a questionnaire can be developed with specific reference to criteria that identify PEPs. Such questionnaire could be required to be completed accordingly by the applicant for business and the beneficial owner, where applicable, and could serve as a basis for identifying PEPs. This questionnaire should be signed by the applicant for business and the beneficial owner, where applicable.

523. For the cases when PEPs are residing outside Malta (either in a EU Member state or outside EU) Regulation 11(6)(a) states that subject persons undertaking transactions or establishing business relationships with such persons must require the approval of senior management for establishing such business relationships.

524. In accordance with Regulation 7(7) where following the application of the CDD measures changes have occurred in the circumstances surrounding the established business relationship (such as changes in customer's status, which make him/her a PEP), then the CDD measures are to be repeated.

525. It was explained to the evaluators that should the repeated CDD conclude that the customer or the beneficial owner is a PEP residing outside Malta, subject persons would then be required to apply the provisions of Regulation 11(6) on enhanced due diligence, including the requirement to obtain senior management approval.

526. During the onsite visit, some of the interviewees in certain specific sectors seemed not to be entirely certain regarding the practical application of the requirement to identify the status of PEPs acquired in a course of a business relationship by an existing customer. Though there was a broad understanding regarding the identification of PEPs at the beginning of a business relation,

concerns remain regarding the verification procedures and thus ongoing monitoring of customers gaining PEP status at a later stage. The authorities clarified that in the course of the on-site visits carried out in respect of different subject persons it could be confirmed that on-going monitoring was actually being carried out through checks on public available databases that would indicate any change of status for PEPs.

527. Regulation 11(6)(b) states that subject persons shall ensure that the internal procedures include adequate measures to establish the source of wealth and funds that are involved in these business relationships or transactions. However, during the on-site visit it was unclear whether all financial institutions (other than banks) were applying adequate measures for establishing the source of wealth and source of funds of PEPs.

528. In addition to the Regulation 11 (6)(b), section 3.1.6 of the Implementing Procedures provides further detailed explanations on the manner in which the source of funds and wealth may be established. As the Implementing Procedures Part I has entered into force shortly before the on-site visit, it was impossible to assess the effectiveness of the application in practice of the relevant provisions of the new document.

529. Regulation 11(6)(c) states that subject persons shall conduct enhanced ongoing monitoring of the business relationships conducted in relation to politically exposed persons.

530. At the same time section 3.5.3 of the Implementing Procedures explains the meaning of enhanced monitoring as to be conducted more regularly and more thoroughly, and a closer analysis should be undertaken on the transactions and their origin. This section cross-refers to section 3.1.5 which deals with ongoing monitoring.

Additional elements

Domestic PEP-s - Requirements

531. While the definition of PEPS in Regulation 2 of the PMLFTR does not distinguish between domestic and foreign PEPs and in terms of Regulation 7(9) subject persons should have in place CDD procedures that are conducive to determine whether an applicant for business is a PEP, Regulation 11(6) and (7) on enhanced due diligence apply only to PEPs residing outside Malta.

Ratification of the Merida Convention

532. The Convention has been signed by Malta on 12th May 2005 and ratified on 11th April 2008.

Effectiveness and efficiency

533. The on-site interviews indicated some difficulties by some categories of subject persons in the implementation of effective measures when dealing with PEPs, especially in relation to the identification of clients who acquire the status of a PEP in the course of the business relationship and in determining the source of wealth. However, the foreign-owned institutions had a better understanding of their responsibility as a result of group-wide procedures.

Recommendation 7 (rated NC in the 3rd round report)

Require to obtain information on respondent institution & Assessment of AML/CFT controls in Respondent institutions (c. 7.1 & 7.2)

534. Under the PMLFTR, cross-border correspondent banking relationships with respondent institutions from non-EU country are regulated by Regulation 11(3). It sets forth requirements for credit institutions to ensure that they fully understand and document the nature of the business activities of their respondent institution including information obtained from publicly available sources on the reputation of the respondent bank, the quality of supervision carried out on that institution and whether that institution has been subject to an ML/FT investigation or regulatory measures (Reg.11 (3) (a)).

535. Regulation 11(3)(b) requires credit institutions to assess the adequacy and effectiveness of the respondent institutions' internal controls for the prevention of ML/FT.

536. Further guidance is set out in the section 3.5.2 of the Implementing Procedures and explains how to fulfil this requirement by obtaining a copy of the procedures manual of the respondent institution, developing a brief questionnaire with specific questions covering the legal obligations and the internal procedures applied or requesting a declaration from the respondent institution on the adequacy of its internal controls. Thus criterion 7.2 is covered.

537. During the interviews it was confirmed that banks were aware of an overall need to carry out some form of research on respondent banks, but this did not always include an assessment of the supervisory regime on those respondents and whether or not the respondent had been subject to a ML/TF investigation in their country of origin. The Maltese authorities however confirmed that during the on-site examinations, evidence of the assessment of the supervisory regime of the foreign institutions was obtained.

Approval of establishing correspondent relationships (c.7.3)

538. Regulation 11(3)(c) requires credit institutions to ensure that they obtain prior approval of senior management for the establishment of new correspondent banking relationships.

539. The banks that were met during the on-site visit to Malta confirmed that approval of senior management is required before establishing correspondent relationships.

Documentation of AML/CFT responsibilities for each institution (c.7.4)

540. Regulation 11(3)(d) requires credit institutions to ensure that they document the respective responsibilities for the prevention of ML/FT.

541. It was confirmed during the interviews in Malta that written agreements would be established between themselves and respondent institutions before starting a correspondent relationships, including AML/CFT responsibilities.

Payable through Accounts (c.7.5)

542. Regulation 11(3)(e) requires credit institutions to ensure that with respect to payable-through accounts, they are satisfied that the respondent credit institution has verified the identity of and performed ongoing 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.

543. In relation to this obligation, Section 3.5.2 of the Implementing Procedures, provides that credit institutions should either refuse to open such accounts due to the higher ML/FT risks posed or, if accepted, obtain written confirmation from the respondent institution that it will assume responsibilities for CDD on such persons.

544. During the interviews it was confirmed by the banks that they do not maintain payable-through accounts, and thus this activity appears not to be carried on in Malta.

Effectiveness and efficiency

545. During the interviews it was confirmed that banks were aware of the overall requirements regarding the correspondent relationship including the need to carry out some form of research on respondent banks, but this did not always include an assessment of the supervisory regime in which those respondents operate or whether the respondent had been subject to a ML/TF investigation.

2.2.2. Recommendations and comments

546. Although requirements under Recommendation 5, 6 and 7 have been in place for a number of years in previous Regulations, the third round results showed some shortcomings. At the time of the on-site visit to Malta it was obviously difficult to evaluate the practicability of the Implementing Procedures as they have come in force shortly before, while the previous Guidelines were not in force any more.

547. As regards PEPs due to the lack of understanding on how to apply the requirement to find out if a customer has become PEP later in the course of business relationship, there is a risk that when a customer becomes a PEP in the course of business it would not be recognized at all or at a later stage. Though there was broad understanding regarding the identification PEP, the evaluation team express concerns with regards to verification procedures and ongoing monitoring of PEPs which seems not to be fully implemented in practice.

548. Lack of direct requirement for the customers that become PEP during the course of business relationship to obtain senior management approval in order to continue relationship, raises also concerns. The existing obligation to repeat CDD measures in such cases it does not necessarily include senior management approval.

549. In practice only banks are applying measures for establishing the source of wealth and source of funds of PEPs.

2.2.3. Compliance with Recommendations 5, 6 and 7

	Rating	Summary of factors underlying rating
R.5	**LC**	• Certain categories of low risk businesses can be exempted from CDD and/or ECDD instead of requiring simplified or reduced measures. • Effectiveness issues: a) the perception of the concept of "*reputable jurisdiction*" slightly differs across the financial sectors and sometimes seems not to be applied correctly in practice b) Weak awareness among some subject persons (financial institutions) on FATF statements regarding the countries listed as undergoing regular review. c) the risk management process needs improvement.

		d) Some financial institutions were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence.
R.6	**LC**	• Not all types of financial institutions are entirely certain regarding the practical application of the requirement to identify the status of PEPs acquired in the course of a business relationship by an existing customer. • Not all types of financial institutions are applying measures for establishing the source of wealth and source of funds of PEPs.
R.7	**C**	

2.3. Financial institution secrecy or confidentiality (R.4)

2.3.1. Description and analysis

Recommendation 4 (rated C in the 3rd round report)

Inhibition of implementation of FATF Recommendations

550. Concerning the legal provisions stating the secrecy and confidentiality obligations imposed to financial institutions, situation hasn't changed significantly since the last MER. The laws stating the confidentiality and secrecy requirement are the Professional Secrecy Act (Cap. 377), Banking Act (Cap. 371), Financial Institutions Act (Cap 376), Insurance Business Act (Cap 487), Insurance Intermediaries Act (Cap. 403) and Investment Services Act (Cap. 370).

551. The access of the authorities to information protected by confidentiality and secrecy privileges is described in those laws and with regards to suspicions of money laundering, in PMLA. According to article 30 of the PMLA, the FIAU, notwithstanding other provisions in any other law, may likewise demand form any person, authority or entity, as is referred to in article 30, any information it deems relevant and useful for the purpose of pursuing its functions under article 16. The above mentioned provisions of shall *mutatis mutandis* apply where any information is demanded by the FIAU under this article.

552. Article 30(2) further states that notwithstanding anything contained in the Professional Secrecy Act (Cap. 377 of the Laws of Malta) and any obligation of secrecy or confidentiality under any other law the financial institution from whom information is demanded by the FIAU shall communicate the information requested and any such disclosure shall be deemed to be a disclosure of information to a public authority compelled by law.

553. In addition to the explicit obligation set out in the PMLA to provide information, Regulation 15(12) of the PMLFTR states that any *bona fide* communication or disclosure made by a financial institution or by any employee or by a director of a financial institution in accordance with the PMLFTR shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information and shall not involve that financial institution or the directors or employees of such an institution in any liability of any kind.

554. This Regulation is strengthened by similar provisions (confidentiality gateways) contained in the legislative acts regulating financial services. Such provisions may be found in Article 34(3) of the Banking Act, Article 25(3) of the Financial Institutions Act, Article 59(6) of the Insurance Business Act and Article 46(6) of the Insurance Intermediaries Act, which state that disclosures made by the officers of a financial institution in accordance with the PMLFTR shall not constitute a breach of confidentiality.

555. The PMLFTR lays down equivalent obligations to those set out in R.7, R.9 and S.R.VII with which financial institutions must comply irrespective of financial institution secrecy.

556. At the time of the on site visit the Maltese authorities as well as the representatives of the private sector didn't emphasised any difficulties encountered in practice in applying the legal provisions on access to information on money laundering cases nor internally or on the course of international cooperation.

Sharing of information between financial institutions where this is required by R.7, R.9 or SR. VII

557. There are no obstacles for the financial institutions to share the information on their customers and their beneficiaries for the need of R.7, R.9 and SR.VII with which financial institutions must comply irrespective of financial institution secrecy.

Effectiveness and efficiency

558. The system and practise appears to be effective.

2.3.2. Recommendations and comments

559. There are no reported practical restrictions in the Maltese legislative framework limiting competent authorities from implementing the FATF Recommendations and performing their anti-money laundering functions. The FAIU is able, in the course of analyzing reports, to access further information from the reporting entity and other reporting entities.

2.3.3. Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**C**	

2.4. Record Keeping and Wire Transfer Rules (R.10 and SR. VII)

2.4.1. Description and analysis

Recommendation 10 (rated C in the 3rd round report)

560. Although Recommendation 10 was rated "Compliant" in the 3rd round report it needs to be reassessed in accordance with the requirements of mutual evaluation procedure for this assessment round.

Record keeping & Reconstruction of Transaction Records (c.10.1 and 10.1.1)

561. Regulation 4(1) (a)(i) of the PMLFTR requires entities to have record-keeping procedures in place. Regulation 13(2) in its turn provides detailed requirements regarding record-keeping procedures. That includes procedures for keeping records with details relating to the business relationship and to all transactions (irrespective of whether these are domestic or international) carried out by that person in the course of an established business relationship or occasional transaction. Regulation 13(3)(b) states that such records shall be kept for a period of five years commencing on the date on which all dealings taking place in the course of the transaction in question were completed.

562. As regards keeping the records longer if requested by a competent authority in specific cases and upon proper authority, PMLTFR in its Regulation 13(4)(b) provides such prolongation possibility only under request of the FIAU.

563. Financial institutions indicated that, in practice, they keep all documents in customer files including those related to transactions for a period at least 5 years. Some entities indicated that they would keep transaction documents (as well as identification data) longer – for 10 years after the business relationship has ended.

Record keeping of identification data, files and correspondence (c.10.2)

564. Financial institutions are required to maintain records of documents obtained under customer due diligence process, including copy of documents used for identification of client and its beneficial owner (Regulation 13(2)(a)).

565. The minimum record keeping period is five years from the date of the termination of the business relation (or last transaction in case of occasional client), or longer if requested by the FIAU. The FIAU stated that, so far, there have been no cases in which it was deemed necessary to request an extension of the record keeping obligation period.

566. For every business relationship established or occasional transaction carried out, Regulation 13(2)(a) requires subject persons to maintain a record indicating the nature of the evidence of the customer due diligence documents required and obtained under procedures maintained in accordance with the PMLFTR, comprising a copy of or the reference to the evidence required for the identity and providing sufficient information to enable the details as to a person's identity contained in the relevant evidence to be re-obtained.

567. With respect to the requirement to maintain a record of business correspondence, Regulation 13(2)(b) of the PMLFTR requires subject persons to keep a record containing details relating to the business relationship and all transactions carried out. These records should be maintained for a period of at least five years after the last transaction in case of occasional client (Regulation 13(3)(b)). The five-year period may, in accordance with Regulation 13(4)(b), be extended as required by the FIAU when there is a suspicion of ML/FT.

Availability of Records to competent authorities in a timely manner (c.10.3)

568. The requirement to keep data available to domestic authorities is also specifically addressed by Regulation 13(6) stating that subject persons must ensure that, upon request, all customer identification, due diligence records and transaction records and other relevant information are

made available on a timely basis to the FIAU and, as may be allowed by law, to other relevant competent authorities, for the purposes of the prevention of ML/FT.

569. Additionally, Regulation 13(7) requires entities carrying out relevant financial business to establish systems that enable them to respond efficiently to enquiries from the FIAU or from supervisory or other relevant competent authorities. They include responding to enquiries as to: (*a) whether they maintain or have maintained during the previous five years a business relationship with a specified natural or legal person or persons; and (b) the nature of that relationship.*

570. At the on-site visit it was no indication that FIAU would have encountered problems in obtaining the required information and data from the obliged entities.

Effectiveness and efficiency

571. The financial institutions confirmed during the on-site visit that they keep the data concerning customer identification for more than five years, in most cases in an electronic format (scanned documents).

572. In order to ensure that AML/CFT obligations are being adhered to by subject persons, the FIAU has drawn up a detailed checklist to be used as a guide in the course of on-site compliance visits, which includes reference to the record-keeping measures set out in the PMLFTR. The part in the checklist dealing with record-keeping reflects every measure which is set out under Recommendation 10.

Special Recommendation VII (rated PC in the 3rd round report)

573. Regulation (EC) No. 1781/2006 of the European Parliament and of the Council of 15th November 2006 provides rules on transactions related to domestic or cross-border money transfer or remittance, in amounts of €1,000 or more. This Regulation is directly applicable as domestic law in view of Malta's membership of the European Union Community. National implementation is therefore limited to establishing an appropriate monitoring, enforcement and penalties regime and to applying certain derogations allowed for in the EU Regulation.

574. Regulation 7(12) of the PMLFTR imposes administrative penalties for non compliance with the EU Regulation 1781/2006.

575. According to Article 3 of the EU Regulation, it applies to transfers of funds, in any currency, which are sent or received by a payment service provider established in the EU. The Regulation does not apply to:

- transfers of funds carried out using a credit or debit card under specific conditions (Article 3, paragraph 2), electronic money up to a threshold of €1.000 (Article 3(3));
- transfers of funds carried out by means of a mobile phone or similar device (Article 3, paragraphs 4 and 5);
- cash withdrawals, transfers related to certain debit transfer authorisations, truncated cheques, transfers to public authorities for taxes, fines, or other levies within a member state;
- transfers, where both the payer and the payee are payment service providers acting on their own behalf (Article 3, paragraph 7).

576. According to Article 5 of the Regulation, providers shall ensure that transfers of funds are accompanied by complete information on the payer. This complete information on the payer includes name, address and account number of the customer (Article 4). In cases when both payment services providers (that of a payer and that of a payee) are situated in European Union

transfers of funds should be accompanied only by the account number of the payer or a unique identifier (Article 6).

577. The payment service provider of the payer shall, before transferring the funds, verify the complete information on the payer on the basis of documents, data or information obtained from a reliable and independent source (Article 5 (2)). In the case of transfers of funds not made from an account, the payment service provider of the payer shall verify the information on the payer only where the amount exceeds EUR 1,000, unless the transaction is carried out in several operations that appear to be linked and together exceed EUR 1,000 (Article 5 (4) of the Regulation). General rules set out in the AML/CFT Act apply for this verification.

578. It is expected that payment services providers have effective procedures in place in order to detect whether in the messaging, payment or settlement system used to effect a transfer of funds, the fields relating to the information on the payer are complete in accordance with Articles 4 and 6.

579. However, the EU Regulation also provides for some exemptions of the verification requirements if:

- a payer's identity has been verified in connection with the opening of the account and the information obtained by this verification has been stored in accordance with the obligations set out in the 3rd EU AML Directive; or
- the payer is an existing customer whose identity has to be verified at an appropriate time as described under Article 9(6) of the 3rd EU AML Directive.

Obtain Originator Information for Wire Transfers (c.VII.1)

580. According to the FATF methodology, transfers between Malta and other EU member countries are considered as domestic for the purposes of the assessment of SR. VII, wire transfers between Malta and non-EU member states are considered as cross-border.

581. Article 5 of Regulation 1781/2006 requires the payment service provider of the payer to ensure that transfers of funds are accompanied by complete information on the payer. Article 4 states that complete information shall consist of his name, address and account number. The address may be substituted with the date and place of birth of the payer, his customer identification number or national identity number. Where the payer does not have an account number a payment service provider of the payer shall substitute it by a unique identifier which allows a transaction to be traced back to the payer.

582. With respect to occasional transactions that involve a money transfer or remittance, the identification the definition of 'Case 3' (single large transaction) under Regulation 2 (1) of the PMLTFR sets the threshold at €1,000 and deemed to CDD obligations as stated in Regulation 7-11.

583. At the on site visit, the money exchange and money and value transfer representatives confirmed that in case of wire transfers they do identify customers regardless of any threshold.

Inclusion of Originator Information in Cross-Border Wire Transfers (c. VII.2); Inclusion of Originator Information in Domestic Wire Transfers (c. VII.3); Maintenance of Originator Information (c.VII.4)

584. Article 7(1) of Regulation 1781/2006 states that cross-border wire transfers shall be accompanied by complete information on the payer.

585. Article 7(2) states that in the case of batch file, from a single payer to different payees, need not be accompanied by complete information on the payer, provided that the batch file contains

that information and the individual transfers carry the account number of the payer or a unique identifier.

586. Under Article 6 of Regulation 1781/2006 transfers of funds shall be required to be accompanied only by the account number of the payer or a unique identifier when both payment services providers (that of a payer and that of a payee) are situated in European Union allowing the transaction to be traced back to the payer. However, if so requested by the payment service provider of the payee, the payment service provider of the payer shall make available to the payment service provider of the payee complete information on the payer within three working days of receiving that request.

587. Article 12 of Regulation 1781/2006 states that intermediary payment service providers shall ensure that all information received on the payer that accompanies a transfer of funds is kept with the transfer.

588. At the on site visit, the representative of the money remitters stated that in case of transactions over 500 euro the information related to the transfer is registered in the system and for transactions over 4000 euro they keep a copy of the document.

589. Article 8 states that the payment service provider of the payee shall detect whether in the messaging or payment and settlement system used to execute a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system.

590. Such provider shall have effective procedures in place in order to detect whether the information on the payer is complete. In terms of Article 9, where information is missing or incomplete the payment service provider of the payee shall either reject the transfer or ask for complete information on the payer. Thus it is supposed that payment services providers should adopt a policy defining their reaction on becoming aware of an incomplete transfer or with meaningless information.

591. However, it should be kept in mind that it is very difficult for a standard filter to be able to assess the completeness of all messages and that there will be instances where the payer information fields are completed with incorrect /meaningless information, where the payment will pass through the system. Thus it is advisable that authorities provide assistance to the industry in terms of advisory for application Article 9 of the EU Regulation.

592. Where a payment service provider regularly fails to supply the required information on the payer, the payment service provider of the payee shall take steps which may initially include the issuing of warnings and setting of deadlines before either rejecting any future transfer of funds from that payment service provider or deciding whether or not to restrict or terminate its business relationship with that payment service provider. The payment service provider of the payee shall report that fact to the authorities responsible for combating ML/FT.

Risk Based Procedures for Transfers Not Accompanied by Originator Information (c. VII.5)

593. According to the representatives of the industry met on site, the missing or incomplete information on the payer will be one of the factors to be taken into consideration by the payment service provider in order to assess whether the funds transfer is suspicious and in that it case it must be reported to the FIAU. However, no training on the application of the Regulation 1781/2006 has been provided.

594. Apart from training it is advisable to provide also additional supervisory assistance in application of this requirement of the EU Regulation.

595. Furthermore, continuous failure of the payment service provider to provide the relevant information on the payee will consider issuance of a warning, restriction or termination of the business relationship as well as the notification of the FIAU.

596. It was reiterated during the interviews that money remittance businesses do adopt internal procedures concerning AML/CFT risks and that the MFSA is checking those procedures during the on-site inspections.

Monitoring of Implementation (c. VII.6) and Application of Sanctions (c. VII.7: applying c.17.1 – 17.4)

597. Regulation 7(12) of the PMLFTR imposes an administrative penalty of not less than €250 and not more than €2,500 for non compliance with Regulation 1781/2006. This administrative penalty shall be imposed by the FIAU without recourse to a court hearing.

598. During the on-site visit the examiners were advised that MFSA carried out on-site inspections where documents and transactions were verified. By the time of the on-site visit, no sanctions were imposed for non-observance of the SRVII provisions.

599. Although the level of fines appears to be proportionate and dissuasive the lack of sanctions applied does give rise to concerns over effectiveness of application.

Additional elements – Elimination of thresholds (c. VII.8 and c. VII.9)

600. For transfers of funds where the payment service provider of the payer is situated outside the EU (incoming cross-border wire transfers), the payment service provider of the payee shall have effective procedures in place in order to detect whether the complete information on the payer as referred to in Article 4 (complete information on the payer) is missing (Article 8 (b) of the Regulation). If this is not the case, the payment service provider has to follow the procedures described above, regardless of any threshold.

601. For transfers of funds where the payment service provider of the payee is situated outside the area of the EU (outgoing cross-border wire transfers), the transfer shall always be accompanied by complete information on the payer, regardless of the threshold.

Effectiveness and efficiency

602. The requirements of SR. VII are clearly stated in the EU Regulation, and there are administrative sanctions provided under the PLMFTR in this regards.

603. All representatives of providers of payment services met during the on-site visit appeared to be aware of their obligations when conducting transfers of funds.

604. The evaluation team noted that as at the time of the on-site visit, no sanctions have been imposed on MSB for failure to observe the SRVII requirements which gives rise to concerns over effectiveness of application. There were no circumstances brought to the attention of the evaluation team that could by any way undermine the proper functioning of the supervision over wire transfer system in Malta.

605. The lack of specific training or any other assistance dedicated to MSB might affect the proper compliance with the Regulation 1781/2006.

2.4.2. Recommendation and comments

Recommendation 10

606. Malta has implemented all the requirements of the Recommendation 10 in its legislative acts.

Special Recommendation VII

607. The Maltese authorities are encouraged to conduct specific training or other assistance dedicated to MSB in application of the EU Regulation.

2.4.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**C**	
SR.VII	**C**	

2.5. Suspicious Transaction Reports and Other Reporting (R. 13 and SR.IV)

2.5.1. Description and analysis[39]

Recommendation 13 (rated PC in the 3rd round report) & Special Recommendation IV (rated NC in the 3rd round report)

Requirement to Make STR-s on ML/FT to FIU (c. 13.1, c.13.2 & IV.1)

608. In the third round R 13 was rated partially compliant since the attempted transactions were not explicitly covered and no reporting obligation on FT was in place.

609. Article 15(6) of PMLFTR provides the reporting obligations set out for the subject person that *knows, suspects or has reasonable grounds to suspect that:*

a) a transaction may be related to money laundering or the funding of terrorism; or
b) a person may have been, is or may be connected with money laundering or the funding of terrorism; or

c) money laundering or the funding of terrorism has been, is being or may be committed or attempted;

that subject person shall, as soon as 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 FIAU.

[39] *The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.*

610. According to the above mentioned, mandatory obligation to report suspicious transactions of ML as well as FT (without applying any threshold for reporting) is in place and it is laid down by regulation.

611. As regards attempted transactions by virtue of Article 15(6) of PMLFTR, attempted ML or FT are covered. Notwithstanding 'attempted transactions' as such are not literally explicitly covered by the PMLFTR, the evaluation team is of the opinion that this wording constitutes a broader legal coverage than the requirement of covering explicitly attempted transactions. Authorities indicated that the FIAU received STRs on attempted transactions.

612. Regulation 15 (6) of the PMLFTR sets out the basis of the reporting requirements. According to 16 (1) of the PMLA, among the other functions, the FIAU is entitled: to receive reports of transactions suspected to involve money laundering or funding of terrorism made by any subject person in pursuance of any regulation made under Article 12, to supplement such reports with such additional information as may be available to it or as it may demand, to analyze the reports together with such additional information and to draw up an analytical report on the result of such analysis.

613. The subject persons should report suspicious transactions related to ML or FT regardless of the nature of the underlying criminal activity which is defined as any criminal offence.

614. The Implementing Procedures Part I approved in 20th May 2011 do also specify the requirement in those cases where the MLRO knows, suspects or has reasonable grounds to suspect that a transaction may be related to ML/FT; or a person may have been, is, or may be connected with ML/FT; or ML/FT has been, is being, or may be committed or attempted, the MLRO shall submit a report to the FIAU. In addition, the Implementing Procedures specify in a detailed manner the steps that should be followed in the reporting process: (1) internal reporting obligation and (2) external reporting obligation.

615. However, interviewed representatives of subject persons stated that they report those transactions and circumstances that are suspicious and not necessarily make distinctions among the abovementioned three categories (knowledge, suspicion, reasonable ground to suspect) of mental elements.

616. The PMLFTR stipulates that the STR has to be sent to the FIAU "as soon as is reasonably practicable, but not later than five (5) working days from when the suspicion first arose." The Implementing Procedures Part I document further elaborates that the suspicion shall be deemed to have first arisen when any person within the structure of the subject person first suspects the existence of ML/FT and thus submits an internal report to the MLRO. With regard to the form of the STR, it is to be noted that an appendix is attached to the Implementing Procedures Part I document in which the MLRO has to provide as much detail as possible together with the relevant identification and other supporting documentation. Then the completed STR shall be delivered, preferably by hand, to the FIAU premises. Moreover the Implementing Procedures also regulate the possibility of making initial disclosure as follows: "In cases of great urgency an initial disclosure may be made by telephone on the number provided below, but a written report will also be required immediately thereafter.

617. The reporting obligation under PMLFTR does not refer to funds that are proceeds of criminal offenses, but transactions that may be related to ML or FT, or persons that may have been or may be connected with ML or FT. Authorities explained that a 'person' constitutes both physical and legal persons. In those cases, where the customer is actually a trust that has no legal personality the settler and/or the trust beneficiary always go through CDD measures.

618. However, the referral in the legal text to "*suspicions of money laundering*" instead of *"proceeds of criminal offences"* (as worded by FATF standard) might limit the scope of the reporting obligations and set a higher standard for the subject persons, restricting their reporting activity.

619. By virtue of the essential criterion 13.2 the obligation to make a STR also applies to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. As described under SR II, a difficulty arises from the language of Article 328A of the Criminal Code which limits the financing of terrorism acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328 A (1) a), b) and c). Financing the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention. Furthermore, it was unclear for the examiners whether the criminalization of FT covers financing of legitimate activities furthering terrorism and indirect financing of terrorism. These deficiencies identified under SR II might limit the compliance with essential criterion 13.2.

620. To illustrate the reporting regime and the FIAU's analytical work authorities provided some sanitised cases that were triggered by STRs and disseminated to the Police. In a couple of cases the subject persons referred in their STR to an ongoing criminal proceeding conducted overseas for the predicate offence along with the fact that funds stemming from that offence (which was investigated overseas) were transferred by suspects via different companies to Malta. However, in the other cases the reporting entities do not refer to particular underlying criminal activities, just purely the suspicion of ML. On the basis of the received cases the examiners established that high level of evidences/knowledge on committed predicate crime appear not to be required by subject persons.

621. Supervisory authorities are also obliged to disclose the information supported by the relevant documentation to the FIAU where, either in the course of their supervisory work or in any other way, discover facts or obtain any information that could be related to money laundering or the funding of terrorism. The information shall be sent as soon as is reasonably practicable, but not later than five working days from when facts are discovered or information obtained.

Table 22: Statistical data on STRs (ML&FT) received by the FIAU

	2005	2006	2007	2008	2009	2010	First five months of 2011
Credit Institutions (Commercial Banks)	39	43	38	40 (1 FT)	26	38 (1 FT)	9
Financial Institutions (Currency Exchange and money remitters)	18	13	10 (1 FT)	13	6	4	3
Investment Services Licensees	-	-	4	2	2	2	2
Insurance Licensees	10	2	-	-	1	4	1
Lawyers	-	-	1	1	2	3	-
Notaries	-	-	-	-	1	-	-
Remote Gaming Companies	-	-	-	2	3	4	5
Casino Licensees	-	-	-	-	1	2	3
Trustees & Fiduciaries	1	5	2	2	2	4	2
Real Estate Agents	-	1	-	-	2	-	-
Accounting Professionals (Accountants, Auditors)	1	2	4	-	4	3	-
Regulated Markets	-	-	-	-	3	-	-
Company Service Providers	-	-	-	-	3	5	1
Supervisory Authorities	6	12	2	-	3	3	2
Others	-	-	-	-	4	1	-
Total	75	78	61	60	63	73	28

Table 23: Statistical data on STRs sent by subject persons and supervisory authorities, and FIAU generated cases

	2005	2006	2007	2008	2009	2010	First five months of 2011
STRs sent by subject persons and supervisory authorities	75	78	61	60	63	73	28
FIAU generated cases	5	10	13	3	13	8	5
Total	80	88	74	63	76	81	33

No Reporting Threshold for STR-s (c. 13.3 & c. SR.IV.2)

622. Article 15(6) of PMLFTR includes the requirement to report suspicious transactions which may be committed or attempted. (see criterion 13.1). No reference is made in the AML/CFT legislation to any threshold or amounts that could trigger STR reporting.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 13.4, c. IV.2)

623. There are no provisions in the AML/CFT legislation that could prohibit the STR reporting on grounds that tax matters are involved. Subject persons are required to report suspicious transactions irrespective of the nature of the underlying criminal activity which is defined as any criminal offence and irrespective of whether they involve tax matters or not. Statistics on suspected predicate offences in disseminated cases show 9 cases with undeclared income as a suspected predicate crime. Some interlocutors underlined the threat of tax and VAT frauds as predicate crimes.

Delay of execution of transaction (postponement)

624. By virtue of Article 28 of PMLA, subject persons are required to delay the execution of a transaction and to send an STR to the FIAU, which constitutes effectively a request for a postponement order, if they are aware or suspect that the transaction may be linked to ML or FT. Both authorities and representatives of the banking industry described the provisions on postponement of the execution of a transaction as a special way of reporting. (The next article of PMLA regulates the situation where delaying the transaction is not possible due to its nature or for the sake of effective investigation or prosecution. Reading the aforementioned provisions in the context of PMLFTR that regulates the reporting obligation the transaction must not be executed unless an STR was filed by the subject person before. However, the transaction can be executed before the submission of an STR, if the delay is not possible. Examiners assume that these provisions are the results of the implementation of the Third EU AML/CFT Directive.)

625. The FIAU may oppose the execution of the transaction within the period indicated by the subject person in its request, which 'opposing' practically means the issue of a postponement order against the transaction at stake. In such cases the FIAU within 24 hours promptly disseminates the STR to the Police, if it establishes reasonable suspicion of ML. Moreover, the 24 hours period has to be sufficient for the application for an attachment order by the Police before the court, and for issuing the attachment order by the court.[40]

[40] *Article 28 of PMLA*

626. According to the statistical data provided by the FIAU subject persons forwarded 7 requests for postponement order in the period from 2006 until 31st May 2011. Out of the 7 requests the FIAU effectively postponed the transactions in 5 cases and the court issued attachment orders in 4 cases. It is worth mentioning that no request for postponement order has been submitted by subject persons in 2008, when the FIAU was the most active in dissemination. In 2010-2011 two requests for postponement orders were filed by subject persons, but no postponement order was issued by the FIAU. All of the requests were sent by credit institutions.

Table 24: Number of postponement orders

Year	Number of requests for a postponement order	Transaction postponed	Period of time within which to execute transaction	Period of time within which FIAU issued postponement order	Attachment order issued	Attachment order (Lifted/Elapsed etc…)
2006	1	√	immediately	same day as request was made	√	Lifted/expired
2007	1	√	not specified	same day as request was made	√	Pending (still in force)
2008	nil	n/a	n/a	n/a	n/a	n/a
2009	1	√	1 day	same day as request was made	√	Lifted
2009	1	√	same day	same day as request was made	√	Lifted
2009	1	√	not specified	same day as request was made	x	X
2010	1	x	not specified	n/a	x	X
2011	1	x	not specified	n/a	x	X

Additional Elements – Reporting of All Criminal Acts (c. 13.5)

627. Under the PMLA the requisite 'criminal activity' means any activity wherever carried out which, under Maltese or any other law, amounts to a criminal offense or crime specified in Article 3 (1) (*a*) of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances adopted on the 19th December 1988 in Vienna, or any criminal offence. Therefore, subject persons are required to report suspicious transactions notwithstanding that the predicate offence was committed outside Malta.

628. It can therefore be concluded that the subject persons are required to report STRs to the FIU in all cases that the predicate offence was committed inside or outside of Malta.

Effectiveness and efficiency

629. The provisions of the PMLA as well as the PMLFTR give power to the FIAU to collect suspicious transactions filed by the subject persons that are stored in properly secured facilities and are processed, analyzed and disseminated thereafter to the Police.

630. As to statistics on final convictions, the evaluation team positively regarded that 4 final convictions in ML out of the total of 8 final convictions were made on the basis of STRs received from subject persons [1 in 2007, 2 in 2008 and 1 in 2009].

631. During 2005-2010 the lowest number of STRs was 60 STRs in 2008, whilst the most STRs (78) were registered in 2006. Thus, it can be stated that the total number of STRs on a yearly basis looks relatively steady. As to the reporting mechanisms of financial sector it is worth analysing the statistical data on STRs submitted and the requests for additional information sent to subject persons in 2010 and in the first five months of 2011.

Table 25: Statistical data on number of STRs sent by subject persons and the FIAU's request to subject persons in 2010 and in the first five months of 2011 broken down by subject persons

	STRs		FIAU's request to subject persons	
	2010	**First five months of 2011**	**2010**	**First five months of 2011**
Credit Institutions (Commercial Banks)	38 (1 FT)	9	1272	293
Financial Institutions (Currency Exchange and money remitters)	4	3	131	11
Investment Services Licensees	2	2	22	-
Insurance Licensees	4	1	-	1
Lawyers	3	-	1	1
Notaries	-		-	-
Remote Gaming Companies	4	5	6	248
Casino Licensees	2	3	-	-
Trustees & Fiduciaries	4	2	1	110
Real Estate Agents	-	-	-	-
Accounting Professionals (Accountants, Auditors)	3	-	3	-
Regulated Markets	-	-	1	-
Company Service Providers	5	1	1	-
Supervisory Authorities	3	2	-	-
Others	1	-	-	-
Total	73	28	1438	664

632. The evaluation team considered the legal context in its analysis of these figures. By virtue the Article 30 (1) of PMLA when the FIAU receives an STR or when from information in its possession the FAIU suspects that any subject person may have been used for any transaction suspected to involve money laundering or funding of terrorism the FIAU may demand from any subject persons any additional information that it deems useful for the purpose of integrating and analysing the report or information in its possession.

633. There is a large difference in the volume of the STRs sent by the subject persons and the requests by the FIAU for additional information. While only 38 STRs were filed by credit institutions in 2010, 1272 requests for additional information were issued by the FIAU.

634. This disparity raises two issues: on one hand it appears to emphasise the proactive approach of the FIAU in following up STRs. On the other hand, while taking into account that one STR may generate numerous requests to several financial or other institutions (some of which will generate negative returns)., the evaluators consider that it is unlikely that these types of general enquiries would account for all the FIAU domestic requests for information.

635. The authorities indicated that the difference between the number of STRs received and the number of FIAU requests is partially accounted for by foreign FIU requests. They indicated that a part of the overall domestic requests sent by the FAIU are triggered by foreign FIU requests.

636. The remaining difference in the numbers of domestic request may also be the results of the FIAU proactively searching the databases and supplementing them with further information from reporting entities in the absence of STRs.

637. It was also noted that the statistics show a considerable decrease in the number of STRs sent by credit institutions in the first five months of 2011. It has to be added that only 2 STRs were filed by credit institutions in the first three months of 2011.[41]

638. Albeit that 7 additional STRs came from credit institutions in April and May 2011, the total number of STRs (9) generated by credit institutions is still low by comparison with previous years. Authorities stated that according to their experience, no steady level of reporting occurs within one examined year and the fact that 7 STRs were received in the last two months underlines the varying nature of reporting[42]. Nonetheless, it has to be emphasised that the FIAU sent 293 requests to credit institutions in the same period, which raises concerns in the minds of the evaluators about the possibility of underreporting.

639. While the Maltese authorities indicated that they had of course discussed and analysed the figures in 2011, no measures were taken at that time as the authorities believe that a period of a few months is not sufficient for corrective action.

640. Commenting on the low number of STRs, the authorities explained that a threshold-based reporting procedure had been considered several years ago, but after analysing the issue, a strong consensus was reached not to introduce a threshold-based reporting system alongside the STR regime. Doubtless the Maltese authorities will wish to keep the earlier decision under review in their ongoing monitoring of the numbers of STRs.

641. The Maltese authorities also indicated that the high number of requests submitted for additional information could also be the result of the small number of databases at their disposal.

642. The discrepancy between the figures of STRs received and the requests submitted to subject persons for additional information has to be taken into consideration in the course of evaluating the adequacy of the volume of STR statistics.

643. As regards the statistics of international cooperation, the statistics on requests sent by foreign FIUs could constitute a point of reference in assessing the effectiveness of the reporting system. According to the international standards the suspicion of ML or FT is the condition of carrying out information exchange with counterpart FIU. The evaluation team welcomed the proactive approach of the FIAU in international cooperation. However the requests received by the FIAU from foreign counterparts constitute at least a suspicion of ML or FT with relevant links to Malta. The figures show that more than 40 requests were sent by foreign FIUs towards the FIAU on a yearly basis between 2008 and 2010, which is about half of the total STRs sent by subject persons in a year. Moreover, the number of requests proportionally ran high in the first five months of 2011: 43 requests were registered in that period, which is the level of requests registered entirely in the previous years. It has to be emphasised that subject persons sent 28 STRs out of which 9 were sent by credit institutions during the same period. In other words, the Maltese subject persons recognised the suspicion of ML/FT in 28 cases, while foreign FIUs had information on suspicions of ML/FT with a possible link with Malta, in 43 cases. The Maltese authorities indicated that only two analyses were initiated by the FIAU due to suspicions raised on the basis of foreign FIUs requests.

[41] *Statistical data on number of STRs sent in the first three months of 2011 were provided in the MEQ.*
[42] *By the end of 2011 the total number of STRs was 107 out of which 26 were forwarded by credit institutions.*

Table 26: Statistical data on international requests received by the FIAU

Year	Request received by the FIAU
2005	37
2006	23
2007	29
2008	44
2009	46
2010	45
First five months of 2011	43

644. A national ML/FT threat assessment was not conducted in Malta, and the authorities were not in a position to quantify the approximate economic loss or damage from criminal offences of an economic nature. In the absence of figures it is difficult to have a point of reference in the debate on the number of STRs received by the Maltese FIU. From the table in the introduction it can be seen that the number of offences of an economic nature are not negligible, but in the absence of quantification of the damage, conclusions are difficult to draw.

645. Furthermore, examiners were informed by some of representatives of financial sector subject persons onsite that the FIAU gives feedback upon request, but the value of the information is not considered sufficient.

646. With regard to transaction postponement the statistics illustrate that the FIAU applied the procedure on postponing transactions with a relatively satisfying rate of efficiency since it postponed the transactions in 5 cases out of 7 requests for postponement order, and the court thereafter issued 4 attachment orders in the evaluated period. As regards the recent years, 2 requests were sent by subject persons in 2010-2011, but no postponement order was issued by the FIAU. It has to be emphasised that in order for the FIAU to issue a postponement order, a subject persons' request is required. the FIAU has no authority to issue postponement order on its own motion or on the basis of a foreign request. The examiners remained doubtful whether the 24 hours period is sufficient on one side for the FIAU to carry out a proper analysis in each cases and establish whether the reasonable suspicion exists, on the other side for the Police to provide sufficient evidences for an attachment order. Authorities noted that the close and productive cooperation between the Police and the FIAU contributed the result showed by statistics.

647. Nonetheless, the low number of postponement requests by subject persons questions the effective implementation in the context of the reporting regime. It is unclear, whether such low numbers of subject persons in applying the postponement request (which is a type of STR) is the result of insufficient training or deficiencies in supervision.

Special Recommendation IV

648. Malta was rated NC in the third round report due to the absence of mandatory obligation to report suspicion of FT.

649. By virtue of the 2006 amendments of the Maltese AML/CFT regime, the obligation to report knowledge or suspicion of transactions that could be related to the funding of terrorism was introduced.

650. Article 15(6) of PMLFTR stipulates the obligation for the reporting parties to inform within five working days the FIAU in all cases when a transaction may be related to money laundering or the funding of terrorism or a person may have been, is or may be connected with money laundering or the funding of terrorism as well as in those cases when money laundering or the funding of terrorism has been, is being or may be committed or attempted. In this context it is apparent that the legal framework is in place to comply with requirements of the recommendation.

651. Furthermore the aforementioned regulation does not contain any threshold or exemptions of any sort and therefore is in line with c.IV.1.

652. Moreover the definition of "suspicion" provided in PMLFTR comprises all cases where, regardless of any exemption or threshold, related to any transaction that the person carrying out the transaction knows or suspects that the applicant for business may have been, is, or may be engaged in money laundering or the funding of terrorisms, or that the transaction is carried out on behalf of another person who may have been, is, or may be engaged in money laundering or the funding of terrorism. The subject persons are obliged to report suspicious transactions regardless irrespective of the nature of the underlying criminal activity which is defined as any criminal offence.

653. The criminal offence of financing of terrorism set out in Criminal Code serves as the definition of FT which is applied for reporting obligation. As described under SR II, a difficulty arises from the language of Article 328A of the Criminal Code which limits the financing of terrorism acts covered by the annex to the TF Convention, because of the three specific intentions set out in Article 328 A (1) a), b) and c). Financing the specific offences covered in the annexes should not require any other intention under Article 2 (1) (a) of the TF Convention. Furthermore, it was unclear for the examiners whether the criminalization of FT covers financing of legitimate activities furthering terrorism and indirect financing of terrorism. These deficiencies identified under SR II might limit the reporting obligation.

Table 27: Statistical data on STRs on FT

	2005	2006	2007	2008	2009	2010	First five months of 2011	Total
STRs on FT	-	-	1 (Currency Exchange)	1 (Commercial Bank)	-	1 (Commercial Bank)	-	3

654. Since the introduction of the legal obligation to report FT suspicions, 3 STRs have been filed. Two of them were sent by credit institutions and one was sent by a currency exchange office.

655. During the on site interviews, the financial sector representatives advised the examiners that monitoring of transactions by using terrorist lists is regularly carried out and in case of a hit, an STR is immediately forwarded to the FIAU. Examiners perceived that, in pursuance of their obligation to identify and report FT suspicions, most of interlocutors of financial industry refer to legal notices implementing UNSCR 1267 and 1373 as one of the indicators of a suspicion.

656. The Implementing Procedures Part I cover both ML and FT. However this document was issued only one week before the onsite visit so the effectiveness is impossible to be determined particularly in relation to combating FT.

657. Prior to the issue of the Implementing Procedures Part I sector-specific Guidance Notes were in place. With the exception of IFSP Guidance Notes (issued in 2010) none of the rest of the Guidance Notes contained any reference to prevention of the financing of terrorism.

658. The evaluators noted at the on-site interviews that several interlocutors were not clear of the distinction between the obligations under SR IV and under SR III. Although no indicators for recognising unusual transactions related to TF have been formally issued, authorities stated that training has been provided to inform reporting entities of known red-flag indicators on FT. The evaluators were advised that subject persons reported unusual transactions that are only linked to persons or geographical areas which were related to international financial sanctions. The

examiners had the impression that not all the interlocutors had separate (distinct) systems in place to identify/report suspicions of FT other than the list provided under SRIII.

Effectiveness and efficiency

659. In the absence of a national risk/threat assessment and given the size of the financial market in Malta, the number of STR on FT submitted to the FIAU seems to be insufficient. Taking into account that two of the reports were generated by the credit institutions and one by a currency exchange office, questions arise regarding the effectiveness of reporting system from other categories of financial institutions.

2.5.2. Recommendations and comments

Recommendation 13 & Special Recommendation IV

660. Maltese authorities are invited to carry out a comprehensive assessment on general adequacy of level of reporting, the scope of reporting obligation and the practice followed by subject persons.

661. It is unclear whether the low level of reporting including in the credit institution sphere is negatively influencing the effectiveness of the whole AML/CFT reporting system. The evaluators consider that it is important for the authorities to continuously monitor the number of STRs in a timely fashion.

662. In this context the evaluators welcomed the decision to undertake a national risk assessment in 2012. In the evaluators' view this is essential and it should address the issue of the number of STRs received. The evaluators have not attempted to make comparisons with other jurisdictions as this is beyond their remit. But in the risk analysis comparisons might usefully be made with jurisdictions of a similar size and developed financial sector. Similarly a quantification of the economic loss from crime may be helpful in the further development of Maltese AML/CFT policies.

663. The low number of applications of requests for a postponement order by subject persons gives rise to concern. Maltese authorities should provide training and fine-tune the supervision in order to identify the possible reasons of under-using the request for postponement order.

664. Specific training and guidance should be provided to subject persons on terrorist financing suspicious transactions reporting, including red flags/indicators of suspicion and case studies.

2.5.3. Compliance with Recommendations 13 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds of criminal activity • Low number of STRs including from credit institutions gives rise to concerns on the reporting regime (effectiveness)

SR.IV	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • Low level of awareness and understanding on FT red flags and indicators among reporting entities; concerns related to the confusion among the reporting entities in relation to the implementation of SR III and the reporting obligations under SR IV • Low level of reporting (effectiveness issue)

2.6. **Shell banks (R.18)**

2.6.1. Description and analysis

Recommendation 18 (rated PC in the 3rd round report)

Not approve establishment or continuation of operations with shell banks (c.18.1)

665. As it was noted in the 3rd round evaluation report, the requirements set forth in the Banking Act Section 7(1) regarding granting of a banking licence, prevent establishment of a bank in Malta without a physical presence, a place of operation and management with an independent board of directors.

666. The approval of a banking licence is subject to the criteria established by the Act itself and Banking Directive No 01 on the licensing procedures.

667. The evaluators were assured that there are no shell banks operating in Malta.

668. The prohibition from entering into business relationships with shell banks is set out in Regulation 11(4) of the PMLFTR.

Not approve correspondent banking relationships with shell banks (c18.2)

669. Regulation 11(4)(a) of the PMLFTR prohibits credit institutions from entering into, or continuing correspondent banking relationships with a shell bank. This prohibition was introduced after recommendations provided in the 3rd evaluation report.

670. Though the requirement itself is now present in the legislative acts, there is no further guidance for financial institutions as to how apply this in practice.

Satisfy that correspondent financial institutions do not permit their accounts to be used by shell banks (c.18.3)

671. Regulation 11(4)(b) requires credit institutions to take appropriate measures to ensure that they do not enter into or continue a correspondent banking relationships with a bank which is known to permit its accounts to be used by a shell bank.

672. However, it seems that there is still lack of understanding among market participants in what way they can be able to verify that their correspondent banks are not servicing shell banks[43].

2.6.2. Recommendations and comments

673. Though Maltese authorities have taken into consideration the recommendations of the 3rd round evaluation report and have introduced prohibition to enter into or continue a banking relationships with shell banks as well as the obligation for financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks, the practical application of these requirements could be complemented by more guidance from the supervisory authorities.

2.6.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	• Effectiveness issue: Insufficient understanding among market participants in what way they can be able to verify that their correspondent banks are not servicing shell banks.

2.7. Special attention for higher risk countries (R.21)

2.7.1. Description and analysis

Recommendation 21 (rated PC in the 3rd round report)

674. In the 3rd round evaluation report it was recommended to introduce a requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations as there was no such specific requirement at that time. It was also recommended to consider supplementing this by issuance specific guidance for all financial institutions in relation to higher risk countries.

Special attention to business relationship and transactions and measures in place to ensure that financial institutions are advised on AML/CFT risks (c.21.1 and 21.1.1)

675. In relation to the requirement to pay special attention to countries which do not, or insufficiently apply the FATF Recommendations, Regulation 15(2) of the PMLFTR makes reference to the concept of "*reputable jurisdiction*" and requires subject persons to pay special attention to countries that does not meet criteria of "*reputable jurisdiction*". According to the said provision, subject persons shall pay special attention to business relationships and transactions with persons, companies and undertakings including those carrying out relevant financial business or a relevant activity from a jurisdiction that does not meet the criteria of a reputable jurisdiction.

[43] *Further guidance on measures to insure that correspondent business relationship are not established or in any way connected with shell banks is provided in the Implementing Procedures Part II, issued by the FIAU in November 2011.*

676. A "*reputable jurisdiction*" is defined under Regulation 2 as any country having appropriate legislative measures for the prevention of money laundering or terrorism financing taking into account that country's membership of or any declaration or accreditation by any international organisation recognised as laying down internationally accepted standards for the prevention of money laundering or terrorism financing and which supervises natural and legal persons subject to such legislative measures for compliance therewith.

677. The Implementing procedures is referring to a requirement for the entities to *pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction*. Further in this document authorities indicate that entities themselves establish whether a jurisdiction is to be considered a "*reputable jurisdiction*", as defined in Regulation 2 by referring to mutual evaluation reports or public statements on that country issued by the FATF, Moneyval or other FSRBs.

678. In situations when such jurisdictions continue not to apply measures equivalent to the PMLFTR, subject persons are required to inform the FIAU which may require the subject person not to continue such business relationship, not to undertake a transaction or to apply any other counter measures as may be adequate under the circumstances (Regulation 15(3)).

679. At the time of the on site visit, the assessment team was informed that country warnings issued by the FATF, MONEYVAL or other FSRBs, are circulated to all financial institutions and posted on the FIAU website. The underlying meaning for the obligors of such warnings would be that the listed countries are "*non-reputable jurisdictions*", as opposed to "*reputable jurisdictions*".

680. The evaluators perceived that the concept is understood slightly differently across the sectors and sometimes seems not to be applied correctly. Thus, it is obvious that industry representatives need more assistance on the application of the concept. So far the Implementing Procedures Part I provide that "the onus remains on subject persons to carry out their own assessment of particular countries based on up-to-date information on that country".

681. The Implementing Procedures Part I in Chapter 8.1. "The notion of reputable jurisdiction" provides more information on application of the concept. However, it is considered that subject persons themselves should establish that a country has "appropriate legislative measures" in place by referring to mutual evaluation reports or public statements on that country issued by the FATF, MONEYVAL or other FSRBs. European Union member states are considered as meeting the criteria of reputable jurisdiction automatically. FIAU has also provided a list of non-EU countries that are recognized as having equivalent AML/CFT systems to the EU. The list of equivalent countries provided in the Implementing Procedures Part I assists subject persons with the interpretation of the concept of "reputable jurisdiction". It should be noted that the list itself has not been updated since 2008[44].

Examination of the transactions with no apparent economic or lawful purpose (c.21.2)

682. Regulation 15(2) states that where transactions have no apparent economic or visible lawful purpose and any other transaction which are particularly likely by their nature to be related to ML/FT, subject persons have to establish their findings in writing and make such findings available to the FIAU and to the relevant supervisory authority.

683. The Implementing procedures state that if *transactions have no apparent economic or visible lawful purpose, the background and purpose of such transactions should, as far as possible, be examined, and written findings should be made available to the FIAU and to the relevant supervisory authority to the extent required by Section 3.1.5.1.* In this section there is a request for

[44] *The relevant Annex to the Implementing Procedures was updated in July 2011 as result of discussion within the CPMLTF.*

subject persons to also implement specific procedures for this purpose. The findings from the assessment of these transactions should serve as an additional element to be taken into consideration in assessing the customer's risk profile.

Counter-measures

684. The basic principle for applying counter-measures lies in the concept of *"reputable jurisdiction"* which is further developed by Regulation 15(3) where a jurisdiction that does not meet the requirements of a reputable jurisdiction continues not to apply measures equivalent to those laid down by the PMLFTR, subject persons have to inform the FIAU which may require such business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances. The evaluators are of opinion that it would be more effective if in cases when a country does not meet criteria of a reputable jurisdiction continuously it should be FIAU or other supervisory authority, which provides such information to the subject persons instead of receiving it from them.

685. As regards FATF and MONEYVAL public statements as well as other relevant UNSC or EU measures, they are brought to attention of the financial sector via the representatives sitting on the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism. The members of the Committee representing persons who qualify as DNFBPs are asked to circulate the documents to their members and bring their contents to their notice. Additionally, all FATF and MONEYVAL statements are prominently placed on the FIAU's website and circulated to all financial institutions individually via email.

2.7.2. Recommendations and comments

686. As regards application of the concept of "*non-reputable*" jurisdiction, in practice more assistance of the authorities would be desirable in terms of guidance (e.g., providing information on how the results of a country AML/CFT system evaluation disclosed in the mutual evaluation report of the FATF or FSRB is to be treated or any other jurisdiction-specific advisory) as there is a risk that subject persons might not be able to evaluate the risk level of a particular country on their own and thus not applying appropriate counter-measures.

2.7.3. Compliance with Recommendation 21

	Rating	Summary of factors underlying rating
R.21	**LC**	• Not enough practical assistance on application of the concept of non-reputable jurisdiction and hence the risk that appropriate counter-measures would not be applied.

2.8. **Foreign branches (R.22)**

2.8.1. Description and analysis

687. It is required by the Regulation 6(1) of the PMLFTR that financial institutions do not establish or acquire branches or majority-owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction (see paragraph 676).

688. Furthermore, 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 22 (rated NC in the 3rd round report)

Foreign branches and subsidiaries observe AML/CFT measures consistent with the home country requirements, particular attention for branches in countries that insufficiently apply FATF Recommendations and higher standard (c.221, c22.1.1 & c22.1.2)

689. Financial institutions should be required to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

690. In the 3rd round evaluation report it was noted that there was no explicit requirement for institutions in Malta to ensure that their overseas branches and subsidiaries follow AML/CFT procedures, though as a part of approval process for foreign branches and subsidiaries the MFSA could require overseas entities to follow MFSA requirements for AML/CFT.

691. Now Regulation 6(2) of the PMLFTR requires financial institutions with overseas branches or majority-owned subsidiaries to communicate to such entities their internal AML/CFT policies and procedures. They are also required to apply in such branches and subsidiaries AML/CFT measures that as a minimum are equivalent to the measures applicable in Malta under the PMLFTR. Evaluators were told that in fact branches or subsidiaries would be required to apply the higher standard, whether it is the Maltese or the one set in the foreign jurisdiction.

692. As stated in the general part, Regulation 6(1) prohibits financial institutions from establishing or acquiring branches or majority-owned subsidiaries in a jurisdiction that does not meet the criteria for a reputable jurisdiction (see paragraph 431). This is further supported by the fact that financial institutions require the authorisation of the MFSA in order to establish or acquire such entities.

693. Regulation 6(2)(b) requires institutions to apply in such branches and majority owned subsidiaries, where applicable, measures that, as a minimum, are equivalent to those under these regulations regarding customer due diligence and record keeping. The emphasis of the provision of this sub-regulation are the words *"as a minimum"* signifying that the overseas entity – be it a branch or a subsidiary – is at least subject to equivalent measures as its domestic parent entity.

694. At the time of the on-site visit there were no branches of Maltese banks outside Malta.

Inform home country supervisor (c22.2)

695. Regulation 6(2) further requires that in the event that the application of AML/CFT measures which are at least equivalent to those in force in Malta is not possible, the subject person having overseas branch or subsidiary in the respective jurisdiction shall immediately notify the FIAU and take additional measures to effectively handle the risk of ML/FT. Should the subject person be unable to take additional measures, the FIAU in collaboration with supervisory authority may order the closure of such branches and subsidiaries.

696. The Implementing Procedures provide examples of the type of additional measures that may be applied. These include the application of enhanced due diligence to all customers, transactions

or products related to such jurisdiction, the imposition of limits on particular transactions or any similar obligations.

697. As stated before in the report, the effective implementation of the provisions of the Implementing Procedures is difficult to assess due to recent adoption of the document, just before the on-site visit.

Additional elements

698. Financial institutions subject to the Core Principles are supervised on a consolidated basis by the regulator in terms of Banking Directive BD/10 Consolidated Supervision.

2.8.2. Recommendations and comments

699. Malta has implemented the Recommendation 22 in its legislative acts as recommended in the 3rd round evaluation report.

2.8.3. Compliance with Recommendation 22

	Rating	Summary of factors underlying rating
R.22	**C**	

Regulation, supervision, guidance, monitoring and sanctions

2.9. The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R. 23, 29 and 17)

2.9.1. Description and analysis

Authorities/SROs roles and duties & Structure and resources

Recommendation 23 (23.1, 23.2) (rated LC in the 3rd round report)

Regulation and Supervision of Financial Institutions (c. 23.1); Designation of Competent Authority (c. 23.2)

700. The licensing and supervision of the financial institutions is mainly regulated by means of the following legislative acts and subsidiary legislation issued thereunder: Banking Act (Cap 371), Malta Financial Services Authority Act (Cap. 330), Financial Institutions Act (Cap 376), Insurance Business Act (Cap. 403), Insurance Intermediaries Act (Cap. 487),, Investment Services Act (Cap. 370), Special Funds (Regulation) Act (Cap. 450), Financial Markets Act (Cap. 345) and the Trust and Trustees Act (Cap 331).

701. All financial institutions must be licensed and supervised by MFSA. According to Article 26 of PMLA, the AML/CFT supervision powers are entrusted to the FIAU. This includes the authority of the FIAU to conduct on-site inspections and carry out off-site compliance monitoring.

Moreover Article 27 of the PMLA empowers the FIAU to enter into arrangements with a supervisory authority to carry out inspections on behalf of the FIAU. The FIAU has had such an arrangement with the MFSA since 2003.

702. PMLFTR includes all financial institutions listed in the FATF Recommendations and by this token they are obligors and subject to AML/CFT Regulations and supervision in accordance with the provisions of Articles 26 and 27 of the PMLA. The FIAU jointly with MFSA (based on art.27 of the PMLA) is responsible for monitoring compliance with of the financial institutions with the provisions of the AML/CFT legislation. All types of financial institutions require a license from the MFSA to conduct their business in Malta and are subject to prudential supervision by the MFSA in addition to the AML/CFT compliance oversight by the FIAU.

703. MFSA inspectors perform periodic supervision of the licensed institutions based on their risk level exposure. The examination reports cover areas related to credit, treasury, internal audit, risk management, deposit accounts, prevention of money laundering, corporate governance etc.

704. With regards to inspections in AML/CFT risk area for Credit and Financial institutions, the on-site visits will take on average 2 inspectors over a 10 working day period to complete the review.

705. For Securities – Investment Services / Collective Investment Schemes, on average the duration of on-site compliance visits is between 3 to 5 working days. In the case of focused on-site visits the duration is 2 – 3 days. With regards to number of staff involved, on average 2 – 3 compliance officials are present for the visit.

706. For the insurance sector the average duration of on-site visits of MFSA in respect of on-site reviews is 2 to 10 days for an insurance undertaking, depending on the complexity of the inspection. A full review of an insurance intermediary will take between 1-3 half days while a focused review will take between 1-2 half days. With regards to the average number of staff involved in full reviews and focused reviews, in the case of a full review of an insurance undertaking the average number of staff involved is 4-5 and in the case of a focused review the number of staff is 2-4. The average number of staff involved in a full /focused review of an insurance intermediary is 2-3 persons.

707. The MFSA is obliged, according to the PMLFTR to disclose to the FIAU in no more than 5 working days where, either in the course of their supervisory work or in any other way, discover facts or obtain any information that could be related to money laundering or the funding of terrorism.

708. The FIAU's supervisory power is enabled through the performance by FIAU of on-site examinations as well as desk reviews by means of off-site supervision.

709. The FIAU has a newly established compliance department in charge of the supervisory activity of the unit, ranging from off-site supervision to on-site visits. In 2010, 14 on site visits were performed by the FIAU in cooperation with other supervisory authorities (MFSA and Lottery and Gaming Authority).

710. At the time of the on-site visit the FIAU didn't have a written methodology for supervisory activity (off site or on-site). The on-site examinations are based on the annual plan which is drafted by the FIAU and MFSA. On-site compliance visits may also be triggered both by the MFSA as well as the FIAU on the basis of information in its possession retrieved through its off-site monitoring function and through other functions exercised by the FIAU.

711. The off-site supervision comprised mainly the scrutiny of the compliance procedures sent by the obligors. Off-site and on-site monitoring are carried out in accordance with an understood procedure followed by the Compliance Section of the FIAU. Even though the procedure is not set out in a written manual, a brief outline of such procedure is provided in the Implementing Procedures under Section 2.4.1

712. For the off-site supervision the annual compliance report is used, which is a very important mechanism for the FIAU to assess compliance of subject persons. The information obtained from the annual compliance reports includes the number of internal reports, the reasons for non-submission of an STR following an internal report, the description of internal procedures, findings of internal audit, changes in MLRO etc… The obligation to file an annual compliance report was introduced in the implementing Procedures.

713. In addition to being subject to AML Regulations, financial institutions are also subject to *ad hoc* laws which provide fit and proper checks that are carried out during the licensing or authorisation process that is performed by the MFSA. AML/CFT legislation alongside the aforementioned ad-hoc laws does serve as a deterrent to criminals attempting to acquire stakes in financial institutions.

714. The PMLA caters for co-operation between the FIAU and other supervisory authorities, for the financial sector this being the MFSA, thus ensuring that financial institutions are not used for criminal purposes and therefore preserve the financial institutions integrity. In fact, Article 27 of the PMLA enables the FIAU to request any supervisory authority to do all or any of the following:

(a) to provide the FIAU with such information of which the supervisory authority may become aware of in the course of its supervisory functions and which indicates that a subject person falling under the competence of the supervisory authority may not be in compliance with any requirements under the PMLA or the PMLFTR;

(b) to carry out, on behalf of the FIAU, on-site examinations on subject persons falling under the competence of the supervisory authority with the aim of establishing that person's compliance with the provisions of the PMLA and the PMLFTR and to report to the FIAU accordingly.

Recommendation 30 (Resources supervisors) Adequacy of Resources (c. 30.1); Professional Standards and Integrity (c. 30.2); Adequate Training (c. 30.3)

715. FIAU has three compliance officers dealing with supervisory activity of the agency both on-site and off site, for all obligors (financial sector and non-financial). However, in view of the arrangements entered into by the FIAU with other supervisory authorities for on-site visits to be carried out on its behalf by officers of the supervisory authorities, compliance monitoring for AML/CFT purposes is being conducted by a sufficient number of officers working within the FIAU, the MFSA and the LGA.

716. The staff complement of the Banking Supervision Unit of Malta Financial Service Authority is made up of 21 persons. The Unit is headed by a director and is subdivided into three complementary Sections: On-Site, Off-Site and Regulation and Compliance. There are 3 deputy directors, each responsible for one of these Sections. The other members of staff are allocated as follows: 7 to the On-Site, 6 to the Off-Site, 3 to the Regulation and Compliance, and 1 reports directly to the Director.

717. The on-site review team may be augmented by additional persons from the other Sections depending on the nature of their specialisation and/or risks currently being overseen.

718. The Insurance and Pensions Supervision Unit within MFSA has 16 members of staff currently engaged including the director. All staff is involved in different aspects of supervision, including on-site and off-site work. While most of the staff can be involved to varying degrees in off-site supervision, 6 staff members are normally involved in on-site supervision. These are the 3 accountants and 3 technical persons.

719. The Securities and Markets supervision Unit within MFSA has 23 members of staff currently engaged with the Securities and Markets Supervision Unit. These include the director of the Unit,

two deputy directors responsible for overseeing work related to on-site supervision/listings and off-site supervision and market oversight, and one Legal Officer. There is 9 staff members involved in off-site work, 8 staff members involved in on-site work and 2 support staff.

Authorities' powers and sanctions

Recommendation 29 (rated LC in the 3rd round report)

Power for Supervisors to Monitor AML/CFT Requirement (c. 29.1); Authority to Conduct AML/CFT Inspections by Supervisors (c. 29.2); Power for Supervisors to Compel Production of Records (c. 29.3 & 29.3.1); Powers of Enforcement & Sanction (c. 29.4)

720. Pursuant to Article 26 of the PMLA, the FIAU is required to ensure compliance by the obligors with the provisions of the AML/CFT legislation (PMLA and PMLFTR). This is enabled through the performance by FIAU of on-site examinations as well as desk reviews by means of off-site supervision. In addition, FIAU can enter into arrangements with other supervisory authorities (such as the MFSA and the LGA) to carry out on site examinations regarding AML/CFT issues on its behalf.

721. According to the PMLA the FIAU may: (*a*) authorise any of its officers, employees or agents, on producing evidence of his authority, to require any subject person to provide him forthwith with such information or documents relating to that subject person's internal procedures for compliance and to answer any questions as the FIAU may reasonably require for the performance of its functions; (*b*) by notice in writing served on a subject person require that person to produce, within the time and at the place as may be specified in that notice, any documents as may be so specified in the notice provided such documents are reasonably required by the FIAU for the performance of its functions under PMLA.

722. FIAU pursuant to Article 26(2) is entitled to request from any obligor to provide information or documents relating to internal procedures for compliance with the AML/CFT legislation (PMLA and the PMLFTR) and to respond to its queries. Additionally, the FIAU may require subject persons to produce such documents that are required by the FIAU to fulfil its compliance function.

723. The monitoring process is carried out both off-site and on-site aiming to assure that the AML/CFT procedures of the subject persons are being complied with appropriately. The submission of an annual compliance report by the obligors is also an important part of assessing the overall compliance.

724. The Maltese legislation by means of article 27 of PMLA does also provide for the cooperation among FIAU and oversight authorities in order to assure that the financial institutions are not utilised for criminal purposes. Moreover the FIAU may also request the supervisory authority to perform on behalf of the FIAU, on-site examinations on obligors falling under the competence of the supervisory authority with the aim of establishing that person's compliance with the legislation (PMLA and the PMLFTR).

725. Malta Financial Supervisory Authority is empowered by Malta Financial Services Authority Act (CAP 330) to among other things to regulate, monitor and supervise financial services operating in Malta, promote the general interests and legitimate expectations of consumers of financial services, to monitor and keep under review trading and business practices relating to the supply of financial services, to monitor the working and enforcement of laws that directly or indirectly affect consumers of financial services in Malta, and to undertake or commission such study, research or investigation which it may deem necessary in this regard.

726. Should the MFSA find any AML/CFT breaches during their supervisory work, the matter shall be refer the findings to the FIAU in order to impose the respective sanction.

727. On-site examinations of the subject persons are carried out by the FIAU in order to determine whether the provisions of the PMLFTR are being implemented in practice by the obligors. The compliance officer of the entity is expected to provide explanations and supporting evidence of the internal procedures of the subject person and to produce a number of customer files for inspection, selected randomly by the officers carrying out the examination.

728. It is worth noting that PMLA empowers the FIAU to request a supervisory authority of particular subject persons, to carry out on-site examinations on behalf of the FIAU. MFSA fulfils such responsibility for the financial institutions and authorised trustees. Findings of the examination carried out by the MFSA are reported to the FIAU that in turn decides whether any action is warranted in order to address the potential breaches of the PMLFTR by the subject person. The MFSA as the financial sector supervisory authority has extensive powers to require any information and / or documentation from its licence holders.

729. The sanctions contemplated under the PMLFTR are stipulated by Regulation 4 (1), 5, 7(12), 15 (15), 16 (1) and 17 (2).

730. An annual compliance plan is drawn by MFSA at the inception of every year which contains the compliance visits that are to be carried out during that year. Such plan is sent to the FIAU in order for the latter to determine whether it will participate in any of them.

731. It should also be noted that shortcomings encountered by the FIAU during the normal course of its activity will be associated with additional requests for information from the obliged entity as well as a potential targeted examination.

Effectiveness and efficiency (R. 23 [c. 23.1, c. 23.2]; R. 29, and R. 30 (all supervisors))

732. MFSA is the primary prudential supervisor in Malta and in this framework is directly responsible for the performance of the financial sector and the application of the Law and regulations as well as other rules which may be laid down as a result thereof. In this regard the MFSA is charged with liquidity, solvency and operational risk supervision and within this remit it is also empowered to address AML/CFT regulation and supervision.

733. The MFSA monitors compliance of all financial institutions as part of its prudential supervision. These entities upon licensing are also subject of on-site inspections and off-site reviews.

734. For the purpose of AML/CFT compliance, financial institutions are monitored by the FIAU with the assistance of the MFSA, which is the sole financial regulator, in terms of Article 27 of the PMLA.

Recommendation 17 (rated LC in the 3rd round report)

Availability of Effective, Proportionate & Dissuasive Sanctions (c. 17.1); Range of Sanctions—Scope and Proportionality (c. 17.4)

735. Article 12(3) of the PMLA states that "*rules or regulations made under this article may impose punishments or other penalties in respect of any contravention or failure of compliance not exceeding a fine (multa) of forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (€46,587.47) or imprisonment for a term not exceeding two years or both such fine and imprisonment*".

736. The offences and penalties contemplated under the PMLFTR and applicable to all types of subject persons are the stipulated in Regulation 4 (1), 5, 7(12), 15 (15), 16 (1) and 17 (2).

737. According to the Regulation a subject person who fails to maintain appropriate procedures for CDD, record-keeping, reporting and training shall on conviction be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. Where such an offence referred is committed by a body or other association of persons, be it corporate or unincorporate, or by any 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 that body or association of persons, such body or other association of persons shall be liable to an administrative penalty of not less than €1,200 and not more than €5,000. Such penalty may either be imposed as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed €50,000.

738. Every person who at the time of the commission of the offence was a director, manager, secretary, any other similar officer, or a person purporting to act in any such capacity shall be guilty of that offence and liable to the punishment under Regulation 4(5), unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of that offence.

739. A subject person who fails to comply with the provisions of customer due diligence set out under Regulation 7 or the provisions of Regulation (EC) No. 1781/2006 shall be liable to an administrative penalty of not less than €250 and not more than €2,500.

740. A subject person who fails to comply with any of the provisions of Regulation 15, including the duty to report suspicious transactions, shall be liable to an administrative penalty of not less than €250 and not more than €2,500. Such penalty may either be imposed as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed €50,000.

741. Any person who discloses to a 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 FIAU shall on conviction be liable to a fine not exceeding €50,000 or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.

742. A subject person who fails to comply with the provisions of the Implementing Procedures shall be liable to an administrative penalty of not less than €250 and not more than €2,500. Such penalty may either be imposed as a one time penalty or on a daily cumulative basis until compliance, provided that in the latter case the accumulated penalty shall not exceed €50,000.

743. Other respective sector laws establish administrative and criminal sanctions for contraventions as well as non compliance, including withdrawing or suspending a financial institution's licence for not observing AML/CFT obligations.

744. The evaluators were advised that the level of sanctions imposed depends on a number of factors such as the severity of the contravention, the frequency and the degree of co-operation with the competent authorities as well as the undertaking of remedial action to address the shortcomings. Pecuniary sanctions were imposed twice only in 2010 (there were no financial sanctions in the other years under review): once for inadequate CDD documents (1.000 EURO imposed by the MFSA on a Trustee) and one for lack of beneficial ownership information on a company kept by a company service provider (250 EUROS imposed by the FIAU). This was followed up by the FIAU with an on-site visit to the CSP which demonstrated that this deficiency and other potential deficiencies had been rectified There were also written and verbal warnings. The sanction imposed by the MFSA was published on the MFSA web-site as are all other sanction imposed by the MFSA. The fine on the CSP was not published as there is no policy currently as to the publication of the sanctions imposed by the FIAU.

Table 28: Sanctions

	2007 for comparison	2008 for comparison	2009	2010	2011
Number of AML/CFT violations identified by the supervisor	**1**	**-**	**-**	**4**	**1**
Type of measure/sanction*					
Written warnings	1	-	-	1	1
Fines	-	-	-	2	-
Removal of manager/compliance officer	-	-	-	-	-
Withdrawal of license	-	-	-	-	-
Other**	-	-	-	1 (verbal warning)	-

745. The number of sanctions applied by FIAU for infringements of PMLFTR is quite low in proportion to the number of entities subject to this law the level of the fines hardly indicate that the penalties are dissuasive enough.

Designation of Authority to Impose Sanctions (c. 17.2)

746. The FIAU is empowered to impose a number of administrative penalties for breaches of the provisions of the PMLFTR, which may be imposed without recourse to a court hearing. Pursuant to Article 16 (1) (c) the FIAU is required to monitor compliance by subject persons and to cooperate and liaise with the supervisory authorities to ensure such compliance. The aforementioned sanctions are applicable to financial institutions as well as all categories of DNFBPs.

747. The MFSA as the financial services supervisory authority also has broad powers to issue orders, instructions its the entities that is licenses and can impose a range of administrative sanctions which include written warning, reprimand, imposition of fines (including daily fines), restriction of licence, suspension of licence and revocation of a licence of a financial institution if the financial institution fails to comply with the licence conditions.

Ability to Sanction Directors and Senior Management of Financial Institutions (c. 17.3)

748. Pursuant to Regulation 5 of the PMLFTR, every person who was a director, manager, secretary, any other similar officer, or a person purporting to act in any such capacity when the offence was committed at the time of the commission of the offence, referred to in Regulation 4(5), shall be guilty of that offence and liable to the punishment under Regulation 4(5), unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of that offence.

749. By the time of the on-site visit, this legal provision was never used in practice by the FIAU or by MFSA.

Market entry

Recommendation 23 (rated LC in the 3rd round report)

Recommendation 23 (c. 23.3, c. 23.3.1, c. 23.5, c. 23.7, licensing/registration elements only)

Prevention of Criminals from Controlling Institutions, Fit and Proper Criteria (c. 23.3 & 23.3.1)

750. Various measures are embedded into the local legislation related to financial institutions aiming at preventing criminals and their collaborators from holding or being the beneficial owners of a significant or controlling interest or holding a management function.

751. With respect to market entry it should be noted that all local legislation concerning the various financial institutions contains measures deemed to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function. The various financial businesses (both banking and non banking), besides being subject to the AML Regulations are also subject to *ad hoc* laws which provide for a licensing or authorisation process (by the MFSA), including checks and measures which only allow that the relevant financial businesses are operated by fit and proper *bona fide* persons.

752. Financial market entry is subjected to licensing procedure, but the Maltese membership in the EU allows the market to be entered by financial institutions licensed in other EU Member States. In this process the respective supervisor (the MFSA) is formally notified by the home supervisory authority of the fact that a financial institution shall provide services on the territory of Malta. Once a market participant enters the financial field, either licensed by the MFSA or under the provision of the respective laws of the EU Member State.

753. According to Maltese authorities, upon submission for approval by MFSA's of a new director or senior manager of a Licence Holder, the presentation of a '*Personal Questionnaire*' is a prerequisite. Such questionnaire contains extended details on the person's back-ground, work experience, and qualifications, business interests, clean track record and bankruptcy proceedings. Following the submission of the questionnaire the MFSA undertakes comprehensive due diligence enquiries with past employers, banks, professional bodies, other regulators, including the FIAU, and the police, in order to ensure that only persons of integrity and good reputation who satisfy the 'fit and proper' test are approved.

754. In order to determine the integrity of the natural persons applying for authorization of a financial institution, several criteria are utilized such as competence and solvency, as well as good reputation. They should also prove that they possess the required competence to provide a professional service, giving consideration to the applicant's relevant experience, training and qualifications.

755. The applicant's resources in terms of staff, know-how, systems etc must also be appropriate to the proposed business. Where the MFSA is of the opinion that a director or a controller is not a suitable person, the MFSA may make an order requiring such a person to cease to be a controller or director or to restrain such person from holding such position.

756. Additionally, provisions are in place to ensure that the consent of the MFSA is obtained where a significant change to the shareholding of a financial institution is to be carried out.

757. All licensed institutions are subject to on-going supervision by the MFSA inspectors. The major banks are split down and supervisory visits conducted according to the different risks to which these are exposed. The different areas which are covered during separate inspections include credit, treasury, internal audit, risk management, deposit accounts, prevention of money laundering, verification of statutory/regulatory reporting corporate governance and representative offices amongst others.

Licensing or Registration of Value Transfer/Exchange Services (c. 23.5)

758. All persons (natural or legal) providing a money or value transfer service or a money or currency exchange service must be licensed by the MFSA in terms of the Financial Institutions Act (Cap. 376 of the Laws of Malta). All institutions so licensed under this Act are subject to the PMLFTR 2008 and the FIAU, together with the MFSA, is responsible for ensuring that such entities are in compliance with their AML/CFT obligations.

Licensing of other Financial Institutions (c. 23.7)

759. According to Maltese authorities, all types of financial institutions require a license from the MFSA to conduct their business in Malta and are subject to prudential supervision by the MFSA in addition to the AML/CFT compliance oversight by the FIAU.

760. The following are the various legislative acts which provide for the licensing and supervision of such entities: Insurance Business Act (Cap. 403), Insurance Intermediaries Act (Cap. 487), Insurance Business (Companies Carrying on Business of Affiliated Insurance) Regulations (S.L. 403.11), the Companies Act (Cell Companies Carrying on Business of Insurance) Regulations (S.L. 386.10), Investment Services Act (Cap. 370), Special Funds (Regulation) Act (Cap. 450), and Financial Markets Act (Cap. 345).

On-going supervision and monitoring

Recommendation 23&32 (c. 23.4, c. 23.6, c. 23.7, supervision/oversight elements only & c. 32.2d)

Application of Prudential Regulations to AML/CFT (c. 23.4)

761. According to Maltese authorities, MFSA inspectors perform periodic on-going supervision of the licensed institutions based on their risk level exposure. The examination reports cover areas related to AML/CFT, credit, treasury, internal audit, risk management, deposit accounts, prevention of money laundering, corporate governance etc.

762. With regards to the other institutions whose business is more restricted and which do not take deposits from Maltese customers, top-down inspections are carried out, where all risks inherent in operations are analysed. Again, this is carried out mostly on a sample basis.

Statistics on On-Site Examinations (c. 32.2(d))

763. Statistics on number of on site visits performed by MFSA and FIAU were provide by Maltese authorities:

Table 29: Banking and financial institutions (other than securities and insurance)

BANKING AND FINANCIAL INSTITUTIONS (other than securities and insurance) ON-SITE EXAMINATIONS				
Year		**Full Review (including AML)**	**AML Review by the FIAU**	**Other Reviews[45]**
2006	Credit Institutions	5	-	8
	Financial Institutions *	3	-	-
2007	Credit Institutions	3	-	10
	Financial Institutions *	3	-	-
2008	Credit Institutions	4	-	5
	Financial Institutions *	2	-	-
2009	Credit Institutions	3	1	6
	Financial Institutions *	2	-	-
2010	Credit Institutions	4	1	6
	Financial Institutions *	-	-	-
As at 31st March 2011	Credit Institutions	-	-	5
	Financial Institutions *	1	-	-
* Excluding institutions falling under the supervision of the Securities and Insurance Units				

764. With regard to credit and financial institutions, the Maltese Authorities stated that the duration of on-site inspections differs according to the type of review being conducted. Onsite reviews constituting top-down analysis of licensed financial institutions and credit institutions deemed to be low risk will normally take 2 inspectors between 8 to 12 working days to finalise.

765. For medium risk credit institutions, it would usually take 10 to 15 working days for 2 inspectors to finalise their on-site work.

766. As regards credit institutions which might be deemed to be at higher risk, these are normally reviewed according to the different risks to which they are exposed. Credit risk is the most significant risk to the local retail banks and a credit risk review will involve the whole inspection team of 6 inspectors, who visit on-site according to availability (average 3-4 persons), over a time span of between 20 to 30 working days.

[45] *On-site prudential examinations without any link to AML/CFT issues*

Table 30: On-site examinations on the insurance sector

INSURANCE ON-SITE EXAMINATIONS			
Insurance Companies			
Year	**Full Review ***	**AML Review (included as part of the full review)**	**Specific Reviews**
2006	2	0	0
2007	5	1	0
2008	4	2	1
2009	2	2	2
2010	6	2	1
Insurance Intermediaries			
Year	**Full Review ***	**AML Review (included as part of the full review)**	**Specific Reviews**
2006	25	2	4
2007	12	2	3
2008	24	4	1
2009	27	10	1
2010	16	1	2
***** Includes reviews conducted on both life and non-life insurance companies.			

767. The average duration of on-site visits in respect of on-site reviews is between 5 -10 full days for full review of an insurance undertaking while a focused review will take between 2-5 full days. A full review of an insurance intermediary will take between 1-3 half days while a focused review will take between 1-2 half days.

768. For insurance intermediaries the most common shortcomings with regard to AML procedures are the lack of written manuals and lack of a risk based approach. However the issue regarding written manuals has improved considerably in 2011.

Table 31: On-site examinations on investment companies

INVESTMENT ON-SITE EXAMINATIONS			
Year		**Full Review (including AML)**	**Others[46]**
2006	Investment Services Companies	6	-
2007	Investment Intermediaries	32	-
2008	Investment Intermediaries and Regulated markets	20	-
	Collective Investment Schemes	8	-
2009	Investment Intermediaries	20	-
2010	Investment Intermediaries	6	2

769. On average the duration of on-site compliance visits is between 3 to 5 working days. In the case of focused on-site visits the duration is 2 – 3 days.

Monitoring and Supervision of Value Transfer/Exchange Services (c. 23.6)

770. According to the legislation, all persons (natural or legal) providing money or value transfer services or a money or currency exchange services must be licensed by the MFSA in terms of the Financial Institutions Act. All institutions so licensed under this Act are subject to the PMLFTR 2008 and the FIAU, together with the MFSA, is responsible for ensuring that such entities are in compliance with their AML/CFT obligations.

771. The evaluation team was informed that the number of the on site visit is indicated in the table 27 above, but no exact breakdown on by category of financial institution was provided were provided. Also, no sanctions were imposed to these categories.

Supervision of other Financial Institutions (c. 23.7)

772. According to Maltese authorities there are only 2 other financial institutions that carry out activities which are not subject to core-principles. These are licensed and supervised by MFSA. There was one on-site visit to these entities (they are included in the Table 28) in 2011.

Statistics on Formal Requests for Assistance (c. 32.2(d), all supervisors)

[46] *On-site prudential examinations without any link to AML/CFT issues*

773. MFSA didn't receive any requests for assistance from foreign counterparts in the evaluated period and it didn't formulate any requests for assistance.

Effectiveness and efficiency (market entry [c. 23.3, c. 23.3.1, c. 23.5, c. 23.7]; on-going supervision and monitoring [c. 23.4, c. 23.6, c. 23.7], c. 32.2d], sanctions [c. 17.1-17.3])

774. The FIAU carries out oversight and monitoring with regard to the compliance of reporting entities with the obligations of the AML/CFT legislation in Malta supported by the MFSA which based on Article 27 of the PMLA carries out AML/CFT compliance monitoring on behalf of the FIAU.

775. The aforementioned article provides that the Unit shall be responsible to ensure that subject persons comply with the provisions of this Act and any pursuant regulations to the extent these are applicable to them.

776. The provisions of MFSA Act (article 10(1)) empower the supervisory authority to prevent persons that an ineligible person may possess, take hold of or participate in the administration or the operation of an entity. In the licensing process comprehensive information is gathered regarding the applicant's back ground, professional experience, integrity and convictions if any.

777. The evaluators were adequately informed during on site visit of the magnitude of due diligence enquiries that MFSA undertakes including former employers, professional associations, regulators, FIAU, and the police, aiming at assuring that persons of good repute that satisfy the 'fit and proper' test are approved. It should also be emphasized that these criteria are continuous requirements on the applicant that is responsible to apprise the supervisor (MFSA) in those cases that are directly related to the integrity of the key management personnel.

778. The statistics on the on-site visits performed by MFSA from 2006 to 2010 show an average of less than 4 on-site AML/CFT examinations per year for 26 credit institutions and an average of 2 on-site visits for all other financial institutions except the insurance undertakings (securities intermediaries, MTS etc…). Similarly, less than 2 on-site AML/CFT examinations pr year were performed for the insurance undertakings between 2006 and 2010. Thus, it appears to the evaluators that the number of on-site inspections is not commensurate with the size of the financial market, especially in respect of other financial institutions, taking into consideration that (according to the figures provided by the Maltese authorities) there are 111 various securities intermediaries and 41 to 50 insurance undertakings operating in Malta in the period under evaluation.

779. According to the explanations provided on-site, when deciding upon the on-site visits, the Maltese authorities target the higher risk situations which compensate the low number of inspections. However, the evaluators are of the view that the absence of a national risk assessment to identify the most risky areas for ML/FT, together with a low level of identified compliance infringements, gives rise to concerns with regard to the effective implementation of the AML/CFT supervisory activity.

2.9.2. Recommendations and comments

Recommendation 23

780. The financial institutions are being examined with regard to the level of compliance with the AML/CFT Legislation in Malta.

781. The competence for supervision of financial institutions compliance with AML/CFT requirements in Malta lies with MFSA and FIAU. Their supervisory mandate appears thorough and encompasses powers for general regulation and supervision, with instrumentalities such as off-site surveillance and on-site inspections, unhindered access to all records, documents.

782. Based on the number of onsite examinations provided in Table 28, it should be noted that the MFSA is performing them in a consistent manner while the ones conducted by FIAU are in years 2009 and 2010, a period that coincides with the enhancement of the oversight capabilities of the agency.

783. Insurance companies are also subject of onsite examinations and the relevant data provided in Table 29 shows that the number of on-site examinations where a full AML/CFT review has usually increased over the years with the exception of 2010 were only 3 such reviews were performed compared to a total of 22 examinations that included both insurance companies and insurance intermediaries.

784. The supervisory authorities interviewed during the assessment visit were not cognizant of problems concerning the oversight quality or their powers to monitor and control activities of the entities that are subject to AML/CFT regulations.

785. The number of the entities being supervised and the quality of such supervision appears to be commensurate with the resources that the Maltese authorities have devoted to the supervision activities.

786. The mechanism of coordinating supervision of Financial Entities should be enhanced in order to maximize the use of resources of the FIAU and MFSA.

787. Based on the number of on-site examinations performed, in the evaluators opinion, the on-site AML/CFT supervisory activity is not commensurate with the volume of the financial market and the balance should gravitate more towards full scope AML/CFT examinations by the FIAU by also continuing to make full use of the heretofore support provided by MFSA.

Recommendation 17

788. During the discussions with the competent authorities, the evaluators were informed that some of the most prevalent violations encountered during the inspections were related to lack of written procedures, formal customer acceptance policy, uneven ongoing monitoring of the business relationship, failure to undertake a thorough review of CDD documentation especially for customers prior to the adoption of PMLTR and inadequate maintenance of statistics regarding the training of the staff.

789. The offences and penalties contemplated under the PMLFTR and applicable to all types of subject persons are the stipulated in Regulation 4 (1), 5, 7(12), 15 (15), 16 (1) and 17 (2). The administrative and criminal sanctions available under the PMLFTR amount to €50,000 or to imprisonment for a term not exceeding two years, or to both and are completed by other respective sector laws establishing administrative and criminal sanctions for contraventions as well as non compliance, including withdrawing or suspending a financial institution's licence for not observing AML/CFT obligations. The legal provision seems to be dissuasive and proportionate and refer also to natural persons such as managers of the subject persons.

790. There is a range of sanctions in the Law which are potentially effective, proportionate, and dissuasive, (criminal, and administrative sanctions). However, the evaluators consider that they haven't been sufficiently used and that those financial penalties that have been imposed were not necessarily dissuasive. No sanctions have been imposed on the financial institutions.

791. The evaluators noted that the penalty in respect of the natural person who was a CSP imposed by the FIAU was not published. The evaluators recommend that the FIAU should be given the power to publish sanctions which it imposes, as is currently being done by the MFSA. This is of particular importance as now the FIAU is responsible for all AML/CFT administrative sanctions and in the past AML/CFT sanctions imposed by the MFSA would have been subject to a publication policy.

792. Even though the authorities have available sanctions in relation to directors and senior managers of the financial institutions, there were no such sanctions imposed in practice.

793. The imposing of sanctions for breaches of PMLFTR should also undergo further analysis in order to empower the FIAU as the main supervisory institution to introduce such sanctions.

Recommendation 29

794. The responsibility of supervising the financial institutions for AML/CFT purposes falls on the FIAU. The unit is empowered to oversee compliance with the PMLFTR obligations and Pursuant to Article 16(c) of PMLA, the FIAU is empowered to monitor compliance by subject persons and to cooperate and coordinate with supervisory authorities to ensure such compliance. The details of monitoring process are set out in Articles 26 and 27 of the PMLA. Article 26(1) of the PMLA states that the FIAU shall be responsible to ensure that subject persons comply with the provisions of the PMLA and the PMLFTR. Desk-reviews of information obtained by the obligors are an important part of the off-site monitoring.

795. FIAU pursuant to Article 26(2) is entitled to request from any obligor to provide information or documents relating to internal procedures for compliance with the AML/CFT legislation (PMLA and the PMLFTR) and to respond to its queries. Additionally, the FIAU may require subject persons to produce such documents that are required by the FIAU to fulfil its compliance function.

796. The monitoring process is carried out both off-site and on-site aiming to assure that the AML/CFT procedures of the subject persons are being complied with appropriately. The submission of an annual compliance report by the obligors is also an important part of assessing the overall compliance.

797. The Maltese legislation by means of article 27 of PMLA does also provide for the cooperation among FIAU and oversight authorities in order to assure that the financial institutions are not utilised for criminal purposes. Moreover the FIAU may also request the supervisory authority to perform on behalf of the FIAU, on-site examinations on obligors falling under the competence of the supervisory authority with the aim of establishing that person's compliance with the legislation (PMLA and the PMLFTR). Malta Financial Supervisory Authority is empowered by Malta Financial Services Authority Act (CAP 330) to among other things to regulate, monitor and supervise financial services operating in Malta, promote the general interests and legitimate expectations of consumers of financial services, to monitor and keep under review trading and business practices relating to the supply of financial services, to monitor the working and enforcement of laws that directly or indirectly affect consumers of financial services in Malta, and to undertake or commission such study, research or investigation which it may deem necessary in this regard.

798. In performing its supervisory tasks, MFSA may impose administrative sanctions on all persons subject to its supervision, as well as their legal representatives and managers.

Recommendation 30

799. The FIAU staffing dedicated to the supervisory activity both on-site and off site, for all obligors (financial sector and non-financial) is clearly not enough for effective AML/CFT supervision in Malta.

800. The staff complement of the Malta Financial Service Authority (Banking Supervision Unit, Insurance and Pensions Supervision Unit and Securities and Markets supervision Unit) appears to be adequate in size and functions in AML/CFT area.

Recommendation 32

801. During the on-site visit the evaluation team was provided with statistics concerning the off-site supervision and on-site inspections performed by MFSA and FIAU. The statistics for financial institutions are not broken-up on category of such intermediaries (securities intermediaries, MTS…). No statistics on international cooperation and requests for assistance from foreign supervisory authorities were made available by the authorities due to the lack of requests.

2.9.3. Compliance with Recommendations 23, 29 & 17

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.17	**PC**	• Low number of sanctions imposed in practice on subject persons • No pecuniary sanctions imposed on financial institutions • The sanctions have not been imposed in an effective and dissuasive manner • No sanctions imposed on FIs senior management
R.23	**LC**	• Low number of on-site inspections performed by the supervisors in relation to AML/CFT in the financial sector • No infringements identified at financial institutions as result of the on-site inspections
R.29	**C**	

2.10. Guidelines and feedback (R.25)

2.10.1. Description and analysis

Recommendation 25 (rated PC in the 3rd round report)

802. In the 3rd round MER, the absence of sector specific guidance for financial institutions on CFT issues was noted. The examiners strongly recommended to the competent authorities to establish Guidelines that will assist financial institutions to implement and comply with their respective

CFT requirements. At that time some industry sectors received more detailed guidance than others. This deficiency was to a large extent addressed by Maltese Authorities in May 2011.

Guidelines for financial institutions to implement AML/CFT requirements (c25.1)

803. At the time of the on-site visit, the FIAU had recently adopted "The Procedures Implementing the Provisions of the Prevention of Money Laundering and Funding of Terrorism Regulations" that replace the former instructions issued by the prudential supervisory authorities or SROs, providing guidance to both financial and non-financial sectors.

804. These Procedures are issued by virtue of Reg. 17 of the PMLFTR and are meant to assist subject persons in implementing, understanding, interpreting and fulfilling their obligations under the PMLFTR.

805. PMLFTR states that procedures are mandatory and binding on all subject persons and 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.

806. Part I of the Implementing Procedures Part I contains the most important AML/CFT principles and is of general application and applies to all subject persons. As stated by the Maltese authorities, Part II of the Implementing procedures shall be prepared by all the bodies representing subject persons and after having been reviewed and endorsed by the FIAU but in the time frame of the present evaluation, the sector specific guidelines were not available.

807. The Implementing Procedures consist of a number of chapters which correspond to the main obligations set out in the PMLFTR. These include, *inter alia*, a chapter on customer due diligence, record-keeping, reporting and awareness and training as well as mandatory risk procedures and the risk based approach.

808. The Implementing Procedures Part I cover now both money laundering and financing of terrorism, The Implementing Procedures Part II will contain sector specific guidance but they were under preparation at the time of the onsite visit. Also, the Implementing Procedures Part I was issued only one week before the on site visit so the effectiveness is impossible to be determined particularly in relation to CFT.

809. Prior to the issue of the Implementing Procedures Part I sector-specific Guidance Notes issued by MFSA, Malta Institute of Accountants (MIA) and the Institute of Financial Services Practitioners (IFSP) appeared to be used. The MFSA guidance notes applied to banking sector and to investment services and life assurance business (separate guidance), MIA guidance notes applied to accountants and auditors, while the IFSP guidance notes applied to practitioners such as lawyers, accountants, trustees and fiduciaries operating within the area of financial services to implement the provisions of the PMLFTR. With the exception of IFSP guidance (issued in 2010) none of the rest of the documents contained any reference to prevention of the financing of terrorism.

810. During onsite visit the evaluators were acquainted with the close cooperation of the FIAU and MFSA with professional associations and organisations of the obliged entities. In the framework of this cooperation, the associations organise meetings for their members whereby they are informed about relevant new legal regulations but also upcoming changes on both national and international levels.

811. Particular attention is given to the financial sector given the fact that it constitutes a sizeable part of the Maltese economy. The role of the organizations was of paramount importance also during the drafting of the implementing procedures and it serves as basis for the effective implementation in practice.

812. Though Maltese authorities have taken into consideration the recommendations of the 3rd round evaluation report and have introduced legal provisions in relation to the shell banks, the practical application of these requirements could be complemented by more guidance from the supervisory authorities.

Particularly FIU should provide adequate and appropriate feedback (c25.2)

813. The FIAU provides general feedback to obliged entities in the annual reports that are published by virtue of article 16 (2) of the PMLA which contain statistics on number of STRs received with appropriate breakdowns in terms of category of reporting entities and the outcome of the financial analysis in terms of disclosures, suspected predicate offences, etc… Also the report contains ML methods and trends and sanitises examples.

814. Specific feedback in not provided to the reporting entities spontaneously. Upon request, FIAU is required by the Law and in practice does provides case by case feedback But not all interviewees confirmed its effectiveness. The assessors were left under the impression that some reporting entities received more feed-back than others. There is no formal and transparent methodology on procedures for this feedback.

815. The specific guidelines do not contain general feed-back on general practical issues related to ML/TF such as methods and trends, examples, typologies. Typologies are presented in the FIAU annual report.

816. Authorities mentioned that three types of specific feedback might occur. Firstly information by indicating that the analysis is ongoing, secondly information by indicating that the analytical report produced by the FIAU was not submitted to the Police and the case was closed, thirdly by indicating that the analytical report was submitted to the Police.

2.10.2. Recommendations and comments

817. The situation on feedback slightly improved since the last MER. General Guidance on ML/FT is available but the effectiveness of certain new provisions (especially the ones relating to FT) cannot be assessed due to the recent adoption of the Implementing Procedures.

818. The Maltese authorities should draft and approve dedicated guidelines which should include description of sector specific ML/FT techniques and methods and any additional measures that financial institutions and DNFBP should take to ensure that their AML/CFT measures are effective.

819. FIAU should make efforts to ensure that subject persons are aware of the necessity to make a request for feed-back if this is required by the subject persons.

Compliance with Recommendation 25

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.25	**PC**	• No sector specific guidelines • Difficulties in assessing the effectiveness of new provisions in the Implementing Procedures Part I due to recent adoption at the time of the on-site visit. • The feedback mechanism is not working effectively in practice.

3. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

820. The 3rd round MER identified shortcomings in reporting attempted transactions (not explicitly covered) and lack of reporting obligations for suspicions on financing of terrorism. Also, the Trust Service Providers not being a nominee company or licensed nominee, were not expressly covered. As effectiveness issue, it was indicated that while the reporting duty was generally in place, there have been few reports from DNFBPs.

821. At the time of the 4th round report, the AML/CFT reporting obligations regarding financial institutions in Malta apply equally to DNFBPs and the attempted transactions are covered by legislation. No restrictions exist to the aforementioned obligation and therefore such reporting is obligatory for both ML and FT.

3.1. Suspicious transaction reporting (R. 16)
(Applying R.13 to 15 and 21)

3.1.1. Description and analysis

822. The third round report pointed out the very low number of STRs received by FIAU from DNFBPs as one of the factor underlying the PC rating. At the time of the 4th round on site visit, the situation improved. The number of STRs sent by most of DNFBPs increased over the years. The constant growth of STRs submitted by company service providers, remote gaming companies, trustees and fiduciaries as well as lawyers is evident. Authorities noted that this shift in the reporting behaviour is due to intensive the awareness raising efforts resulting in increased vigilance of these sectors.

823. The AML/CFT reporting obligations regarding financial institutions in Malta apply equally to DNFBPs. No restrictions exist to the aforementioned obligation and therefore such reporting is obligatory for both ML and FT.

824. The protection of the director, employees of the obligors is laid out in Regulation 15(12) of PMLTR which stipulates that "Any bona fide communication or disclosure made by a supervisory authority or by a subject person or by an employee or director of such a supervisory authority or

subject person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information and shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind".

825. Moreover Regulation 15(14) PMLFTR provides additional safeguards related to protection of the identity of the persons who report either internally or to the FIAU, suspicions of money laundering and funding of terrorism. This obligation extends as well to any investigating, prosecuting, judicial or administrative authority that is acquainted with such information.

Recommendation 16 (rated PC in the 3rd round report)

826. The STR reporting regime has already been described under section 3.5 above. The identified shortcomings related to the financial sector are also valid for DNFBP. Furthermore, it should be emphasized that the provisions set out in the PMLFTR are applicable to all DNFBP due to the fact that no distinctions are made in that respect.

827. The reporting obligation set out in Recommendation 13 applies both to subject persons carrying out relevant financial business. "Relevant activity" is defined in the PMLFTR as the activity of the following legal or natural persons when acting in the exercise of their professional activities:

auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c);

real estate agents;

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) buying and selling of real property or business entities; (ii) managing of client money, securities or other assets, unless the activity is undertaken under a licence issued under the provisions of the Investment Services Act (Cap. 370 of the Laws of Malta); (iii) opening or management of bank, savings or securities accounts; (iv) organisation of contributions necessary for the creation, operation or management of companies; (v) 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 (Cap. 330 of the Laws of Malta) 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 (Cap. 331 of the Laws of Malta);
(g) casino licensee;
(h) other 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; and
(i) any activity which is associated with an activity falling within paragraphs (a) to (h)."

828. In addition to accountants, the reporting requirement also applies to auditors and tax advisors (see definition of 'relevant activity' in the PMLFTR).

829. Regulation 2 defines *"trust and company service providers*" as 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 (Cap. 345 of the Laws of Malta) or subject to equivalent international standards.

Requirement to Make STR-s on ML/FT to FIU (c. 16.1; applying c. 13.1 & c.13.2 to DNFBP)

830. Regulation 15(6) of PMLTFR provides the reporting obligations for all subject persons (including DNFBP) that shall inform the FIU as soon as reasonably practicable, but not later than five working days from when the suspicion first arose. The disclosure shall be supported by the relevant identification and other documentation.

831. According to the statistics provided by the Maltese authorities a clear increase in the number of the STRs filed by DNFBP is noticeable since the last MER:

Table 32: STRs filed by DNFBP

STRs by DNFBP	2003	2004	2005	2006	2007	2008	2009	2010	2011*	Total
Ind. Legal professionals	1	-	-	-	1	1	3	3	-	**9**
Remote gaming companies	-	1	-	-	-	3	3	4	5	**16**
Casinos	-	-	-	-	-	-	1	2	2	**5**
Trustees & Fiduciaries	-	-	1	5	2	3	2	4	2	**19**
Real Estate Agent	-	-	-	1	-	-	2	-	-	**3**
Accounting Professionals	1	1	1	2	4	-	4	3	-	**16**
Lawyers/Accountants acting as CSPs	-	-	-	-	-	2	3	5	-	**10**
Total	**2**	**2**	**2**	**8**	**7**	**9**	**18**	**21**	**9**	**78**
* figures as at 25.03.2011										

832. The MLRO designated by internal procedures of the Lotteries and Gaming Authority, is required to submit STRs (separate from the ones filed by the casino itself) if in the course of the inspections finds reasonable suspicion of Money Laundering and/or Terrorist Financing activity. At the time of the on-site visit, eight STR had been filed by the Authority between 2005-2010.

833. During the on-site interviews, the evaluators noted an uneven level of awareness on reporting obligations and procedures among different segments of the DNFBP.

No Reporting Threshold for STR-s (c. 16.1; applying c. 13.3 to DNFBP)

834. The reporting obligation is suspicion based and applies irrespective of any threshold. This obligation is applicable for all subject persons, including DNFBPs.

Making of ML/FT STR-s Regardless of Possible Involvement of Tax Matters (c. 16.1; applying c. 13.4 to DNFBP)

835. There are no provisions in the AML/CFT legislation that could prohibit the STR reporting on grounds that tax matters are involved. Subject persons are required to report suspicious transactions irrespective of the nature of the underlying criminal activity which is defined as any criminal offence and irrespective of whether they involve tax matters or not.

Reporting through Self-Regulatory Organisations (c.16.2)

836. According to the PMLFTR all reports are directly filed to the FIAU.

Legal Protection and No Tipping-Off (c. 16.3; applying c. 14.1 to DNFBP) Prohibition against Tipping-Off (c. 16.3; applying c. 14.2 to DNFBP)

837. The protection of the director, employees of the obligors is laid out in Regulation 15(12) of PMLTR which stipulates that "*Any bona fide communication or disclosure made by a supervisory authority or by a subject person or by an employee or director of such a supervisory authority or subject person in accordance with these regulations shall not be treated as a breach of the duty of professional secrecy or any other restriction (whether imposed by statute or otherwise) upon the disclosure of information and shall not involve that supervisory authority or subject person or the directors or employees of such supervisory authority or subject person in any liability of any kind*".

838. Moreover, Regulation 15(14) PMLFTR provides additional safeguards related to protection of the identity of the persons who report either internally or to the FIAU, suspicions of money laundering and funding of terrorism. This obligation extends as well to any investigating, prosecuting, judicial or administrative authority that is acquainted with such information.

839. The prohibition not to disclose the fact that a Suspicious Transaction Report had been filed to the FIU is stipulated under the Regulation 16 (1): "*A subject person, a supervisory authority or any official or employee of a subject person or a supervisory authority who discloses to the person concerned or to a third party, other than as provided for in this regulation, 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 pursuant to these regulations shall be guilty of an offence and liable on conviction to a fine (multa) not exceeding fifty thousand euro (€50,000) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment.*"

Establish and Maintain Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.1, 15.1.1 & 15.1.2 to DNFBP)

840. The obligation to develop programs against money laundering and terrorist financing and on going employee training programmes is provided by Regulation 4 (1) of the PMLFTR. The article states that no subject person (including DNFBP) shall form a business relationship or carry out an occasional transaction with an applicant for business, unless it establishes policies and procedures on internal control, risk assessment, risk management, compliance management and communications that are adequate and appropriate to prevent the carrying out of operations that may be related to money laundering or the funding of terrorism.

841. The Implementing Procedures Part I (Section 6.1) provides that the MLRO of the subject person (including DNFBP) shall occupy a senior position within the institution where effective influence can be exercised on the AML/CFT policy. The MLRO must have the authority to act independently in carrying out his responsibilities and should have full and unlimited access to all records, data, documentation and information of the subject person for the purposes of fulfilling his responsibilities.

842. According to the quoted act, the MLRO is responsible for the oversight of all aspects of the subject person's AML/CFT activities and is the focal point for all activity relating to AML/CFT. The senior management of the subject person must ensure that the MLRO has sufficient resources available to him, including appropriate staff and technology, to be able to monitor the day to day operations of the subject person to ensure compliance with the subject person's AML/CFT policy.

843. In case of the casinos, during the on-site visit it appeared that the compliance officers have timely access to customer identification data and other relevant information. In case of other DNFBP, questions remain with regard to awareness of the powers and duties of the compliance officer in practice due to recent adoption of the Implementing Procedures Part I.

Independent Audit of Internal Controls to Prevent ML/FT (c. 16.3; applying c. 15.2 to DNFBP)

844. In the 3rd MER it was indicated that in Malta, a large part of the DNFBP sector is made up by sole practitioners or small firms where in practice it is not possible to fully fledged internal structures for compliance and audit.

845. At the time of the 4th round report the Implementing Procedures Part I (Section 4.2.2.4) provide for the obligation of the subject persons to carry out periodic internal audits or assessments to review the adequacy of the risk assessment, the internal controls and the compliance arrangements. Such audits or assessments should also review the effectiveness of liaison between the different departments of the organisation and the effectiveness of the balance between technology-based and people-based systems.

846. The same document (Section 8.4) states that where an internal audit department is not set up, subject persons are expected to take other measures, such for instance assigning this task internally to a person other than the MLRO or engaging the services of an external assessor, to control and monitor policies and procedures.

847. Since the Implementing Procedures were issued shortly before the on-site visit, the effectiveness of the provisions could not be assessed.

Ongoing Employee Training on AML/CFT Matters (c. 16.3; applying c. 15.3 to DNFBP)

848. According to the PMLFTR the subject persons shall take appropriate measures (from time to time) for the purpose of making employees aware of the internal CDD, record keeping and internal control measures and procedures and any other relevant AML/CFT legal provisions.

Reporting entities shall equally provide employees with training in the recognition and handling of transactions carried out by, or on behalf of, any person who may have been, is, or appears to be engaged in money laundering or the funding of terrorism.

849. The Lotteries and Gambling Authority organised in house training courses for the casinos, where legal provisions, definitions of AML/CFT relevant terms, reporting obligations and red flags and indicators were emphasised. At the time of the on-site visit it appeared that the casino industry had a sufficiently high level of awareness on AML/CFT issues.

850. In 2010 specific training has been delivered by the FIAU in cooperation with the Institute of Financial Services Practitioners and Chamber of Advocates to MLROs and prospective MLROs.

851. At the time of the on-site visit, the real estate industry seemed to be less aware of the reporting procedures and obligations and no STR had been filed to the FIAU in the last two years by this sector[47].

Employee Screening Procedures (c. 16.3; applying c. 15.4 to DNFBP)

852. According to section 4 of the PMLFTR subject persons shall insure that they have in place appropriate procedures for due diligence when hiring employees. The term "employees" is defined further on as "employees whose duties include the handling of either relevant financial business or relevant activity.

853. During the interviews on the on-site visit, assessors were advised by the representatives of the Lotteries and Gaming Authority that in case of casinos all employees must have a licence from authorities which is granted based on an application form and there were cases where the licence was denied. The on-going monitoring process is performed at the switch of functions of the employees of otherwise every six months.

Additional Element—Independence of Compliance Officer (c. 16.3; applying c. 15.5 to DNFBP)

854. The Implementing Procedures Part I (Section 6.1) provides that the person occupying MLRO position must have direct reporting line to the Board of Directors and should not be precluded from posing effective challenge where necessary.

Applying Recommendation 21

Special Attention to Persons from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.1 & 21.1.1 to DNFBP)

855. According to PMLFTR subject persons (including DNFBP) shall pay special attention to business relationships and transactions with persons, companies and undertakings, including those carrying out relevant financial business or a relevant activity, from a jurisdiction that does not meet the criteria of a reputable jurisdiction as defined in regulation as described in the section 3.7.1 above.

856. The same shortcoming identified in relation to the financial institutions apply also for the DNFBP.

[47] *Following the on-site inspection the Maltese authorities reported that AML/CFT training program was conducted for the MLROs of the real estate sector*

857. Most of the representatives of the DNFBPs met during on site evaluation were vaguely or insufficiently aware of the need to treat with special attention the transactions and business relations with countries that do not apply or insufficiently apply the FATF standards.

Examinations of Transactions with no Apparent Economic or Visible Lawful Purpose from Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.2 to DNFBP)

858. The PLMFTR makes no distinction between reporting entities and so, the analysis performed for the financial institutions above apply also for DNFBP.

Ability to Apply Counter Measures with Regard to Countries Not Sufficiently Applying FATF Recommendations (c. 16.3; applying c. 21.3 to DNFBP)

859. The basic principle for applying counter-measures lies in the concept of *"reputable jurisdiction"*. Where a jurisdiction that does not meet the requirements of a reputable jurisdiction and continues not to apply measures equivalent to those laid down by the PMLFTR, subject persons have to inform the FIAU which may require such business relationship not to continue or a transaction not to be undertaken or apply any other counter-measures as may be adequate under the respective circumstances.

860. As regards FATF and MONEYVAL public statements as well as other relevant UNSC or EU measures, the members of the Joint Committee representing persons who qualify as DNFBP are asked by the FIAU to circulate the documents to their members and bring their contents to their notice. Such statements are also uploaded on the website of the FIAU.

Additional Elements – Reporting Requirement Extended to Auditors (c. 16.5)

861. According to PMLFTR the reporting requirement also applies to auditors and tax advisors.

Effectiveness and efficiency

Applying Recommendation 13

862. A clear increase in the reporting volume of the DNFBP is noticeable since the last MER. It appears that the improvement is due mainly to the modification of the legal provisions on reporting obligations and to the efforts made in awareness raising by the FIAU and part of the supervisory authorities or/and SRO.

863. However, the uneven level of awareness on reporting obligations and procedures among different segments of the DNFBP could negatively impact on the overall reporting behaviour of the DNFBP.

Applying Recommendation 14

864. Evaluators could not detect any obstacles to the effective and efficient implementation of the requirements in place. No cases have come to the attention of the Maltese authorities where the fact that a STR has been reported has been disclosed or where anyone has been held liable for breach of any restriction on disclosure when reporting suspicions in good faith to the FIAU.

Applying Recommendation 15

865. While the Maltese legal provisions concerning the Recommendation 15 appear to be quite robust, in case of DNFBP (other than the casinos) questions remain with regard to the awareness concerning the powers and duties of the compliance officer in practice.

Applying Recommendation 21

866. The shortcomings identified in relation to the definition used for the specific requirement to pay special attention to countries which do not or insufficiently apply the FATF Recommendations might negatively influence on reporting conduct of the DNFBP as Regulation 15(2) of the PMLFTR makes reference to the concept of "*reputable jurisdiction*" and requires paying special attention to countries that does not meet criteria of "*reputable jurisdiction*".

3.1.2. Recommendations and comments

Applying Recommendation 13

867. Specifically address through awareness raising and training sessions the lack of awareness of certain categories of DNFBP related to detection of suspicious transactions/activities, as well as provide ongoing guidance regarding the transactions with countries that do not apply (or insufficiently apply) FATF standards.

868. Monitor on a continuous basis the impact of the recently adopted implementing procedures in order to take measures to remedy eventual shortcomings.

Applying Recommendation 14

869. The evaluators consider that the recommendation is fully observed.

Applying Recommendation 15

870. Ensure the effective implementation of the common approach adopted in the Implementing Procedures in furthering the heretofore off site inspection of the sector by paying special attention to the robustness of the internal control and auditing functions.

Applying Recommendation 21

871. For efficient and equivalent understanding and application of the concept of "*non-reputable*" jurisdiction in practice, more involvement of the authorities in terms of guidance would be desirable.

3.1.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds from criminal activity • Effectiveness issues a) Uneven level of awareness across different sectors regarding the obligation to file suspicious transaction reports. b) Uneven application of the internal auditing and inconsistent staff training by DNFBP; c) Not enough practical assistance on application of the concept of "*non-reputable jurisdiction"* and hence the risk that appropriate counter-measures would not be applied.

3.2. Regulation, supervision and monitoring (R. 24)

3.2.1. Description and analysis

Recommendation 24 (rated PC in the 3rd round report)

Designated Authority for Regulation and Supervision of Casinos (c. 24.1, c.24.1.1; applying R.17 to casinos) & Licensing of casinos (c. 24.1.2)

872. The Lotteries and Gaming Authority (LGA) was set up pursuant to the Lotteries and Other Games Act (Cap. 438 of the Laws of Malta) and the establishment of casinos is done in accordance with the Gaming Act which contains the necessary provisions for granting the licence. The process includes a comprehensive due diligence process in order to assure the integrity of the persons involved in this industry.

873. The (LGA) is responsible for licensing, regulating and supervising the activity of casinos in Malta (including the ones that operate in internet) and in accordance with the arrangement between the LGA and the FIAU in terms of Article 27 of the PMLA, it acts as the agent of the FIAU regarding these entities in order to assure that they comply with their AML/CFT obligations.

874. Furthermore casinos are also subject to Regulation 9 of PMLFTR which stipulates clear obligation to be met by the entities during the course of their activity. The FIAU has all the necessary powers under the PMLA to carry out its compliance monitoring functions including the powers to impose sanctions.

875. The compliance department within the FIAU carries out both on and off-site monitoring of the entities and in the case of casinos a specific questionnaire has been drafted in order to assist the compliance staff in assessing the compliance of the entities.

876. Pecuniary sanctions were imposed twice only in 2010 (there were no financial sanctions in the other years under review): once for inadequate CDD documents (1.000 EURO imposed by the MFSA on a Trustee) and one for lack of beneficial ownership information on a company kept by a company service provider (250 EUROS imposed by the FIAU). This was followed up by the FIAU with an on-site visit to the CSP which demonstrated that this deficiency and other potential deficiencies had been rectified There were also written and verbal warnings. The sanction imposed by the MFSA was published on the MFSA web-site as are all other sanction imposed by the MFSA. The fine on the CSP was not published as there is no policy currently as to the publication of the sanctions imposed by the FIAU.

Prevention of Criminals from Controlling Institutions (c. 24.1.3)

877. The obliged entities that do carry out activities prescribed in the in the law (PMLFTR) are subject to oversight and monitoring by the FIAU for compliance with their AML/CFT obligations. On the other hand the Lotteries and Gaming Authority (LGA) are responsible for the licensing and supervision of casinos (including the ones operating through internet) and duly act as the agent of the FIAU.

878. The licensing of new entities involves a thorough process that includes robust safeguards embedded in Part IV of the Gaming Act in order to ensure that anyone presenting an application for a licence is fit and proper for such an activity.

Monitoring and Enforcement Systems for Other DNFBP-s (c. 24.2 & 24.2.1)

879. The FIAU is the authority responsible for monitoring compliance of subject persons with the requirements set out under the PMLFTR, including all DNFBPs.

880. There are 147 Real estate agents registered in Malta and for purposes of AML/CFT they are subject to supervision by the FIAU.

881. More efforts should be directed to the real estate sector in order to increase the level of awareness concerning the reporting obligations as well as ongoing monitoring of business relationships.

882. The dealers in precious metals and stones acting in Malta are subject to supervision by the FIAU for purposes of AML/CFT. However, in practice, at the time of the on-site visit, no such supervision was undertaken.

Effectiveness and efficiency

883. LGA has been designated as the Maltese supervisory authority for the casinos and the evaluators were thoroughly informed by its representatives and are considered to be aware of their role with regard to supervision. The authority is endowed with professional and other resources that allow it to effectively carry out it legal obligations.

884. A robust licensing process is firmly embedded in the Gaming Act and it contains provisions regulating the due diligence process that persons applying for a license should undergo. This aims among others to assure the integrity of the person. Based on the discussions held with casino representatives it appears that they are aware of and applying the AML/CFT rules in practice.

885. With respect to DNFBP sector, a general sector's awareness was noted regarding standards in relation to politically exposed persons (PEPs). Despite the powers to sanction are included into the Maltese legislation given the fact that they are rarely used raises questions about the effectiveness of the system.

886. The evaluators considered that efforts that are being directed towards developing sector specific guidance for the obligors including the DNFBPs as a positive development that will further contribute to enhance the awareness of the sector.

3.2.2. Recommendations and comments

887. Without prejudice to the steps undertaken to increase the monitoring capabilities of the FIAU, the authorities should consider the involvement of SROs into the oversight process while at the same time formalise a risk approach in order to leverage the available resources.

888. The current practice of developing monitoring tools for the off –site supervision that have been developed by the FIAU in cooperation with LGA should be further enhance in order to allow it to collect information more thoroughly. This information should be used to better target the entities that will undergo on site examinations.

3.2.3. Compliance with Recommendations 24

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• Insufficient resources devoted to AML/CFT supervision of compliance and reporting of lawyers, notaries, dealers in precious metals and stones and real estate agents • The risk based approach concerning the oversight of all the DNFBP is not formalised

3.3. Guidelines and feedback (R. 25)

3.3.1. Description and analysis

Recommendation 25 (rated PC in the 3rd round report)

Guidelines for DNFBP to implement AML/CFT requirements (c25.1)

889. The Procedures Implementing the Provisions have been designed in pursuance of PMLFTR (art. 17) and were approved on May 20, 2011. They set out in a detailed manner the requirements for all the obligors and equally apply to FIs as well as DNFBPs.

890. Regulation 17 of the PMLFTR stipulates that:

> *"The Financial Intelligence Analysis Unit, with the concurrence of the relevant supervisory authority, may issue procedures and guidance as may be required for the carrying into effect of the provisions of these regulations, and which shall be binding on persons carrying out relevant financial business or relevant activity.*

A subject person who fails to comply with the provisions of any procedures and guidance established in accordance with sub-regulation (1) shall be liable to the administrative penalties as provided for under regulation 15(15) and (16). Cap. 373.

In fulfilling its compliance supervisory responsibilities under the Prevention of Money Laundering Act, the Financial Intelligence Analysis Unit may monitor persons carrying out a 'relevant activity', with the exception of those under paragraph (g) and paragraph (i), on a risk-sensitive basis".

891. Regulation 4(6) of the PMLFTR clearly states *"In determining whether a subject person has complied with any of the requirements of sub-regulation (1), a court shall consider:(a) any relevant guidance or procedures issued, approved or adopted by the Financial Intelligence Analysis Unit with the concurrence of the relevant supervisory authority, and which applies to that subject person; and (b) in a case where no guidance or procedures falling within the provisions of paragraph (a) apply, any other relevant guidance issued by a body which regulates, or is representative of, any trade, profession, business or employment carried on by that subject person".*

892. The Implementing Procedures replace the heretofore guidance notes and assist the obligors in implementing, carrying out and complying with the obligations of PMLFTR. At the time of on site assessment the evaluators were informed that upon approval of Part I of the aforesaid procedures, which constitutes the core part, a second stage would follow aimed at developing Part II containing some specific procedural issues tailored according to the operational features of each and every one of the categories of obligors including DNFBPs. Such document will be reviewed and afterwards endorsed by the FIAU but in the time frame of the present evaluation, the sector specific guidelines were not available.

893. The Implementing Procedures consist of a number of chapters which correspond to the main obligations set out in the PMLFTR. These include, *inter alia*, a chapter on customer due diligence, record-keeping, reporting and awareness and training as well as risk based approach.

894. Annual reports are published periodically by the FIAU and in assessors opinion contribute towards enhancing the awareness of the obligors in order to better comply with their relevant AML/CFT requirements. The Implementing Procedures consist of a number of chapters which correspond to the main obligations set out in the PMLFTR and provide specific guidance on CDD measures, beneficial owners, ongoing monitoring of the business relationship, simplified due diligence as well as enhanced due diligence. However, the two sector specific guidelines do not contain practical issues related to ML/TF such as methods and trends, examples, typologies.

895. The assessors were also informed about the continuous communication that takes place among the FIAU and the obligors. This interaction does provide a platform to address general as well as specific questions that obligors might have. The website also contains guidance as well as useful links to relevant international and organizations such as FATF, MONEYVAL, the Egmont Group, OECD, IMF etc.

896. Additionally, Malta Institute of Accountants (MIA) and the Institute of Financial Services Practitioners (IFSP) have issued guidance notes to assist their members. Before entering into force of the Implementing Procedures Part I, those applied to accountants and auditors as well as practitioners such as lawyers, accountants, trustees and fiduciaries that operate within the area of financial services to implement the provisions of the PMLFTR. These notes have been endorsed by the FIAU.

Particularly FIU should provide adequate and appropriate feedback (c25.2)

897. The FIAU provides general feedback to obliged entities in the annual reports that are published by virtue of article 16 (2) of the PMLA which contain statistics on number of STRs received with appropriate breakdowns in terms of category of reporting entities and the outcome

of the financial analysis in terms of disclosures, suspected predicate offences etc… Also the report contains ML methods and trends and sanitises examples.

898. Upon reviewing the 2010 FIAU report, overall trend analysis of the STR is provided as well as some typologies, but no sanitised cases and as a result, the implementation of C.25.2 cannot be deemed as complete.

899. Specific feed back in not provided to the reporting entities including DNFBPs spontaneously. Upon request, FIAU might send case by case feedback, but not all interviewees confirmed its effectiveness. The assessors were left under the impression that some reporting entities received more feed-back than others. There is no formal and transparent methodology on procedures for this feedback.

	Rating	**Summary of factors relevant to s.4.2 underlying overall rating**
R.25	**PC**	• No DNFBP specific guidelines • Difficulties in assessing the effectiveness of new provisions in the Implementing Procedures Part I due to recent adoption at the time of the on-site visit. • The feedback mechanism is not working effectively in practice.

4. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

4.1. Non-profit organisations (SR.VIII)

4.1.1. Description and analysis

Special Recommendation VIII (rated NC in the 3rd round report)

Legal framework

900. Since the last evaluation report, new legislation regulating the Voluntary Organisations (VO) has been adopted by Maltese authorities, namely the Voluntary Organisations Act (Cap. 492 of the Laws of Malta) and the Second Schedule of the Civil Code (Cap. 16 of the Laws of Malta) introduced in 2007.

901. The VO Act regulates the procedure for enrolment of VO and establishes the position of Commissioner of VO, including his duties and function (part III of the Act).

902. The responsibility and duties of the Commissioner are exhaustively listed in Article 7 of the act providing that he shall (among others):

- Provide the enrolment facilities for organisations which are eligible for enrolment;
- Monitoring the VO activities in order to ensure observance of the provisions of the act;
- Providing voluntary organisations with information about the benefits and responsibilities deriving from registration;
- Providing information and guidelines to persons performing voluntary work and to members of voluntary organisations;
- Make recommendations to the Minister on legislation and policies in support of voluntary organizations;
- Investigating any complaints relating to voluntary organisations or persons;

903. The Commissioner of VO is obliged to make and present to the Minister an annual report that shall contain the activities during the preceding year, a general description of the circumstances of the voluntary sector in Malta, any recommendations regarding relevant legislation and the accounts and financial records in respect of the operations of his office.

904. Additionally, the Commissioner should encourage an environment where the credibility and good reputation of the voluntary sector is continually enhanced through high standards of operation, public awareness and proper accountability. The Commissioner is also responsible for making and presenting to the Minister responsible for social policy an annual report which shall include information on the circumstances of the voluntary sector in Malta and any developments which may have affected such sector.

905. The new legislation regulates a Register of VO (part IV. Of the Act) and exhaustively lists information which shall be contained in the Register, as the name, address, registration number of the organization, the names and the addresses of the administrators, a copy of the constitutive deed including any amendments, annual reports and annual accounts of the organizations.

906. The registration of VO according to the Voluntary Organisations Act is not compulsory: *any voluntary organisation may apply for enrolment* (Art. 13 (1)). The only restriction in terms of non-registered VO is that they cannot benefit from donations from public sources (Maltese).

Review of adequacy of laws and regulations (c.VIII.1)

907. Despite of the adopting of the new legislation, no domestic review on the activities, size and relevant features of the non-profit sector for the purpose of identifying the features and types of the NPOs that are at risk of being misused for terrorist financing was conducted by the authorities.

908. Also, there should be more detailed rules for the registration procedure and a special form for all the types of organisations. Any natural or legal person based on Malta or abroad can be a founder of a voluntary organisation.

Outreach to the NPO Sector to protect it from Terrorist Financing Abuse (c.VIII.2)

909. The Commissioner of Voluntary Organisations shall perform the duties and exercise the functions imposed by the Act, including providing enrolment facilities for organisations which are eligible for enrolment in terms of the Act, monitoring the activities of voluntary organisations, providing information and guidelines to persons performing voluntary work and to members of voluntary organisations for the appropriate operating of the voluntary sector.

910. The Commissioner shall establish systems for communication with volunteers, is responsible for encouraging an environment where the credibility and good reputation of the voluntary sector is continually enhanced, is responsible for the transparency and public awareness.

911. Notwithstanding the above mentioned legal provisions, in practice no awareness raising program dedicated to the NPO sector about the risks of terrorist abuse and available measures to protect against it was conducted. By the time of the on-site visit no training on AML/CFT issues was provided for the NPOs.

912. The transparency is limited by the lack of an electronic version of the Registry. The evaluation team has been advised by the Commissioner, that a 20 euro fee is required for the consultation of the paper documents in the Commissioner office, for each organisation. An appointment with the Commissioner office is necessary in order to consult the files. This procedure makes the access to the Register difficult to the public.

Supervision or monitoring of NPO-s that account for significant share of the sector's resources or international activities (c.VIII.3)

913. According to the VO Act, the Commissioner is responsible for monitoring all the activities of voluntary organisations, for co-ordinating and communicating with the Registrar for Legal persons, co-operating with the Council of voluntary organisations. The commissioner is responsible for the maintaining the Register of voluntary organisations.

914. However, the evaluation team was advised that control and monitoring procedures are carried out unless a complaint is being forwarded to the Commissioner. No checks in the financial resources or beneficial owner are performed (even if it is a foreign company).

Information maintained by NPO-s and availability to the public thereof (c.VIII.3.1)

915. The Register of Voluntary Organisations, which shall be maintained by the Commissioner, shall contain the following information: (as stipulates in the Article 12 of the VO Act)

(*a*) the name of the organisation;

(*b*) the address of the organisation;

(*c*) the registration number of the organisation if registered as a legal person, whether in Malta or abroad;

(*d*) the names and addresses of the administrators of the organisation;

(*e*) in case of foreign or international organisations, the name and address of the representative resident in Malta of such organisation;

(*f*) a copy of the constitutive deed of the organisation and any amendments thereto;

(*g*) a copy of the annual accounts for the last financial year prior to enrolment, if any, prepared by the applicant;

(*h*) annual reports of the organisation;

(*i*) annual accounts of the organisation, together with a report of reviewers or auditors as may be required under applicable law.

916. The Commissioner shall classify the organisations according to the principal purpose for which the organisation was set up.

917. When applying for enrolment together with an applicant form voluntary organisations are required to submit:

(*a*) an original or authenticated copy (by notary) of the constitutive deed or statute of the organisation;

(*b*) the written consent of the administrators to hold office after enrolment;

(*c*) the enrolment fees, if any;

(*d*) information on the promoters, founders, administrators, donors and beneficiaries;

(*e*) information on the assets and liabilities;

(*f*) information on the past, if any, present and intended activities of the organisation;

(*g*) information on the purposes of the organisation and the intended activities through which they are to be achieved; and

(*h*) information on any other matter on which the Commissioner may have reservations or concerns in relation to the application.

918. Upon being satisfied that the organisation is eligible for enrolment, the Commissioner shall:

(*a*) enter the particulars of the voluntary organisation in the Register;

(*b*) issue a Certificate of Enrolment with the identification number of the voluntary organisation;

(*c*) specify whether the voluntary organisation is a foundation, an association, a trust or a temporary organisation; and

(*d*) specify the voluntary organisation's enrolment classification.

919. It should be noted that on payment of the applicable fee, any person may view and obtain copies of the Register and any documentation which has been submitted to the Commissioner by any voluntary organisation.

920. However, since there is no electronic version of the Register, in order to access the information one should pay a 20 EURO fee for each organisation checked, to make an appointment with the Commissioner office and see the paper documents at the Commissioner office.

921. The website (www.voluntaryorganisations.gov.mt) still does not provide all necessary information required by the VO Act.

922. Voluntary organisations shall make the statute, annual report and audited accounts available for inspection, free of charge, by any founder, administrator or member of the voluntary organisation as well as by any donor or beneficiary who satisfies the administrators of an interest in the information.

923. If a person is unjustifiably refused any information by a voluntary organisation such person may complain, in writing, to the Commissioner who shall decide on whether such person is entitled to the information or not in terms of this article and inform the complainant in writing of his determination, and reasons therefore, within a reasonable time.

924. The Commissioner shall present not later than 6 weeks after the end of each year an annual report, according the requirements stated in Article 10. The annual report as well as the information contained in the Register shall be available to the public.

Measures in place to sanction violations of oversight rules by NPO-s (c.VIII.3.2)

925. The Commissioner may apply to the Board of Appeal to order: ***the suspension*** of the activities of an enrolled voluntary organisation by the issue of a Suspension Order, for such period as shall be specified in such order; or ***the cancellation*** of the enrolment of a voluntary organisation by the issue of a Cancellation Order, which shall come into effect fifteen days from the date of notification of such order, to all or any one of the administrators, unless an appeal is filed prior to such period, in which case such order shall have effect from the date established by the Board of Appeal.

926. Such orders may be issued if: *the voluntary organisation (a) is not pursuing the purposes for which it was established and in so doing it is misleading the general public; (b) is carrying out unlawful activities, including making public collections without the necessary authorisation; (c) is failing to comply with the provisions of its statute or of this Act or any regulations made thereunder; (d) is misapplying funds, or is using funds or benefits received for purposes other than those for which such funds or benefits were granted; (e) appears to have continued operating after it has been formally dissolved; (f) has not functioned for a period which exceeds twenty four consecutive months; (g) obtained enrolment on the basis of materially incorrect or incomplete information that would have otherwise resulted in a refusal had the correct or complete information been known to the Commissioner.*

927. In case of a Cancellation Order based on the grounds specified in subarticles (*a*), (*b*) and (*d*), the Board of Appeal shall have the power to order the organisation to desist from carrying on any further activities.

928. A fine (multa) of two hundred and thirty-two euro and ninety-four cents (232.94) and a fine (*multa*) of eleven euro and sixty-five cents (11.65) for every day of default shall be imposed in the event of cancellation of enrolment of a voluntary organisation, where the administrators fail to surrender the certificate within the time stated in the demand.

929. The offences provided by the VO Act are stated under part VII, Art. 31-33 and refers to:

- any person acts in breach of any of the provisions of the Act or any regulations made there under, and a specific penalty is not provided for the offence under the Act or any regulations made there under, such person shall, on conviction, be liable to a fine (*multa*) of not less than one hundred

and sixteen euro and forty-seven cents (€116.47) but not more than two thousand and three hundred and twenty-nine euro and thirty-seven cents (€2,329.37) or to a term of imprisonment for a period not exceeding six months, or to both such fine and imprisonment;

- any person who forges or alters a Certificate of Enrolment of a voluntary organisation so as to give the impression that he acts on behalf of an enrolled voluntary organisation, or that an existing organisation is a voluntary organisation when it is not, shall be guilty of an offence and shall be liable to the same punishment as provided for in article 183 of the Criminal Code. (forgery);
- any person who knowingly acts or purports to act as an administrator of a voluntary organisation without having been duly appointed or elected as an administrator of such organisation, shall be guilty of an offence punishable as a contravention unless the actions of the said person constitute a more serious offence under any other law, in which case it shall be punishable accordingly.
- any person who makes or attempts to make a public collection when not enrolled as a voluntary organisation under this Act shall be guilty of an offence

930. According to those legal provisions, in case an NPO is carrying out unlawful activities the only penalty is suspension or cancellation of its activities, which seems not to be dissuasive enough. In addition, at the time of the on-site visit the assessment team was informed that no such sanctions were imposed in practice.

Licensing or Registration of NPO-s and availability of this information (c.VIII.3.3)

931. Voluntary organisations are enrolled in the Register of Voluntary organisations, established by the Voluntary Organisations Act. The registration is not compulsory.

Maintenance of records by NPO-s, and availability to appropriate authorities (c.VIII.3.4)

932. The commissioner is obliged to maintain a copy of the latest financial statements of voluntary organisations but no time frame is provided by the VO Act[48].

Measures to ensure effective investigation and gathering of information (c.VIII.4)

933. The Commissioner is empowered to carry out investigations in relation to the affairs of any voluntary organisation at any time and may demand any relevant information relating to the operation of the organisation or any person involved in the activities of the organisation.

934. The assessment team was informed that in case of fraud indicators, the Commissioner shall inform the Police, but no such cases were actually encountered.

Domestic co-operation, coordination and information sharing on NPO-s (c.VIII.4.1);
Access to information on administration and management of NPO-s during investigations (c.VIII.4.2);
Sharing of information, preventative actions and investigative expertise and capability, with respect to NPO-s suspected of being exploited for terrorist financing purposes (c.VIII.4.3)

935. In the course of an investigation either the Commissioner of Voluntary Organisations or the police may demand any relevant information relating to the operation of the organisation or any person involved in the activities of the organisations.

[48] Following the on-site visit, the Maltese authorities confirmed that the Voluntary Organisations (annual returns and annual accounts) Regulations had been approved and will be published by Legal Notice. Among other things this legal notice will impose a time frame within which financial statements are to be submitted.

936. The FIAU may demand information from the commissioner of voluntary organisations to ensure that the voluntary sector is not being misused for FT purposes. Such information may be demanded either in relation to specific suspicions of FT or in relation to the fulfilment of any other function of FIAU.

Responding to international requests regarding NPO-s – points of contacts and procedures (c.VIII.5)

937. There are is no special mechanism given to the Commissioner or any other body concerning responding to international request regarding VO, NPO, but the police and AG are supposed to use their mechanism for the VO, NPO sector as well.

Effectiveness and efficiency

938. Although there has been legal progress since the 3rd round report there is still a lack of awareness of the FT risks within the NPO sector. No specific risk assessment has been conducted to identify those types of NPOs which are most vulnerable to FT.

939. The supervision and the sanctions regimes' effectiveness are difficult to assess as they haven't been tested in practice.

940. The registrar office is understaffed: 3 people only.

941. There should be transparent rules for the enrolment procedure, a guideline for administrators. There is a need for clear rules for the administrator's responsibility.

942. The evaluation team was informed that the draft of a Code of good governance, practise and ethics for Administrators of VO has been prepared and is now available on the website.

943. The annual report 2010 is available on the website www.voluntaryorganisations.gov.mt

4.1.2. Recommendations and comments

944. Considerable progress has been achieved since the 3rd round report, in order to address FATF requirements described on SR VIII, the most important being the adoption of Voluntary Organisations Act. However, further work is needed to make the regime operational according to the standards.

945. The VO Act regulates the procedure for enrolment of VO, lists the information which shall be submitted to the Register and establishes the position of Commissioner of VO, his duties and functions.

946. However, the registration of VO according to the Voluntary Organisations Act is not compulsory. The only restriction in terms of non-registered VO is that they cannot benefit from donations from Maltese public sources.

947. More actions are needed for properly tackling all of the SR.VIII requirements in terms of reviewing the domestic NPOs' activities, size and relevant features for the purpose of identifying the risk area and preventing their misuse for terrorist financing. A specific risk assessment should be conducted by the Maltese authorities.

948. It is necessary to identify the number and types of NPO that control significant parts of the financial resources of the sector and the ones conducting international activities.

949. There have been no awareness-raising measures put in place by the Maltese authorities for the NPO sector related to the risk of terrorist abuse and the available measures to protect the sector

against such abuse. The assessment team strongly recommend the implementation of such a campaign.

950. The public access to the data contained in the Register is impeded by the lack of electronic form of the register and by the fee to be paid for every NPO accessed. This issue should be addressed.

951. The system of supervising or monitoring NPOs is described in the VO Act but it hasn't been tested in practice yet. The sanctions provided seem not to be dissuasive enough. A stronger sanction regime should be put in place.

952. No controls and checks are performed by the Commissioner on the source of funds of on beneficial owner. This issue should be addressed both by legal provision and in practice.

953. There is a considerable need for continuous training for the staff of the Commissioner office. The Commissioner and his office have no capacity to fulfil their duties required by the VO Act, they are not aware of a potential risk for misusing the VO for TF.

954. There is a considerable need for detailed rules for the cancelation of VO from the Register. A specific procedure in this respect would be very recommendable.

955. The Chapter of foundation should have a form of a notary deed or at least an authorised signature should be required.

956. The evaluators were provided with statistics on the number of VO enrolled with the Commissioner, including statistics on refusals for the enrolment.

4.1.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**PC**	• The registration of VO according to the Voluntary Organisations Act is not compulsory. The only restriction in terms of non-registered VO is that they cannot benefit from donations from public sources (Maltese). • No risk assessment was conducted for the sector. • No awareness raising programmes have been adopted or implemented. • The public access to the data contained in the Register is impeded by the lack of electronic form of the register and by the current fee to be paid for every NPO accessed. • The system of supervising and monitoring hasn't been tested in practice yet. • The sanctions provided seem not to be dissuasive enough. • No controls and checks are envisaged on the source of funds of beneficiaries. • The office of the Commissioner is understaffed (effectiveness issue)

5. NATIONAL AND INTERNATIONAL CO-OPERATION

5.1. National co-operation and co-ordination (R. 31 & R.32)

5.1.1. Description and analysis

Recommendation 31 (rated C in the 3rd round report)

Effective mechanisms in place to co-operate, and where appropriate, co-ordinate domestically concerning the development and implementation of policies and activities to combat money laundering and terrorist financing (c.31.1)

957. The Board of Governors of the FIAU is of particular relevance in the context of national co-operation and co-ordination. It is composed of four members nominated from the Office of the Attorney General, the Central Bank of Malta, the Malta Police Force and the Malta Financial Services Authority respectively. Accordingly, the major actors of the Maltese AML/CFT system are present in the Board.

958. The members of the Board are in a position to ensure that a national AML/CFT policy is implemented comprehensively across the entities which they represent. However, authorities articulated that the Board is not the forum of national co-ordination and co-operation but it is the policy-setting organ of the FIAU.

959. Article 16 of PMLA sets out internal cooperation functions of the FIAU as a central authority in AML/CFT system that:

- instructs any subject person to take such steps as it may deem appropriate to facilitate any money laundering or funding of terrorism investigation in general or the investigation of any particular suspicious transaction report;
- gathers information on the financial and commercial activities in the country for analytical purposes with a view to detecting areas of activity which may be vulnerable to money laundering or funding of terrorism;
- compiles statistics and records, to disseminate information, to make recommendations, to issue guidelines and advice the Minister on all matters and issues relevant to the prevention, detection, investigation, prosecution and punishment of money laundering or funding of terrorism offences;
- promotes the training of, and to provide training for, personnel employed with any subject person in respect of any matter, obligation or activity relevant to the prevention of money laundering or funding of terrorism;
- consults with any person, institution or organization as may be appropriate for the purpose of discharging any of its functions;
- advises and to assist persons, whether physical or legal, to put in place and to develop effective measures and programmes for the prevention of money laundering and funding of terrorism.

960. In addition, the PMLA sets out the general responsibility of the FIAU to co-operate and exchange information with supervisory authorities, where that information is relevant to the processing or analysis of information or to investigations regarding financial transactions related to ML/FT. The definition of 'supervisory authorities' includes a wide range of entities such as the Central Bank of Malta, the MFSA, the Registrar of Companies, the LGA and the Controler of Customs. Additionally, the FIAU is authorised to disclose any document or information relating to the affairs of the FIAU, or information on any person which the FIAU has acquired on the exercise of its duties or its functions under the PMLA to supervisory authorities, whether situated in Malta or outside Malta.

961. In the situation where the analytical reports are disseminated to the Police and involves a subject person over whom a supervisory authority has regulatory functions, the FIAU shall inform the said supervisory authority of the action taken.

962. Article 27 of the PMLA also lays down a duty on the FIAU to co-operate with supervisory authorities to ensure that the financial and other systems are not used for criminal purposes and thus safeguard their integrity. The supervisory authorities are required to extend all assistance and co-operation to the FIAU. In particular, the FIAU may request supervisory authorities to provide any information which may be relevant to the functions of the FIAU and to carry-out on-site examinations on subject persons falling under the competence of the supervisory authority on behalf of the FIAU. Representatives of FIAU underlined that in practice, the FIAU co-operates with the MFSA and the LGA on a regular basis.

963. The Customs Authority, which is entrusted with the function of monitoring cross-border transport of cash and monetary instruments, is also required to assist the FIAU by passing on the records of cash declarations on a weekly basis.

964. According to the PMLA, the cooperation of the FIAU with the police authorities is done with the assistance of the police officer who acts as liaison officer. The main functions of liaison officer are providing and facilitating law enforcement information for the FIAU and serving as a channel for dissemination.

965. The evaluation team was informed onsite that although the designated (detailed) liaison officer is the Assistant Commissioner of Police in charge of administration, in practice there is also direct contact with the Money Laundering Unit of the police. The Maltese authorities explained that the reason behind appointing the Assistant Commissioner in charge of administration as the liaison officer was his higher rank in the police structure, which authorises him to ask information from all Police units in order to provide any information requested by the FIAU.

966. It has to be noted that one of the members of the Board of Governors is the Assistant Commissioner in charge of criminal investigations. The Board member is nominated by the Commissioner of Police and appointed by the Minister responsible for finance.

Co-operation between the Police and the Office of the Attorney General

967. The Police and the Office of the Attorney General co-operate on an operational level on a daily basis. In the course of ML/FT investigations, the Police authority is required to consult with the Office of the Attorney General as it is the channel through which attachment, investigation, freezing and monitoring orders are obtained.

Additional elements – Mechanisms for consultation between competent authorities and the financial sector and other sectors (including DNFBP)
Joint Committee

968. Co-ordination and co-operation with the relevant operators in the financial and non-financial sectors in the AML/CFT regime is further achieved through the Joint Committee for the Prevention of Money Laundering and Funding of Terrorism (Joint Committee). The Joint Committee is an ad hoc committee set up to provide a forum for discussion and exchange of views relating to the prevention of money laundering and funding of terrorism with a view to develop common AML/CFT standards and practices in compliance with the PMLFTR.

969. The Joint Committee is chaired by the Director of the FIAU, with the Legal & International Relations Officer of the FIAU acting as secretary. It is made up of representatives from the Office

of the Attorney General, the Police, the Central Bank of Malta, the MFSA, the LGA and other associations and bodies representing persons subject to the PMLFTR. The latter include the Institute of Financial Services Practitioners, the Malta Banker's Association, the Malta Insurance Association, the Malta Funds Industry Association, the College of Stock Brokers, the Malta Institute of Accountants, the Malta Stock Exchange, the Chamber of Advocates, the College of Legal Procurators, the College of Notaries, the Malta Institute of Taxation, the Federation of Real Estate Agents and the Association of Licensed Financial Institutions.

970. In spite of its ad hoc nature, the Joint Committee meets regularly to ensure co-ordination and effective use of resources. The Committee has been instrumental in suggesting the amendments to AML/CFT laws and the Implementing Procedures. Moreover the forum serves a purpose of not only keeping abreast with developments, policies, new legislation, regulations and directives in this arena, but also offers an efficient opportunity for bringing forward the different views and didactic experience of the members in a bid to formulate comprehensive and all-inclusive measures which serve as the very tools to curb and detect money laundering activities.

971. Examiners noted that at the time of the on-site visit, the customs authority was not member of the Joint Committee[49].

Sanctions Monitoring Board

972. The Sanctions Monitoring Board within the Ministry of Foreign Affairs is responsible for the implementation of UN resolutions concerning sanctions and it co-ordinates its efforts in this regard with the MFSA, being the single regulator of the financial sector.

Customs

973. Evaluation team noted that the Customs information on cash declaration is transmitted directly to the FIAU, which is in compliance with the recommendation of the third round. The cooperation between the FIAU and the Customs Authority in respect of immediate and intelligence based information exchange should be further strengthened.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

974. The Board and the Joint Committee provide firm framework for discussing the effectiveness of the AML/CFT regime on a regular basis.

975. Meetings with representatives of private sector confirmed that the Joint Committee provided valuable forum for discussing the draft Implementing Procedures. This committee is also involved in the review of the various aspects of the effectiveness of the AML/CFT regime.

976. The evaluators were advised that the Board does initiate major policy discussions (such as on the appropriate levels of control on the use of cash). Equally, the Maltese authorities indicated that the Board does regularly assess the effectiveness of the system, based on available statistics. The evaluators nonetheless found problems in obtaining complete and comprehensive statistics on money laundering cases and the use of confiscation. The evaluators consider that the expertise of the Board should be employed in the future design of the statistical data that needs to be regularly kept and routinely analysed in order to better facilitate the Board's overview of the effectiveness of the system.

[49] *The Maltese Authorities confirmed that subsequent to the on-site visit, the Customs Authorities became members of the Joint Committee*

Effectiveness and efficiency

977. The stakeholders of the AML/CFT regime have a variety of mechanisms in place to facilitate national co-operation and co-ordination.

978. Bearing in mind the relatively small size of the country more efficient mechanisms in practice between the FIAU and Police would be desirable. The existing relationship between the Police and the FIAU appears not to be in conformity with the system laid down by the PMLA.

979. By virtue of the authorities' responses during the onsite visit the evaluation team concluded that the role of the appointed liaison officer has a rather imponderable nature since he constitutes only as a focal point for receiving written requests, and the practical liaising work is carried out informally via police officers of Money Laundering Unit.

980. Furthermore, it remained unclear who advises the FIAU n investigative techniques and all law enforcement issues. Having a single designated police official with demanding providing law enforcement information and intelligence "*as a physical link*" within the existing legal framework would even more strengthen the efficient operational cooperation between FIAU and the Malta police forces.

981. The provisions of the PMLA on the Board provide a sound legal environment for the co-ordination. The Board does initiate major policy discussions and does regularly assess the effectiveness of the system, based on available statistics. However, some difficulties were encountered in obtaining complete and comprehensive statistics on money laundering cases and the use of confiscation. The Board should be employed in the future design of the statistical data that needs to be regularly kept and routinely analysed in order to better facilitate overview of the effectiveness of the system. The evaluators strongly advise that the Board should be directly involved in the construction of the Methodology for this risk assessment. There is still room to further exploit the experience and seniority of the Board members in the analyses of the effectiveness of the Maltese system as a whole.

982. The national cooperation between AG's Office, police and magistrates is operating mostly on an informal base. The Maltese authorities pointed out, that this way of cooperation is very efficient in Malta and using a formal way of cooperation could not be definitely more effective. Maltese authorities consider more or less informal cooperation to be most productive.

5.1.2. Recommendations and Comments

Recommendation 31

983. Full implementation of the existing legal provision on the liaison officer in effect would contribute to have a more efficient operational cooperation between the Police and the FIAU.

984. Maltese authorities should consider involving the customs authority into the formal co-operation among stakeholders.

Review of the effectiveness of the AML/CFT systems on a regular basis (Recommendation 32.1)

985. The authorities are encouraged to review the effectiveness of the AML/CFT system on a regular basis and scrutinise the collected statistics in the light of the effectiveness.

986. It is recommended to further exploit the experience and seniority of the Board members in the national risk assessment and in the analyses of the effectiveness of the Maltese system as a whole.

Recommendation 30 (Policy makers – Resources, professional standards and training)

987. More investigators focused to ML cases in the Police Unit would be welcome. There is a need for a specialized continuous training for Police, magistrates and judicial staff.

5.1.3. Compliance with Recommendations 31 and 32 (criterion 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**C**	
R.32.1	**LC**	• Insufficient review of the effectiveness of the Maltese AML/CFT system as a whole; The experience and seniority of the Board members is not fully exploited in this respect.

5.2. The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

5.2.1. Description and analysis

Recommendation 35 (rated LC in the 3rd round report) & Special Recommendation I (rated LC in the 3rd round report)

Ratification of AML Related UN Conventions (c. R.35.1) and of CFT Related UN Conventions (c. SR I.1)

988. The Vienna Convention was acceded to on 28th February 1996. The Palermo Convention was signed on 14th December 2000 and ratified on 24th September 2003. The Terrorist Financing Convention was signed on 10th January 2000 and ratified on 11th November 2001.

989. The Council of Europe Convention on Laundering Search, Seizure and Confiscation was ratified on 19th November 1999 and came into force on the 1st March 2000.

990. The Council of Europe Convention on Laundering Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism was ratified on 30th January 2008 and came into force on 1st May 2008.

Implementation of Vienna Convention (Articles 3-11, 15, 17 & 19, c. R. 35.1)

991. The main law to implement anti-terrorist-financing measures required by UN resolutions is the National Interest (Enabling Powers) Act of 1993. Under this law all the sanctions or measures adopted by the United Nations Security Council are also being implemented in Malta.

992. The 1988 United Nations Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (Vienna Convention) was acceded to on 28th February 1996.

993. The Article 3 of PMLA is in accordance with the Vienna Convention (Investigation and prosecution of the offences), Conspiracy to commit an offence is sanctioned under Article 48A of the CC, the promotion, constitution, organisation or financing of an organisation of two or more persons with a view to commit criminal offences is criminalised under article 83A of the CC. Both of the provisions apply also to the offence of money laundering.

994. As mentioned concerning R3, the confiscation regime is not regulated satisfactory and the measures are not fully in accordance with the Vienna Convention. Especially third party provisions need to be developed. The limited period of time to 30 days for the attachment order is also problematic in the light of the Vienna Convention.

Implementation of Palermo Convention (Articles 5-7, 10-16, 18-20, 24-27, 29-31 & 34, c. R 35.1)

995. The 2000 United Nations Convention against Transnational Organised Crime (Palermo Convention) has been ratified on 24th September 2003. The Articles mentioned above have been implemented to the Maltese legislation, as mostly mentioned in the previous paragraphs. The evaluators want to point out the reservation to the regime of confiscation and training related to confiscation and investigation/prosecution of the offences.

Implementation of the Terrorist Financing Convention (Articles 2-18, c. R 35.1 & c. SR. I.1)

996. The 1999 United Nations International Convention for the Suppression of the Financing of Terrorism has been ratified on 11th November 2001. Financing of Terrorism is completely criminalized. The conventions were transposed into national law mainly by the Criminal Code, Dangerous Drug Ordinance (DDO), Medical and Kindred Professions Ordinance (MKPO), Prevention of Money Laundering Act (PMLA) and the Extradition Act. The implementation is sufficient.

Implementation of UNSCRs relating to Prevention and Suppression (c. SR.I.2)

997. The United Nations Security Resolutions are implemented through the subsidiary legislation by the National Interest Act (Enabling Powers). UNSC Resolutions 1267 and 1373 are enforceable in Malta by virtue of legal Notice 214 of 1999 and Legal Notice 156 of 2002.

998. As mentioned in detail above (SRIII), the procedure of freezing of assets is not implemented satisfactory. There are not transparent rules for the freezing order. Despite the Maltese authorities stressed, that the practical application of the freezing order is not confusing or problematic, the evaluation team would suggest to create transparent regime.

999. There is also not effective and publicly known procedure considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities. The Sanction Monitoring Board also admitted a lack of such procedure.

Additional element – Ratification or Implementation of other relevant international conventions

1000. The Council of Europe Convention on Laundering Search, Seizure and Confiscation was ratified on 19th November 1999 and came into force on the 1st March 2000.

1001. The Council of Europe Convention on Laundering Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism was ratified on 30th January 2008 and came into force on 1st May 2008.

5.2.2. Recommendations and comments

1002. The evaluators welcome the ratification of the Council of Europe Convention on Laundering Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (was ratified on 30th January 2008 and came into force on 1st May 2008).

1003. The evaluators suggest to develop the procedure for freezing funds and to create an effective and publicly known procedure for unfreezing and de-listing.

5.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**LC**	• Although the Palermo and TF Conventions are in force, there are still reservations about the effectiveness of implementation in some issues (unclear provisions described under SRII)
SR.I	**LC**	• The regime for freezing funds not satisfactory implemented. • There is a need for effective and publicly known procedure for unfreezing and de-listing.

5.3. Mutual legal assistance (R. 36, SR.V)

5.3.1. Description and analysis

Recommendation 36 (rated C in the 3rd round report)

Legal framework

1004. The Attorney General's Office has been named as the central judicial authority in all major agreements dealing with mutual legal assistance. Malta is party to the Strasbourg Convention (1999) and several other major conventions providing for mutual legal assistance.

1005. Malta has a comprehensive legal system to meet the requirements of the Recommendations for mutual legal assistance. The main laws referring to legal assistance are:

- the Criminal Code (such as Articles 435 B - E, 628 A - B, 647B, 649)
- the Prevention of Money Laundering Act (Articles 9 - 11)
- the Dangerous Drugs Ordinance (Articles 24 B - D).

1006. Even without a treaty, convention, agreement or understanding, Malta may still extend mutual assistance on the basis of reciprocity, as provided for in A.649 CC or provided that domestic law provisions are satisfied. The local and international co-operation is focused mainly to the fight against international terrorism and transnational organised crime. Malta has concluded a number of bilateral agreements with other States relating to co-operation in the fight against drugs and organised crime.

Table 33: Bilateral agreements

Country	Signed	Enter into force
United States of America	16/6/2004	10/03/2005
Albania	19/2/2002	19/2/2002
China	22/10/2001	22/10/2001
Cyprus	16/9/1999	18/3/2000
Egypt	13/2/1997	22/3/1998
France	9/3/1998	1/7/2998
Greece	Co-operation between the Ministry of Home Affairs of Malta and the Ministry of Public Order of the Hellenic Rep. on Matter of their competence - 24/5/2001	Awaiting ratification
Hungary	18/5/2000	18/12/2000
Israel	28/5/1999	1/8/2000
Libya	28/2/1991 Amendments through Exchange of Notes signed on 22 August 1996 and on 3 September 1996	28/2/1991 3/9/1996
Russia	21/4/1993	21/4/1993
Slovakia	16/5/2001	16/5/2001
Spain	28/5/1998	27/11/1998
Sweden	10/5/2001	10/5/2001
Tunisia	6/4/2001	6/4/2001
Turkey	29/11/1999	28/2/2000
United Kingdom	9/1/2003	9/1/2003

1007. According to the Maltese authorities, the majority of the recent bilateral agreements cover money laundering and terrorist financing, though the earlier ones do not necessarily explicitly cover money laundering or terrorist financing, although organised crime issues are featured.

1008. The legal framework allows the judicial authorities to give sufficient assistance in money laundering and terrorism financing cases, including the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets.

1009. As mentioned above, the requirements on the base of the UN Conventions have been implemented satisfactory. The Attorney General's Office as the central judicial authority covers all the international requests for the mutual legal assistance. The evaluation team was informed that the Maltese authorities without any delay have satisfied all the legal assistance requests.

1010. Seizure and confiscation actions are coordinated by the Attorney General in his role of central authority due to the provisions in the Criminal Code and in international instruments to which Malta is a party. Sharing of assets is possible by arrangement on a case by case basis.

1011. When mutual legal assistance requests are being executed, foreign officials can be present from the requesting party and evidence can be taken in accordance with procedures required by the requesting State, provided that they are not contrary to Maltese public policy.

Widest possible range of mutual assistance (c.36.1)

1012. The Maltese authorities pointed out that, in practice, Malta has not refused any assistance in any request.

1013. The Article 649 of the CC amended several times encloses provisions for the execution of letters of requests in general. This legislation is meant to assure that Malta provides a wide scope of judicial assistance.

1014. The PMLA Act and the DDO legislation have the provisions for dealing with the requests related to dangerous drugs and psychotropic substances and money laundering.

1015. The procedure for requesting MLA related to seizing and freezing the assets is regulated in the Articles 435B, 435C, 649 of the CC, Articles 9 and 10 of the PMLA and the Article 24B, 24C of the DDO.

1016. The Article 435D of the CC regulates mutual legal assistance concerning confiscation as follows:

"*(1) A confiscation order made by a court outside Malta providing or purporting to provide for the confiscation or forfeiture of any property of or in the possession or under the control of any person convicted of a relevant offence shall be enforceable in Malta in accordance with the provisions of article 24D(2) to (11) of the Ordinance.*

(2) For the purposes of this article "confiscation order" includes any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property as is described in sub article (1)."

Provision of assistance in timely, constructive and effective manner (c. 36.1.1)

1017. The Article 628A and 628B of the CC regulate Mutual legal assistance as follow:

"(1) The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which makes provision for mutual assistance in criminal matters.

(2) Regulations made under this article may make provision, as the Minister may deem appropriate in the circumstances, including the application, with any appropriate modifications, of any of the provisions of this Code or of any other law."

628B. *"(1) Without prejudice to the generality of the power conferred on the Minister by article 628A the Minister may, in particular, make regulations designating the competent person, body corporate or unincorporated, authority or agency for the purpose of providing the assistance that may be requested under any arrangement referred to in article 628A(1) and prescribing the conditions and procedures for the execution of any request for such assistance for all or any of the following purposes –*

(a) the questioning of persons being investigated or prosecuted for a criminal offence;

(b) the taking or production of evidence;

(c) the service of any document or act;

(d) the interception of communications;

(e) the temporary transfer of a prisoner for the purposes of identification or for obtaining testimony or other assistance;

(f) the entry into and search of any premises and the seizure of any item;

(g) the taking of fingerprints or of intimate or non- intimate samples;

h) the exhumation of any body;

(i) the provision of records and documents;

(j) the investigation of proceeds of criminal offences;

(k) the monitoring, freezing or seizing of assets of any kind including bank accounts;

(l) the verification of any evidence or other material."

1018. In terms of Maltese law, the assistance afforded may range from the service of summons and documents to enforcement of confiscation orders, from the hearing of witnesses to search and seizure, from the production of documents to video conference. By means of investigation orders or following testimony on oath (wherein one is exempted from confidentiality/professional secrecy obligations), any bars to the production of documents or the rendering of testimony which would otherwise be bound by confidentiality are overridden.

1019. In general, where the Attorney General communicates to a magistrate a request made by the judicial, prosecuting or administrative authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be.

1020. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

Clear and efficient processes (c. 36.3)

1021. When a request is received by the Attorney General's Office, it is immediately processed to ensure all formalities and legal requisites are met. The next step would be to decide on the best course of action in order to give effect to the assistance being requested.

1022. The request is then communicated to the police liaison officer. When it is a request which necessitates the compulsory hearing of witnesses, or the production of documents and the giving of evidence otherwise ridden by obligations of professional/banking secrecy, a request is immediately sent to the courts for execution.

1023. There, the court registrar assigns the request to one of the two purposely-designated Magistrates (who deal with letters of request to ensure specialisation in the field of mutual legal assistance, albeit in addition to the domestic cases and inquiries) and soon after the Magistrate appoints a date for the hearing and execution of that request. Any delay which may result would generally be due to the complexity of the evidence requested and difficulties (legal or practical) in its production, the number of witnesses etc.

1024. The Maltese authorities stressed that the procedure of mutual legal assistance under the Maltese law is effective enough. There are 2 lawyers in the AG Office, dealing exclusively with the mutual legal assistance requests (some of the requests need to go to the court, some of them don't).

1025. As the Maltese authorities stressed at the on-site visit, this practice is effective enough, even if there are no sanctions if the Court misses the time limit. The co-operation between AG and the Court appears to be good.

Provision of assistance regardless of possible involvement of fiscal matters (c. 36.4)

1026. According to Maltese authorities, mutual legal assistance is granted when the offence also involves fiscal aspects. In practice there has not been a case of refusal from Maltese authorities.

Provision of assistance regardless of existence of secrecy and confidentiality laws (c. 36.5)

1027. Secrecy and confidentiality are lifted by the courts when granting the request and are not an inhibiting factor.

1028. The legal provisions concerning the disclosure of the professional secret is regulated in the Article 257 of the CC as follow: *"If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (multa) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment."*

1029. The Article 6B of the Professional secrecy Act also regulates the way of disclosing information to the Maltese authorities.

1030. If the investigation order or attachment order is granted, then it will prevail over any obligation of confidentiality or professional secrecy and the provisions applicable to a domestic investigation order or attachment order apply.

1031. When the request is for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person charged or accused of an act or omission which if committed in Malta, or in corresponding circumstances, would constitute an offence carrying a maximum of over one year imprisonment or a money laundering offence, the Attorney General applies to the Criminal Court for a freezing order. (Article 435C Criminal Code; Article 10, The Prevention of Money Laundering Act, Article 24C, Dangerous Drugs Ordinance).

Availability of powers of competent authorities (applying R.28, c. 36.6)

1032. Investigation orders, attachment orders and warrants for search and seizure are also used for mutual legal assistance requests.

Avoiding conflicts of jurisdiction (c. 36.7)

1033. Malta is prepared to discuss, on a case by case basis, depending on all relevant factors (e.g. country where offence committed, where witnesses are to be found, location of evidence etc) the most suitable place for prosecution to take place.

1034. Two examples were provided by Maltese authorities in relation to one EU country. In one case Malta was requested to undertake an investigation into possible drug related and possession of pornographic material. The investigation is still underway. Another case dealt with fraud.

1035. In another case, following the transmission by the partner country's Prosecutor General of evidentiary material against a Greek/Austrian national facing criminal procedures in Malta, it was found that the Maltese courts had no jurisdiction over the case given that the offence was perpetrated in the said other country.

Special Recommendation V (rated C in the 3rd round report)

1036. Terrorist acts and financing of terrorism are crimes under Maltese law punishable by over 1 year imprisonment, and by that within the scope of law concerning extraditable offences. As a result, extradition for such offences of any person, irrespective of nationality, shall be granted.

1037. All the legal provisions referring to MLA and mentioned above are applicable for TF offences as well. TF offences are considered as serious offences, which are subject to mutual legal assistance, including coercive measures and the execution of foreign criminal seizure or confiscation orders related to laundered property, proceeds, instrumentalities and equivalent value assets.

1038. Basically, the dual criminality principle applies. This is deemed satisfied if under Maltese law the conduct underlying the offence is punishable irrespective of how the offence is qualified. Due to Maltese law the description of the offence in the request is not regarded as material if the offence is substantially of the same nature as in the domestic law. This requirement is interpreted by the office of the Attorney General as central authority of the processing of requests for mutual assistance as well as by the courts in Malta very broadly.

Recommendation 30 (Resources – Central authority for sending/receiving mutual legal assistance/extradition requests)

1039. Malta has purposely designated a Unit which deals with mutual judicial assistance, including also extradition requests and EAW requests. Requests are processed immediately and a system operated by the Unit allows the office to track the progress of each request. The Unit was also assigned a police officer to act as liaison officer for execution of request requiring police intervention, (e.g. Search and seizure, service of summons, arrest for purposes of interrogation, court hearings etc.)...

1040. It is also worth mentioning that within this Unit one also finds contact points within the European Judicial Network (EJN). This was opted for in order to enhance the assistance provided by the Unit.

1041. There are two purposely-designated Magistrates who deal with letters of request to ensure specialisation in the field of mutual legal assistance, albeit in addition to the domestic cases and inquiries.

Recommendation 32 (Statistics – c. 32.2)

1042. The country authorities provided the following statistics concerning mutual legal assistance

Table 34: Request for Mutual Legal Assistance 2005 – 2011

Judicial Co-operation **Request for Mutual Legal Assistance 2005 – 2011**							
	2005 (from 1Oct 2005)	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**
Malta as the Requesting State	0	1	1	9	18	40	
Malta as the Requested State In General (i.e. not only ML/FT related)	3	10	4	31	56	61	
Requests dealing with Money Laundering (Malta as the Requesting State)	0	0	0	0	0	2	
Requests dealing with Money Laundering (Malta as the Requested State)	0	3	1	3	6	10	
Requests dealing with FT or Aiding of Terrorism (Malta as the Requested State)	0	0	0	0	0	0	

Table 35: Request for Mutual Legal Assistance from Malta 2005 – 2011

Money Laundering Measures Requested <u>of</u> Malta under Mutual Legal Assistance (Investigation Orders) 2004 – 2011								
	2005	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	
Investigation orders	0	0	0	2	4	4	1	
Attachment Orders	0	0	0	2	4	4	1	

Confiscation Order	0	0	0	1	1	1		

Statistics 01.01.2011-01.06.2011
Mutual Legal Assistance

European Arrest Warrants
Malta as requesting State 5
Malta as requested State 2

Freezing Orders
Malta as requesting State NIL
Malta as requested State 1 (money laundering et)

Transfer of Sentenced Persons
Malta as requesting State NIL
Malta as requested State 2

Requests for Legal Assistance
Malta as requesting State 4
Malta as requested State 38 (money laundering)

Effectiveness and efficiency

1043. The legal provisions regulating the mutual legal assistance appear as effectively applied in practice by Maltese authorities.

1044. The Maltese authorities also pointed out that requests that are transmitted to the Court for execution, or that require testimony or witnessing, are performed within 2-3 months. Other requests, which are executed by the Police, are performed within 3 weeks. The requests that have to be executed by the AG (especially requests related to an investigation, attachment or freezing order), are carried out within 2 weeks.

1045. According to Maltese authorities, any delay which may result in Court, would generally be due to the complexity of the evidence requested and difficulties (legal or practical) in its production, the number of witnesses etc.

1046. Assistance in the absence of dual criminality is only possible when there is no need for coercive measures.

5.3.2. Recommendations and comments

Recommendation 36

1047. The mutual legal assistance framework, both in money laundering and in terrorism financing cases, is quite comprehensive. It has been effective so far and assistance has been granted in a timely manner.

Special Recommendation V

1048. The extradition provisions are comprehensive and in compliance with international standards.

1049. No actual cases have been encountered in practice.

Recommendation 30

1050. It appears that Malta has sufficient resources with the designated Unit in order to processed immediately the mutual judicial assistance requests.

Recommendation 32

1051. The assessors consider that the statistics held and provide by the Maltese authorities on MLA are comprehensive and in compliance with the international standards.

5.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3. underlying overall rating
R.36	**C**	
SR.V	**C**	

5.4. Other Forms of International Co-operation (R. 40 and SR.V)

5.4.1. Description and analysis

Recommendation 40 (rated C in the 3rd round report)

Wide range of international co-operation (c.40.1); Provision of assistance in timely, constructive and effective manner (c.40.1.1); Clear and effective gateways for exchange of information (c.40.2), Spontaneous exchange of information (c. 40.3)

FIU

1052. The international information exchange of the FIAU is governed by the PMLA as well as the EU Council Decision 2000/642/JHA. The standards set up by the Egmont Group are also applied by the FIAU. The FIAU has been a member of the Egmont Group since 2003.

1053. The information exchange with foreign FIUs is regulated as one of the functions of the FIAU and as an exemption from prohibition of disclosure rules.

1054. The PMLA gives the authority for the FIAU – as a function – to exchange information for AML/CFT purposes, either upon request or on its own motion with any foreign body, authority or agency which it considers to have equivalent or analogous functions to the FIAU.

1055. The exchange of information is not restricted to the existence of international agreement or MoU, but the FIAU has the authority to conclude such an agreement, if the other party requires or the FIAU decides so.

1056. The FIU-FIU co-operation is also considered as an exemption from prohibition of disclosure. Accordingly, the PMLA stipulates that FIAU might disclose any information or document to an organisation outside Malta which has functions similar to FIAU's functions and has similar duties of secrecy and confidentiality as FIAU's duties. This provision does not use the same wording as it is laid down in previous provisions ('similar' instead of 'equivalent or analogous'), but authorities confirmed that this difference has no legal or practical impact on information exchange.

1057. No expressed references are made to the Egmont Group Charter or the Principles of Information Exchange in legal texts due to their informal nature of Egmont documents, but authorities stated that member FIUs of the Egmont Group are considered as organisations having equivalent or analogous/similar functions and duties of secrecy and confidentiality.

1058. Effectively the exchange of information is conducted via secured channels: the Egmont Secured Web and the FIU.NET (in respect to EU FIUs).

Table 36: Statistical data on international requests received and sent by the FIAU

Year	Request received by the FIAU	Requests sent by the FIAU
2005	37	41
2006	23	43
2007	29	29
2008	44	28
2009	46	83
2010	45	75
First five months of 2011	43	43

1059. The figures demonstrate the active participation of the FIAU in the field of international information exchange.

1060. FIAU collects statistics on those FIUs, with which the FIAU had the most frequent international cooperation. Table 35 demonstrates the most active foreign counterparts of the FIAU in the context of both the outgoing and incoming request. In addition, the table provides average days of the answers of the requesting FIU.

Table 37: Statistics on the requests sent and received by the FIAU in the context of the most active counterparts

Requests sent by the FIAU		
	No. of Requests	Average Days
2006		
Italy	6	28.6
Switzerland	3	4.7
Jersey	2	27.0
Netherlands	2	21.0
Romania	2	69.5

Russia	2	180.0
Spain	2	88.5
USA	2	122.0
2007		
Russia	3	82.0
UK	3	33.0
Switzerland	2	17.5
2008		
Italy	4	101.3
Austria	3	32.0
UK	3	68.3
USA	3	46.7
Cyprus	2	80.0
Luxembourg	2	71.0
2009		
UK	9	19.2
Russia	6	51.2
Spain	6	90.5
Italy	5	96.0
Hong Kong	4	10.8
Switzerland	4	2.0
2010		
USA	8	31.4
Italy	5	48.6
Austria	5	3.6
UK	5	17.4
Germany	4	11.8

Requests Received by the FIAU		
	No. of Requests	Average Days
2006		
Croatia	4	42.5
Italy	3	19.3
UK	3	5.3
USA	2	32.5
During 2006 there were 11 other requests from 11 jurisdictions with one request each.		
2007		
Bulgaria	4	31.3
Croatia	3	27.0
Jersey	3	6.3
Poland	3	4.3
UK	3	35.3

2008		
Bulgaria	5	41.4
UK	4	23.3
Germany	2	8.5
Italy	2	23.5
Jersey	2	1.5
Macedonia	2	11.5
Russia	2	46.5
Taiwan	2	3.5
Ukraine	2	73.5
2009		
UK	5	28.8
Finland	3	1.3
USA	3	31.7
Venezuela	3	10.3
Belgium	2	3.5
Costa Rica	2	11.0
Jersey	2	7.5
Slovakia	2	13.0
2010		
Croatia	5	5.8
France	4	5.8
Spain	4	16.3
Luxembourg	3	15.0
UK	3	31.0

1061. Statistics are collected on number of cases generated by the FIAU which resulted from an international request for information or the provision of spontaneous information from foreign FIUs.

Table 38: The number of FIAU generated cases triggered by foreign FIUs

	2006	**2007**	**2008**	**2009**	**2010**	The first Five Months of **2011**
Cases	**1**	**1**	**-**	**1**	**4**	**2**

1062. As it was outlined under Recommendation 26, the FIAU is authorised to access to financial, administrative and law enforcement information. The FIAU is authorised to search its own database and to request a search on the database of other departments/agencies on behalf of foreign counterparts. Two conditions have to meet: 1. the foreign counterpart must have equivalent or analogous functions; 2. the suspicion of ML and FT must be referred.

1063. As regards essential criterion 40.7 co-operation is not refused on the sole ground that the request is also considered to involve fiscal matters, but treaty conditions may apply especially in relation to extradition.

1064. It has to be noted that the FIAU keeps statistics on requests that were denied by the FIAU (2 cases). The FIAU may, in particular, refuse (deny) to disclose any document or information if:
- Such disclosure could lead to causing prejudice to a criminal investigation in course in Malta.
- Due to exceptional circumstances, such disclosure would clearly disproportionate to the legitimate interest of Malta or of a national or legal person.
- Such disclosure would not be in accordance with the fundamental principles of Maltese law.

1065. Such refusal shall be clearly explained to the body or authority requesting the disclosure.

1066. With regard to the dissemination, if the FIAU disseminates a case to Police, the information shall only be used for intelligence purposes and for investigation of ML/FT. Accordingly, if the disseminated case incorporates information stemming from foreign FIU (that gives the authorisation for disseminating it), the FIAU disseminates it also for intelligence purposes.

1067. Additionally, regular attendance of Egmont Group, FIU.NET and EU FIU-Platform meetings assists the Director and officers of the FIAU in fostering a network of contacts even on a personal level. This greatly facilitates co-operation with other FIUs, especially in the exchange of information in urgent matters.

Office of Attorney General, Police

1068. The officers of the International Co-Operation in Criminal Matters Unit of the Attorney are contact points within the European Judicial Network, facilitates international co-operation. Personal contacts through participation in conferences and plenary meetings of the network also contribute to the strengthening of relations. This comes to good use when difficulties necessitating the facilitation of letters of request or other forms of assistance, even of an informal nature, arise. The Attorney General's Office, whose officer is represented in Eurojust, is also called upon to assist other Eurojust national members in matters involving the co-ordination and facilitation of organised crime cases of mutual concern.

1069. The Article 649 of the Criminal Code provides the legal basis for prosecutorial international cooperation as follows:

> ***"****(1) Where the Attorney General communicates to a magistrate a request made by the judicial, prosecuting or administrative authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.*
>
> *(2) The provisions of sub article (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country from which the request emanates or which applies to both such countries or to which both such countries are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of sub article (3) shall be applicable.*

(3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognizable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing."

1070. Another common form of co-operation, often of an informal nature, is that by the police via Interpol, Europol and Sirene channels.

1071. The National Fraud Squad (Economic Crime Unit, Police) is designated as a national asset recovery office (ARO)[50] in Malta and communicates through the informal network of Camden Asset Recovery Inter-agency Network (CARIN).

1072. Such police to police co-operation is often supplemented by formal international requests for assistance being filed when the information or evidence thus obtained is required to be used in judicial proceedings. The International Relations Office within the Police HQ of Malta Police Force headed by a high ranking police officer serves as a focal point for direct communication via Interpol and Europol channels. It was also pointed out that a liaison officer is commanded to the Europol in the Hague.

Table 39 - International co-operation - Money Laundering Unit (requests received by the Police in Malta)

International co-operation - Money Laundering Unit				
Year	**Comm. Rogs.**	**Foreign Requests (Interpol, Europol)**	**CARIN**	**Total**
2006	8	13	2	23
2007	4	7	nil	11
2008	9	10	nil	19
2009	10	4	1	15
2010	8	3	1	12
First five months of 2011	4	nil	3	7
Total	**43**	**37**	**7**	**87**

[50] Council Decision 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime

Table 40 - International co-operation - Money Laundering Unit (requests made by the Police to foreign autorities)

International co-operation - Money Laundering Unit				
Year	**Comm. Rogs.**	**Foreign Requests (Interpol, Europol)**	**CARIN**	**Total**
2006	0	0	0	0
2007	4	2	0	6
2008	4	1	0	5
2009	0	1	0	1
2010	7	1	0	8
First five months of 2011	4	3	0	7
Total	**19**	**8**	**0**	**27**

1073. The law enforcement authorities are able to conduct investigations on behalf of foreign counterparts in appropriate circumstances and where permitted by domestic law other competent authorities will also conduct such investigations upon request.

1074. Mutual assistance in relation to Maltese custom authority and foreign customs takes place regularly through administrative channels as provided for in EC Regulation 515/1997 and on the basis of the Naples Convention. Statistics on the number of requests received and forwarded are not available.

Supervisory authorities

1075. The Maltese supervisory authorities can cooperate and exchange information with overseas regulators including those cases that AML issues are concerned.
Article 4(2) CAP 330 Malta Financial Services Authority Act states that MFSA *"For the better performance of its functions, the Authority shall collaborate with other local and foreign bodies, Government departments, international organizations and other entities which exercise regulatory, supervisory or licensing powers under any law in Malta or abroad or which are otherwise engaged in overseeing or monitoring areas or activities in the financial services sector and the registration of commercial partnerships, and to make arrangements for the mutual exchange of information and for other forms of assistance in regulatory and supervisory matters"*.

Article of 41 CAP Central Bank of Malta states that the Bank "*may, on the basis of international agreements or upon reciprocity agreements , or otherwise in order to fulfill its international obligations including in situations of instability in the financial system , disclose information in its possession to international and other bodies , authorities and , or organizations, when this is required to carry out its duties under the law or to fulfill its international obligations including in situations of instability in the financial system"*. Such exchange of information is valid as long as the responsibility of professional secrecy is respected.

1076. In practice it has never been the case that a foreign supervisory authority required AML/CFT related information from MFSA. Therefore, there are no statistics on the number of formal requests for assistance made or received by the MFSA or Central Bank relating to or including AML/CFT.

1077. From the discussions held during the onsite visit the evaluators were informed that no disproportionate or unduly restrictive conditions are imposed by the Maltese regulators with regard to the exchange of information with their foreign counterparts.

1078. The evaluators were advised that the Maltese supervisory authorities cannot refuse the request for information from foreign counterparts on the ground that it is considered to involve fiscal matters although some treaty conditions may apply in relation to extradition.

International co-operation under SR.V (applying 40.1-40.9 in R.40, c.V.5) (rated C in the 3rd round report)

1079. All the provisions and practice applicable under Recommendation 40 also apply for financing of terrorism.

Recommendation 32 (Statistics – other requests made or received by the FIU, spontaneous referrals, requests made or received by supervisors)

1080. As presented above, the FIAU maintain statistics concerning international cooperation.

1081. However, due to the lack of requests for international cooperation, no statistics were maintained by of the supervisory authorities.

Additional elements

Effectiveness and efficiency

1082. The FIAU can obtain financial, law enforcement and administrative information on behalf of foreign counterparts. However, the absence of any reference in law or guidance to the need for law enforcement and administrative authorities to respond on a timely basis was noted by the evaluators.

1083. The FIAU plays an active role in the field of international information exchange. Proper statistics elaborated by FIAU show a good level of cooperation. The responses received to MONEYVAL's standard feedback on international cooperation express no indications of deficiencies.

1084. The statistics on requests sent by foreign FIUs and the requests received by the FIAU from foreign counterparts describe the activity of the FIAU in FIU-FIU cooperation. The assessors regarded positively the effort of measuring the average time of replying foreign requests.

1085. The figures of requests sent by the FIAU was halved in 2007 and remained the same volume until 2009 when the number of outgoing requests vastly increased. As it was mentioned by authorities, since that time the FIAU has carried out a more extensive international communication with counterparts. Two requests of information were sent in relation to FT.

1086. The FIAU runs statistics on cases resulted from foreign FIU's information. Although these figures show that cases triggered solely by foreign FIUs in the FIAU operation are not dominant, a relative growth can be seen since 2010.

1087. Since the tool of postponing transactions is restricted to the request of subject persons, the FIAU is not authorised to postpone transactions on the basis of its own motion or a foreign FIU request.

5.4.2. Recommendation and comments

1088. The absence of any reference in law or guidance to the need for law enforcement and administrative authorities to respond on a timely basis was noted by the evaluators.

5.4.3. Recommendation and comments

1089. It appears that the human and technical resources are sufficient for effective application of the recommendation.

5.4.4. Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**C**	
SR.V	**C**	

6. OTHER ISSUES

6.1. Resources and Statistics (R 30 and R32)

1090. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant Sections of the report i.e. all of Section 2, parts of Sections 3 and 4, and in Section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several Sections. Section 7.1 of the report contains only the box showing the ratings and the factors underlying the rating.

	Rating	Summary of factors underlying rating
R.30	**LC[51] (composite rating)**	• Lack of analytical software (FIAU) • FIAU staff not sufficient for effective AML/CFT supervision • Insufficient number of investigators in Police Anti-Money Laundering Unit • Insufficient training for police and judges
R.32	**LC[52] (composite rating)**	• No detailed statistic of the number of confiscations and confiscation orders in general. • Statistics for on-going supervision of financial institutions (other than credit institutions) not broken-up by category • Effectiveness of maintaining statistics on international exchange of information of supervisors impossible to assess due to the lack of requests • Insufficient review of the effectiveness of the Maltese AML/CFT system as a whole; The experience and seniority of the Board members is not fully exploited in this respect. • insufficient statistical data is routinely collected on criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML • Statistics on police to police response times not available • Statistics on customs to customs response to international requests for assistance not available

6.2. Other Relevant AML/CFT Measures or Issues

Not applicable

6.3. General Framework for AML/CFT System (see also section 1.1)

Not applicable

[51] The review of Recommendation 30 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on resources integrity and training of law enforcement authorities and prosecution agencies.

[52] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition, it has also taken into account the findings from the 3rd round report on statistics kept in respect of SR.IX.

IV. TABLES

TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

The rating of compliance vis-à-vis the FATF 40+ 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to Malta. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[53]
Legal systems		
1. Money laundering offence	**C**	
2. Money laundering offence Mental element and corporate liability	*Largely Compliant*	• A greater willingness to draw inferences from objective facts is required for the intentional element. • The evaluators have concerns regarding the concept and the effectiveness of corporate liability provisions.
3. Confiscation and provisional measures	**PC**	• The lack of information on freezing orders made in proceeds generating predicate offences coupled with lack of evidence of use of attachment orders in proceed generating cases raises doubts as to the effectiveness of freezing and attachment regime. • The lack of information on confiscation orders on laundered property raises doubts about the effectiveness of the confiscation regime overall. • Effectiveness of attachment order regime is questioned in domestic cases.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	
5. Customer due diligence	**LC**	• Effectiveness issues: a) The perception of the concept of "*reputable jurisdiction*" slightly differs across the financial sectors and sometimes seems not to be applied

[53] *These factors are only required to be set out when the rating is less than Compliant.*

		correctly in practice b) Weak awareness among some subject persons (financial institutions) on FATF statements regarding the countries listed as undergoing regular review. c) The risk management process needs improvement. d) Some financial institutions were not entirely clear on the distinction between CDD and ECDD while there was little recognition of reduced or simplified due diligence
6. Politically exposed persons	**LC**	• Not all types of financial institutions are entirely certain regarding the practical application of the requirement to identify the status of PEPs acquired in the course of a business relationship by an existing customer. • Not all types of financial institutions are applying measures for establishing the source of wealth and source of funds of PEPs.
7. Correspondent banking	**C**	
8. New technologies and non face-to-face business	*Compliant*	
9. Third parties and introducers	*Compliant*	
10. Record keeping	**C**	
11. Unusual transactions	*Largely Compliant*	• *There are no specific requirements for financial institutions to set forth their findings in writing and to keep the findings available for at least five years.*
12. DNFBP – R.5, 6, 8-11	*Largely Compliant*	• *The same concerns in the implementation of Rec. 5 apply equally to DNFBP.* • *No adequate implementation of Rec. 6.* • *The same concerns in the implementation of Rec. 11 apply equally to DNFBP.* • *Not all persons providing company services are covered by Maltese legislation.*
13. Suspicious transaction reporting	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds from criminal activity • Low number of STRs including credit institutions gives rise to concerns on reporting regime (effectiveness)

14. Protection and no tipping-off	*Compliant*	
15. Internal controls, compliance and audit	*Compliant*	
16. DNFBP – R.13-15 & 21	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • The scope of reporting requirements relates to money laundering only, not to proceeds from criminal activity • Effectiveness issues a) Uneven level of awareness across different sectors regarding the obligation to file suspicious transaction reports. b) Uneven application of the internal auditing and inconsistent staff training by DNFBP; c) Not enough practical assistance on application of the concept of "*non-reputable jurisdiction*" and hence the risk that appropriate counter-measures would not be applied.
17. Sanctions	**PC**	• Low number of sanctions imposed in practice on subject persons • No pecuniary sanctions imposed on financial institutions • The sanctions have not been imposed in an effective and dissuasive manner • No sanctions imposed on FIs senior management
18. Shell banks	**LC**	• Effectiveness issue: Insufficient understanding among market participants in what way they can be able to verify that their correspondent banks are not servicing shell banks.
19. Other forms of reporting	*Compliant*	
20. Other DNFBP and secure transaction techniques	*Compliant*	
21. Special attention for higher risk countries	**LC**	• Not enough practical assistance on application of the concept of non-reputable jurisdiction and hence the risk that appropriate counter-measures would not be applied.
22. Foreign branches and subsidiaries	**C**	
23. Regulation, supervision and monitoring	**LC**	• Low number of on-site inspections performed by the supervisors in relation to AML/CFT in the financial sector • No infringements identified at financial institutions as result of the on-site inspections

24. DNFBP - Regulation, supervision and monitoring	**PC**	• Insufficient resources devoted to AML/CFT supervision of compliance and reporting of lawyers, notaries, dealers in precious metals and stones and real estates agents. • The risk based approach concerning the oversight of all the DNFBP is not formalised
25. Guidelines and Feedback	**PC**	• No sector specific guidelines. • Difficulties in assessing the effectiveness of new provisions in the Implementing Procedures Part I due to recent adoption at the time of the on-site visit. • The feedback mechanism is not working effectively in practice.
Institutional and other measures		
26. The FIU	**C**	
27. Law enforcement authorities	*Largely Compliant*	• There is a reserve on the effectiveness of money laundering investigation given that there are no convictions.
28. Powers of competent authorities	*Compliant*	
29. Supervisors	**C**	
30. Resources, integrity and training	**LC**	• Lack of analytical software (FIAU) • FIAU staff not sufficient for effective AML/CFT supervision • Insufficient number of investigators in the Police Anti-Money Laundering Unit • Insufficient training for police and judges
31. National co-operation	**C**	
32. Statistics	**LC**	• No detailed statistic of the number of confiscations and confiscation orders in general. • Statistics for on-going supervision of financial institutions (other than credit institutions) not broken-up by category • Effectiveness of maintaining statistics on international exchange of information of supervisors impossible to assess due to the lack of requests • Insufficient review of the effectiveness of the Maltese AML/CFT system as a whole; The experience and seniority of the Board members is not fully exploited in this respect.

		• Insufficient statistical data is routinely collected on criminal proceedings, provisional measures and confiscation in proceeds generating crimes other than ML • Statistics on police to police response times not available • Statistics on customs to customs response to international requests for assistance not available
33. Legal persons – beneficial owners	*Compliant*	
34. Legal arrangements – beneficial owners	*Compliant*	
International Co-operation		
35. Conventions	**LC**	• Although the Palermo and TF Conventions are in force, there are still reservations about the effectiveness of implementation in some issues (unclear provisions described under SRII)
36. Mutual legal assistance (MLA)	**C**	
37. Dual criminality	*Compliant*	
38. MLA on confiscation and freezing	*Compliant*	
39. Extradition	*Compliant*	
40. Other forms of co-operation	**C**	•
Nine Special Recommendations		
SR.I Implement UN instruments	**LC**	• The regime for freezing funds not satisfactory implemented. • There is a need for effective and publicly known procedure for unfreezing and de-listing.
SR.II Criminalise terrorist financing	**LC**	• Unclear whether the interpretation of A328F covers financing of "legitimate" activities furthering terrorism • No clear provision to cover direct and indirect financing of terrorism. • The financing of offences covered in the annex to the TF Convention has, in the Maltese law, additional mental element not required by TF Convention for offences under A 2 (1) (a).
SR.III Freeze and confiscate terrorist assets	**PC**	• There is not any clear and publicly known procedure for de-listing and unfreezing. • No evidence that designation of EU internals have been converted into the Maltese legal framework • Concerns over effectiveness of freezing system at

		the request of another country that relies on judicial proceedings. • Insufficient guidance and communication mechanisms with DNFBP (except Trustees) regarding designations and instructions including asset freezing. • Insufficient monitoring for compliance of the DNFBPs. • The effectiveness concerns on Recommendation 3 might affect the effective application of criterion III. 11
SR.IV Suspicious transaction reporting	**PC**	• Deficiencies in the incrimination of TF might limit the reporting obligations • Low level of awareness and understanding on FT red flags and indicators among reporting entities; concerns related to the confusion among the reporting entities in relation to the implementation of SR III and the reporting obligations under SR IV • Low level of reporting (effectiveness issue)
SR.V International co-operation	**C**	
SR.VI AML requirements for money/value transfer services	*Compliant*	
SR.VII Wire transfer rules	**C**	
SR.VIII Non-profit organisations	**PC**	• The registration of VO according to the Voluntary Organisations Act is not compulsory. The only restriction in terms of non-registered VO is that they cannot benefit from donations from public sources (Maltese). • No risk assessment was conducted for the sector. • No awareness raising programmes have been adopted or implemented. • The public access to the data contained in the Register is impeded by the lack of electronic form of the register and by the current fee to be paid for every NPO accessed. • The system of supervising and monitoring hasn't been tested in practice yet. • The sanctions provided seem not to be dissuasive enough.

		• No controls and checks are envisaged on the source of funds of beneficiaries. • The office of the Commissioner is understaffed (effectiveness issue)
SR.IX Cross Border declaration and disclosure	*Largely Compliant*	• *No clear power to stop and restrain where suspicions of money laundering below the reporting threshold or in the case of suspicions of terrorist financing below the reporting threshold.* • *Gateways to Customs information for the FIU need reviewing.*

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1)	This recommendation is fully observed.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Maltese authorities should adopt clearer legal provisions in the definition of terrorism financing offences to cover contributions used by a terrorist group for any purpose, including a legitimate activity. • Maltese authorities should introduce clearer legal provision to include direct and indirect collection of funds for terrorist financing.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The effectiveness of the attachment order regime should be reviewed. • The continued utility of the court appointed official to trace assets should be reviewed and financial investigation in major proceeds generating cases should be enhanced. • The effectiveness of the freezing and confiscation regime overall should be kept under active review by the senior national coordination mechanism.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Maltese authorities should provide an effective and publicly known national procedure for the purposes of de-listing and unfreezing in appropriate cases in a timely manner. • The authorities should ensure that EU internals are converted into Maltese legislation. • Assess the effectiveness of freezing system at the request of another country which relies on judicial procedures. • Further guidance is required and development of communication mechanisms with DNFBP (except Trustees), regarding designations and instructions, including asset freezing. • Take additional measures as necessary to monitor effectively the implementation of SRIII requirements by DNFBP.

2.5 The Financial Intelligence Unit and its functions (R.26)	• A timeframe for law enforcement and administrative authorities to respond to FIAU requests of information on a timely basis should be introduced.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	
3.2 Customer due diligence, including enhanced or reduced measures (R.5 and 6)	• Guidance and training should be issued/performed in order to clarify the concept of "*reputable jurisdiction*". • The authorities should further enhance the awareness of the subject persons in relation to the FATF statements regarding the countries listed as undergoing regular review. • The authorities should improve the risk management process. • Further clarify the distinction between CDD and ECDD and the recognition of reduced or simplified due diligence • The authorities should enhance their efforts to make sure that financial institutions are certain about the practical application of the requirement to identify the status of PEP when acquired in the course of a business relationship. • Clarify that financial institutions should ascertain the source of wealth and funds in all circumstances.
3.3 Financial institution secrecy or confidentiality (R.4)	This recommendation is fully observed.
3.4 Record keeping and wire transfer rules (SR.VII)	• Further training and assistance for respective subject persons are needed
3.5 Suspicious transaction reports and other reporting (R.13 & SR.IV)	• Further clarification in the definition of terrorism financing is required. • Encourage greater reporting of STRs (both for ML and FT suspicions) by obliged persons by raising awareness of the reporting requirements and by providing sector specific guidance including red flags/indicators. • Encourage greater use of the postponement powers • Provide specific FT training and guidance, red flags and indicators for better understanding the difference between the implementation of SRIII and the reporting obligations under SRIV.

3.6 Shell banks (R18)	• More emphasis should be placed on guidance from the supervisory authorities to market participants to enhance their ability to verify that their correspondent banks are not servicing shell banks.
3.7. Monitoring of transactions and relationship (R21)	• The authorities should provide more assistance and guidance to ensure that the concept of non-reputable jurisdiction is fully understood and the appropriate measures are taken in practice by subject persons.
3.8. Foreign branches and subsidiaries (R22)	This recommendation is fully observed.
3.9. The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23 and 17)	• Maltese authorities should enhance the on-going monitoring to ensure that the infringements identified and the sanctions imposed are commensurate with the financial market size. • The authorities should take appropriate measures to make sure that the sanctions imposed in practice are effective and dissuasive and that they can be applied also on FIs senior management. • The FIAU should be able to publish the sanctions it imposes. • Authorities should enhance the on-site supervision regime to ensure that all subject persons are properly covered.
3.10. Guidelines and feedback (R25)	• Maltese authorities should draft and approve dedicated guidelines to include sector specific ML/FT techniques and methods and any additional measures that financial institutions and DNFBP should take to ensure that their AML/CFT measures are effective. • The authorities should monitor and assess the effective implementation of Implementing Procedures Part I. • FIAU should make efforts to ensure that the feedback mechanism is fully working in practice.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Suspicious transaction reporting (R.16)	• Maltese authorities should place more emphasis on the awareness raising on AML/CFT obligations across different DNFBP. • The authorities should ensure that application of the internal auditing and staff training obligations are observed by DNFBP. • Further assistance should be provided to clarify the

	concept of "non-reputable jurisdiction" and the steps to be taken accordingly. • Further clarification in the definition of terrorism financing is required.
4.2 Regulation, supervision and monitoring (R.24-25)	• Maltese authorities should provide more resources to AML/CFT supervision of compliance of lawyers, notaries, dealers in precious metals and stones and real estates agents. • The risk based approach on the oversight of the DNFBP needs to be formalized.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.3 Non-profit organisations (SR.VIII)	• Maltese authorities should establish the compulsory registration of Voluntary Organizations. • Maltese authorities should develop a targeted risk assessment to determine the TF risks are in the NPO sector. • The Maltese authorities should identify the number and the types of NPOs that control significant parts of the financial resources of the sector and the ones conducting international activities. • The Maltese authorities should identify the number and the types of NPOs that control significant parts of the financial resources of the sector and the ones conducting international activities. • Awareness-raising programs need to be adopted and implemented in relation to the risks of terrorist financing abuse in the NPO sector. • Improve the access to public data contained in the VO Register. • Maltese authorities should implement supervising and monitoring systems. • A more dissuasive sanction regime should be adopted in order to increase effectiveness. • Controls and checks on the source of funds and on beneficiaries should be envisaged.

	• Ensure adequate staff resources for the VO Registrar
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	This recommendation is fully observed.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Malta should take additional measures in order to fully and effectively implement the Palermo and TF • The freezing regime should be strengthened. • Maltese authorities should provide an effective and publicly known national procedure for the purposes of de-listing and unfreezing.
6.3 Mutual Legal Assistance (R.36 & SR.V)	These recommendations are fully observed.
6.4 Other Forms of Co-operation (R.40)	This recommendation is fully observed.
7. Other Issues	
7.1 Resources and statistics (R. 30, R32)	• FIAU should implement analytical software in its activity. • Maltese authorities ensure that the staff dedicated to supervision of subject persons is sufficient for effective supervision. • The authorities should increase the staff for the Police Anti Money Laundering Unit[54]. • The authorities should ensure that police and judiciary have enough training on AML/CFT matters[55]. • Statistics on confiscations and confiscation orders should be kept and made available. • Statistics on supervisory activity should be kept by category of financial institutions • Malta should conduct a review of the effectiveness of the AML/CFT system as a whole and conduct a national risk assessment based on comprehensive statistics. The experience and seniority of the Board members should be further exploited in this respect. • Additional statistical data should be routinely collected on criminal proceedings, provisional measures and

[54] *This action point is related to a deficiency identified under the 3rd round report*
[55] *This action point is related to a deficiency identified under the 3rd round report*

	confiscations in proceeds generating crimes other than ML • Statistics on police to police and customs to customs information exchange should be made available.
7.2 Other relevant AML/CFT measures or issues	N/A
7.3 General framework – structural issues	N/A

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Relevant Sections and Paragraphs	Country Comments

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Malta has been a member country of the European Union since 2004. It has implemented **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **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**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	Regulation 5(1) of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) states that where an offence is committed by a body or other association of persons any person who at the time was a director, manager, secretary or other similar officer of such body or association shall be guilty of that offence unless he proves that the offence was committed without his knowledge and the he exercised all due diligence to prevent the commission of that offence. Also in terms of Regulation 5(2) when an offence is committed by a body or other association of persons or for the benefit of that body or association due to the lack of supervision or control such body or association shall be liable to an administrative penalty imposed by the FIAU without recourse to a court hearing.
Conclusion	Criminal liability for money laundering extends to legal persons.
Recommendations and Comments	

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts. The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your

	jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	Regulation 7(4) of PLMFTR specifically states that "subject persons shall not keep anonymous accounts or accounts in fictitious names".
Conclusion	The existing legislative provision regarding anonymous accounts and accounts in fictitious names leaves question of using numbered accounts open.
Recommendations and Comments	Authorities may wish to introduce restrictive measures for maintaining numbered accounts.

3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to EUR 15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of EUR 15 000 covered?
Description and Analysis	Regulation 2(1) of the PMLFTR defines case 3 (single large transaction) as any transaction, where payment is to be made by or to the applicant amounts to fifteen thousand euro (€15,000) or more. Furthermore Case 4 also includes transactions that are similar in character and are carried out by the same person and together amount to fifteen thousand euro (€15,000) or more. Regulation 7(5) then goes on to state that in order to be in line with the regulations subject persons must conduct customer due diligence on new applicant in the above mentioned cases amongst other situations when contact is first made between the subject person and the applicant for business concerning any particular business relationship or occasional transaction. This is further explained in the Implementing Procedures wherein it is explained that one type of applicant for business is the prospective customer who carries out an occasional transaction. In this case CDD should be applied when an occasional transaction involves "the payment of 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".
Conclusion	Transactions of €15,000 or more are covered.
Recommendations and Comments	-

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of 'Beneficial Owner' establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	'Beneficial Owner' refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.

Description and Analysis	Regulation 2(1) defines the beneficial owner in the case of body corporate or a body of persons as "any natural person who owns or controls, whether through direct or indirect ownership or control, more than 25% of the shares or voting rights in that body corporate or body of persons or who exercise control over the management of that body corporate or body of persons. In the case of other legal entities or arrangement when the beneficiaries have been determined, the beneficial owner is a natural person who is the beneficiary of or controls at least 25% of the property of the legal entity or arrangement. In cases where the beneficiaries have not been determined, the class of persons in whose main interest the legal entity or arrangement is set up is considered the beneficial owner. This is explained in the Implementing Procedures, Chapter 3, through the use of a table and two examples of possible company structures.
Conclusion	Maltese legislation covers the criteria in the EU definition of "beneficial owner" and thus follows the EU approach. The legal definition of beneficial owner as included in the PMLFTR corresponds to the definition of beneficial owner in the Third Directive.
Recommendations and Comments	

5.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further defines this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	Regulation 3 of the PMLFTR is dedicated to relevant financial activity on an occasional or very limited basis. This Regulations explains that the Financial Intelligence Analysis Units (FIAU) may determine that a subject person who engages in financial activity on an occasional or very limited basis and where there is little risk of money laundering shall not fall within the scope of the Regulations. This will be determined using a predetermined set of criteria as detailed in Article 4 of the Commission Implementation Directive. These include inter alia that the total turnover of the activity does not exceed fifteen thousand euro (€15,000); each transaction or series of linked transactions per customer does not exceed five hundred euro (€500), the financial activity is not the main activity and does not exceed five percent of the total turnover, the financial activity is not directly related to the main activity, the main activity is not an activity falling within the definition of 'relevant financial business' or

	'relevant activity' and the financial activity is only provided to the customers of the main activity.
Conclusion	Art. 4 of Commission Directive 2006/70/EC is implemented in Maltese legislation.
Recommendations and Comments	

6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	Regulation 10 of the PMLFTR, transposing Article 3 of the Commission Implementation Directive, provides that subject persons may not carry out customer due diligence but shall establish that the applicant qualifies according in the following circumstances; (a) where the applicant for business is a person who is authorised to undertake relevant financial business; (b) in case of legal persons listed on a regulated market, (c) with respect to beneficial owners of pooled accounts held by notaries or independent legal professionals; (d) domestic pubic authorities which fulfil certain criteria; (e) legal persons who represent a low risk of money laundering and funding of terrorism in accordance with certain criteria listed in the Regulations. This Regulations also provides a list of products or transactions in respect of which simplified due diligence may be applied. It is not allowed to apply simplified customer due diligence in cases when there are reasons for suspicion of money laundering or terrorist financing (Reg 10(5)).
Conclusion	The regulations of the PMLFTR are broadly in line with the Article 3 of Commission Directive 2006/70/EC.
Recommendations and Comments	

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?

Description and Analysis	The definition of "Politically Exposed Person" (PEP) is provided in the PMLFTR (Regulation 11(7) and 11(8)) and follows the definition of the Third Directive and the Implementation Directive. Regulation 11(6) of the PMLFTR requires enhanced due diligence to be conducted on politically exposed persons residing in another Member state of the Community or in any other jurisdiction.
Conclusion	Malta has implemented Article 2(4) of Commission Directive 2006/70/EC, and it applies Article 13(4) of the Directive as well.
Recommendations and Comments	

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	In this respect Malta applies Article 13 through Regulation 11(3) of the PMLFTR which limits the application of enhanced due diligence to cross border correspondent banking relationships and other similar relationships with institutions from a country outside the European Union. This is the case because it is understood that all EU Member States are bound to have implemented the EU Third AML Directive and hence their AML/CFT obligations in this regard would be harmonised.
Conclusion	The requirements included in the APMLFT are in line with the Article 13(3) of the Directive.
Recommendations and Comments	

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favour anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favour anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	The Maltese Regulations include both threats from products and transactions that favour anonymity and from new technologies. These are provided in Regulation 11(5) which requires subject persons to "pay special attention to any threat of money laundering or funding of terrorism that may arise from new or developing technologies, or from products or transactions that might favour anonymity and take measure to prevent their use in money laundering and funding of terrorism".
Conclusion	Article 13(6) of Directive is applied by requirement to pay special attention, which aims at identifying cases where the risk is high and it is required to carry out a risk analysis and to establish a risk assessment for individual groups or customers, business relationships, products or transactions with respect to their potential misuse for money laundering or terrorist financing.

Recommendations and Comments	

10.	**Third Party Reliance**
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	Under Regulation 12(5) of the PMLFTR reliance on CDD measures may be placed on subject persons undertaking "relevant financial business" with the exception of those persons whose main business is currency exchange or money transmission or remittance services. "Relevant financial business" is defined in Regulation 2 of the PMLFTR as (a) any business of banking or electronic money transfer, (b) any activity of a financial institution, (c) long term insurance business, (d) investment services, (e) administration services to collective investment schemes, (f) a collective investment scheme marketing its units or shares, (g) any activity other than that of a scheme or a retirement fund registered under the provisions of the Special Funds (Regulation) Act, (h) any activity of a regulated market and that of a central securities depository, (i) any activity under (a) - (h) carried out by branches in Malta, (j) any activity associated with business falling within paragraphs (a) – (i). Moreover subject persons may also rely on certain subject persons under the definition of "relevant activity" being auditors external accountant and tax auditors, notaries, when performing particular duties relating to real estate and management of clients' money or other assets, and any person providing trustee or any other fiduciary services. With reference to cross border reliance auditors, external accountants, notaries and persons providing trustee or fiduciary services may only rely on CDD carried out by subject persons carrying out activities equivalent to this category. The question of who qualifies as a third party is explained in further detail in the Procedures and Guidance in the section relating to reliance to third parties.
Conclusion	Maltese legislative acts permit reliance on professional, qualified third parties from EU Member States or third countries for CDD purposes, under certain conditions.
Recommendations and Comments	

11.	**Auditors, accountants and tax advisors**
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out

	transactions for their client concerning the following activities: • buying and selling of real estate; • managing of client money, securities or other assets; • management of bank, savings or securities accounts; • organisation of contributions for the creation, operation or management of companies; • creation, operation or management of legal persons or arrangements, and buying and selling of business entities (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and Analysis	In the definition of "relevant activity" this sector of DNFBPs is captured as follows: (a) auditors, external accountants and tax advisors, including when acting as provided for in paragraph (c). Paragraph (c) of the definition refers to the legal profession under circumstances as defined under the FATF 40. In brief therefore, auditors, external accountants and tax advisors are subject to the obligations under the PMLFTR both in their profession (as per EU Directive) and when undertaking additional activities as for the legal profession (as per FATF requirements) (See also Sections on Rec. 5 and Rec. 10 and Rec. 13)
Conclusion	Maltese legislation extents the scope of the CDD and reporting obligations for auditors, external accountants and tax advisors to all their activities including the ones defined by FATF standards.
Recommendations and Comments	

12.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of EUR 15 000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	Under Regulation 2(1) of the PMLFTR subject persons defined under "relevant activity" include "other natural or legal persons trading in goods whenever the payment is made 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". Therefore this includes all natural and legal persons trading in goods where payment is made in cash and amounts to €15,000 or more and is not limited to trading in precious metal as suggested in the FATF recommendation.
Conclusion	Malta has adopted the broader approach.
Recommendations and Comments	

13.	Casinos
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of EUR 2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above EUR 3 000.
Key elements	In what situations do customers of casinos have to be identified? What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	In terms of Regulation 9 of the PMLFTR all persons who enter into a casino must be identified. Also the casino must identify and verify the identity of any person who exchanges cash, a cheque or bank draft, or makes a credit card payment in exchange for chips or tokens for an amount of two thousand euro (€2,000) and again when that persons exchanges chips or tokens after a game, for an amount of two thousand euro (€2,000). This information should then be matched with the identity of the person who originally exchanged money for those chips or tokens and the casino shall further ensure that such chips or tokens are derived from winnings made whilst playing a game or games. The above shall also apply in situations where a series of transactions which in aggregate equal or exceed such amount.
Conclusion	The scope of the Regulations covers all persons entering into the casino and also any persons who purchases or exchanges chips of a value of €2,000 or more.
Recommendations and Comments	

14.	Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FIU
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FIU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	Regulation 15(6) provides that in cases when suspicions arise, subject persons (including accountants, auditors and tax advisors, and for notaries and other independent legal professionals) forward reports to the FIU.
Conclusion	The Maltese legislation does not make use of the option provided by the European Directive.
Recommendations and Comments	

15.	Reporting obligations
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering

	or terrorist financing and to report it to the FIU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FIU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	Reporting obligations of subject persons are laid down in Regulation 15(6) of the PMLFTR wherein any subject person who 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 shall report to the FIAU, together with all supporting documents by not later than five working days from when the suspicion first arose. Furthermore with regards to transactions Regulation 15(7) specifically prohibits subject persons from carrying out a transaction that is suspected or known to be related to money laundering or the funding of terrorism until they have informed the FIAU. In particular circumstances where to refrain in such a manner is not possible or is likely to frustrate efforts of the suspected money laundering or funding of terrorism operations, subject persons shall inform the FIAU immediately after the transaction is executed. In terms of Article 28 of the PMLA the FIAU may delay the execution of the transaction for 24 hours.
Conclusion	There is an obligation to report to the FIU where reasons for suspicion of money laundering or terrorist financing exist in connection with the customer or transaction included in the PMLTFR, as well as the obligation to refrain from a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FIU, which can stop the transaction.
Recommendations and Comments	

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	This is implemented in two separate sub-regulations being Regulation 15(12) which states that disclosures in accordance with the Regulations shall not involve that subject person, supervisory authority or their respective officers in any liability of any kind. Furthermore, and more specifically, Regulation 15(14) emphasises that the identity of the persons and employee who report suspicions of money laundering and funding of terrorism shall be kept confidential.

Conclusion	Article 27 of the Third Directive has been implemented by Regulation 15(12) and 15(14).
Recommendations and Comments	

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FIU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	Regulation 16 of the PMLFTR specifically prohibits any disclosures made by a subject person, supervisory authority, or any official or employee within that subject person or supervisory authority. However, in line with the EU AML Directive, the Regulation provides a series of circumstance when this obligation is lifted. These include disclosures to the supervisory authority relevant to that subject person or to law enforcement agencies, disclosures by the MLRO of a subject person to an MLRO of another person who undertakes equivalent activities, who form part of the same group of companies, and is situated in Malta or within another Member State of the Community or in a reputable jurisdiction. Disclosures by the MLRO of a subject person who undertakes activities of auditor, external accountant, tax auditor or notary to the MLRO 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, whether situated in Malta, within another Member State of the Community or in a reputable jurisdiction are also permissible. Moreover other permissible disclosures included disclosures between the same professional category of subject persons, related to the same customer, the same transaction, that involve two or more institutions or persons situated in Malta, within another Member State 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.
Conclusion	The provisions of the PMLTFR correspond to the requirements of Article 28 of the Third Directive.
Recommendations and Comments	

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries.

FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Article 34(2) of the Directive is interpreted in Regulation 6(2) which provides that subject persons should communicate to all their branches the established policies and procedures and such branches must apply as a minimum procedures regarding customer due diligence and record-keeping that are equivalent to the obligations set out in the PMLFTR.
Conclusion	The obligation as provided in the Article 34 (2) of the Third Directive is broadly in place in Malta. Regulation 6(2) does not include obligation to communicate the relevant internal policies and procedures where applicable on risk assessment, risk management, compliance management and communication to branches and majority owned subsidiaries in third (non EU) countries. It only allows opening branches and subsidiaries in reputable countries, thus narrowing the application of the Directive
Recommendations and Comments	

19.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	In cases where the legislation of a particular country does not permit the application of equivalent AML/CFT measures Regulation(6) of the PMLFTR provides that subject persons must immediately inform the FIAU who will in turn inform the relevant domestic supervisory authority, the relevant authority of other member states and the European Commission accordingly. The subject person is also required to take additional measures to handle the risk of money laundering and funding of terrorism and if such measures may not be applied the FIAU together with the relevant supervisory authority may require the closure of the branch or majority owned subsidiary.
Conclusion	Maltese legislation requires financial institutions to inform the FIU about situations where the legislation of the third country does not allow application of equivalent AML/CFT measures as stipulated by PMLTFR. In the said circumstances, Regulation 6 includes an obligation for the financial institutions to apply additional measures, but it is not quite clear to what measures should be applied and to what extent. No specific additional measures are set forth for the financial institutions to be applied in circumstances where the legislation of a third country

	does not permit the application of equivalent AML/CFT measures by foreign branches of Maltese financial institutions.
Recommendations and Comments	

Supervisory Bodies	
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FIU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	Article 25(1) of the Directive is implemented through Regulation 15(5) which places an obligation on a supervisory authority to maintain internal reporting procedures. Regulation 15(9) specifically provides that when a supervisory authority discovers facts or information that may be related to money laundering or funding of terrorism it shall disclose that information, together with the supporting documents to the FIAU by not later than five working days from when the facts are discovered.
Conclusion	Art. 25(1) of the Directive is implemented in Malta.
Recommendations and Comments	

20.	**Systems to respond to competent authorities**
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FIU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	In terms of Regulations 13(6) all subject persons (which include both financial and non financial institution) shall provide the FIAU or other supervisory authority with all customer identification, due diligence records and transaction records or other relevant information upon request. Regulation 13(7) imposes on subject persons the obligation to establish systems that enable them to respond efficiently to enquiries from the FIAU in relation to whether they maintain or have maintained during the previous five years, a relationship with a specified legal or natural person and the nature of such relationship.
Conclusion	Article 32 of the Directive can be considered implemented sufficiently in Malta.
Recommendations and Comments	

21.	**Extension to other professions and undertakings**
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive,

	which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	In terms of Article 12(2) of the PMLA which is similar in concept to Article 4 of the Directive the PMLFTR have been extended to apply the AML/CFT obligations to affiliated insurance businesses and to other business of insurance carried on by a cell company. Also the scope of the regulations has been further extended to include regulated markets and central securities depository authorised under the Financial Markets Act. For ease of reference, Article 12(2) of the PMLA states that: The Minister may by regulations extend the provisions of this Act in whole or in part and of any regulations made to categories of undertakings and to professions which engage in activities which, in the opinion of the Minister, are particularly likely to be used for money laundering purposes or funding of terrorism.
Conclusion	Malta has implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes. In practice the AML/CFT obligations under the PMLFTR have already been recently extended to affiliated insurance business and protected cell companies. However, no formal risk assessment has been undertaken in this regard.
Recommendations and Comments	The Maltese authorities should consider undertaking a formal risk assessment of the professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes.

22.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	The PMLFTR introduces the notion of a "reputable jurisdiction" which is defined as any country having appropriate legislative measures for the prevention of money laundering and funding of terrorism and which supervises subject persons for compliance with such measures. Subject persons are required to establish whether a jurisdiction is considered to be reputable on the basis of the information available on that country and the consideration of any FATF, MONEYVAL or other FSRB or IMF/World Bank evaluations undertaken, membership of groups, public announcements and other relevant factors. This evaluation is required for a number of reasons including risk assessment of an applicant, qualification for simplified due diligence or enhanced due diligence, with respect to reliance to third parties, cross border branches and prohibition of disclosure. The Implementing Procedures provide further detail in this

	respect and also include the list in the Common Understanding issued by the EU Member States considered as having equivalent AML/CFT systems to the EU.
Conclusion	Maltese AML/CFT provisions on equivalent third countries (including the list of those countries) are broadly in line with those in the Third Directive.
Recommendations and Comments	

Annex to Compliance with 3rd EU AML/CFT Directive Questionnaire

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;

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

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.

VI. LIST OF ANNEXES

Annex 1

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation
Participation in an organised criminal group and racketeering;	Article 83A of the Criminal Code (Cap. 9 of the Laws of Malta)
Terrorism, including terrorist financing	Article 328A to 328M of the Criminal Code
(a)Trafficking in human beings and (b) migrant smuggling; (c) Sexual exploitation, including sexual exploitation of children;	(a) Article 248A to E of the Criminal Code (b) Article 337A of the Criminal Code and Article 32 of the Immigration Act (Cap. 217 of the Laws of Malta) (c) Article 54C of the Criminal Code
Illicit trafficking in narcotic drugs and psychotropic substances;	Dangerous Drugs Ordinance (Cap. 101 of the Laws of Malta) Article 120, et seq. of the Medical and Kindred Professions Act (Cap. 31 of the Laws of Malta)
Illicit arms trafficking	Article 5(2) and 51(3) of the Arms Act (Cap. 480 of the Laws of Malta) and Exportation of Arms and Ammunition Regulations (Government Notice 65 of 1910)
Illicit trafficking in stolen and other goods	Art 334 of the Criminal Code and Art 53e of the Cultural Heritage Act (Cap. 445 of the Laws of Malta)
(a) Corruption and (b) bribery	(a) Article 121 of the Criminal Code (b) Article 115 of the Criminal Code
Fraud	Article 293 to 310 of the Criminal Code
Counterfeiting currency	Art 45 to 53 of the Central Bank of Malta Act (Cap. 204 of the Laws of Malta)
(a) Counterfeiting and (b) piracy of products	Article 298 of the Criminal Code
Environmental crime	Environment Protection Act (Cap. 435 of the Laws of Malta)
(a) Murder, (b) grievous bodily injury	(a) Article 211 to 213 of the Criminal Code (b) Article 216 of the Criminal Code
(a) Kidnapping, (b) illegal restraint and (c) hostage-taking	(a) Article 210 of the Criminal Code (b) Article 86 of the Criminal Code (c) Article 54D(e)(viii) of the Criminal Code
Robbery or theft;	Article 261 to 288 of the Criminal Code
Smuggling	Art 60 to 64 of the Customs Ordinance (Cap. 37 of the Laws of Malta)
Extortion	Article 113 of the Criminal Code
Forgery	Article 166 to 188 of the Criminal Code
Piracy	Article 328N to 328O of the Criminal Code
Insider trading and market manipulation	Prevention of Financial Markets Abuse Act (Cap. 476 of the Laws of Malta)

ANNEXES I - VIII
See MONEYVAL (2012) 3 ANN