

Malta

Fifth Round Mutual Evaluation Report Executive Summary

1. This report provides a summary of the anti-money laundering (AML) and countering the financing of terrorism (CFT) measures in place in Malta as at the date of the onsite visit (5-16 November 2018). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Malta's AML/CFT system, and provides recommendations on how the system could be strengthened.

Key Findings

- Malta has made significant efforts to understand its money laundering (ML) and financing of terrorism (FT) risks, including by conducting a formal national risk assessment (NRA) exercise in 2013/14, with some updating of statistics and findings in 2017. The resulting 2018 report is the primary document demonstrating the country's understanding of ML/FT threats, vulnerabilities and risks in Malta. The NRA demonstrates that the authorities have a broad understanding of the vulnerabilities within the anti-money laundering and counter-terrorist financing (AML/CFT) system (particularly the regulated sectors), but a number of important factors appear to be insufficiently analysed or understood. Several agencies, such as the Financial Intelligence Analysis Unit (FIAU) and the Malta Financial Services Authority (MFSA) have taken action over the period 2015–2017, and have further revised or are planning to revise, their operations and priorities to take account of vulnerabilities in the framework. While initial indications are positive, it is too early to assess their effectiveness. The private sector has not used the results of the risk assessment for revisiting their relevant policies, procedures and controls, mainly due to the results of the NRA being first communicated to them in late October 2018.
- The FIAU is considered to be an important source of financial intelligence for the Police in Malta for pursuing investigations and prosecutions of ML, associated predicate offences and FT. However, only in a limited number of cases are the FIAU disseminations used to develop evidence and trace criminal proceeds related to ML. The authorities' focus primarily on tax collection (as opposed to conducting criminal investigations on tax-related matters and parallel financial investigations) excludes the ML elements of the cases, which raises concerns on the adequacy of the measures applied by the competent authorities in the light of the NRA conclusions about tax evasion being one of the highest threats in the country. There are also some concerns regarding the use of suspicious transaction reports (STRs), mainly from the remote gambling sector concerning non-residents, as these cases are not sufficiently considered to identify possible ML taking place through Malta. There are only few FT-related investigations conducted by the Police, of which some were still on-going at the time of the on-site visit. Hence it is difficult to conclude on the use of financial

intelligence by the authorities for the purposes of FT investigations. The FIAU uses cross-border cash declarations for analytical purposes and submits relevant information to the Police and/or foreign counterparts. Other than that, strategic analysis conducted by the FIAU does not adequately support the activities of the respective stakeholders. The FIAU officers perform their functions freely and objectively without undue influence. Different factors and circumstances call into question the FIAU's ability to perform its analytical function at full capacity. Underreporting and non-reporting within certain entities and sectors poses problems.

- ML is mainly investigated together with the predicate offence on which the investigation is centred. Limited resources, both human and financial, allocated to the investigation and prosecution of ML weighs negatively on Malta's capability to effectively fight ML. ML investigations and prosecutions do not appear to be in line with the country's risk profile and the growing size and complexity of its financial sector. The assessment team is not convinced that the law enforcement authorities are currently in a position to effectively and in a timely manner investigate and prosecute high-level and complex ML cases related to financial, bribery and corruption offences. While Malta was in principle able to provide examples of convictions for most of the different types of ML, cases of stand-alone ML are very rare and no recent case was presented in relation to professionals of the financial sector. Based on the few convictions the sanctions applied against natural persons appear to be dissuasive. Malta has not yet achieved convictions for ML concerning legal persons.
- While the law courts routinely order the confiscation of assets, shortcomings in asset-tracing, in the effective use of provisional measures and in the identification of assets in the judgments cast doubts on the effectiveness of the system and the existence of a coherent policy. No asset-tracing has until very recently been performed in respect of assets located abroad. Very few steps have been undertaken to trace assets transferred onto the name of third parties or (very often complex) corporate structures. The shortcomings in the asset-tracing and confiscation regime are not in line with the risks faced by the jurisdiction.
- Malta has a sound legal framework to fight FT. The Maltese authorities have recently instituted a few FT investigations, but it is difficult to assess whether these are consistent with the country's FT risk profile as no up-to-date and exhaustive risk assessment was provided by the authorities. There have not yet been any prosecutions or convictions for FT in Malta. While the actions undertaken by the authorities are not fully in line with Malta's possible FT risks, the assessment team has however noted recent progress, insofar as the competent authorities have improved their understanding of the threats and vulnerabilities and have undertaken certain actions to mitigate the risks. Malta has recently elaborated a high-level national counter-terrorism strategy which could however not be provided to the assessment team (which consequently could not form a view of how FT is integrated with or supportive of that strategy).
- The financial sector's appreciation of the ML/FT risk is varied across the sectors. Banks and casinos demonstrated a good understanding of the ML risks, but some non-bank financial institutions (FIs) and other designated non-financial businesses and professions (DNFBPs) (including some trust and company services providers (TCSPs), legal professionals, accountants and real estate agents) were unable to clearly articulate how ML might occur within their institution or sector. Both FIs and DNFBPs were less confident in their understanding in relation to FT risk. Banks, non-bank FIs, TCSPs, legal professionals and casinos demonstrated knowledge of the applicable requirements in the AML/CFT Law and relevant regulations regarding the pillars of the preventative regime. Among other DNFBPs, knowledge of AML/CFT obligations was generally demonstrated, with

some common gaps. Nevertheless, there remain concerns about suspicious reporting obligations with most non-bank FIs and DNFBPs unable to elaborate on typologies, transactions or activities that would give rise to a STR, particularly in relation to FT. Although the total number of STRs has been steadily growing over the period 2013-2018, there are generally low reporting rates across the sectors, compared to the inherent risks of those sectors. Overall, Malta has not demonstrated that AML/CFT obligations are being effectively implemented.

- The supervisory authorities do not have adequate resources to conduct risk-based supervision, for the size, complexity and risk profiles of Malta's financial and DNFBP sectors. At the time of the evaluation, the Maltese authorities were working through a comprehensive list of strategic actions to enhance Malta's AML/CFT supervisory framework. Positive steps have been taken by the supervisory authorities to improve their knowledge of ML/FT risks in the banking, TCSPs and remote gaming sectors. However, weaknesses remain for all other sectors. The supervisory authorities' primary focus in the past has been to issue pecuniary fines for specific breaches of AML/CFT requirements, rather than assess whether there are systemic deficiencies with a subject person's AML/CFT governance and control framework and apply the necessary remediation measures. The sectorial supervisors have in place established fitness and properness checks to prevent criminals and their associates from owning or controlling FIs. However, during the period under review, the MFSA took well-publicised prudential enforcement action related to AML/CFT issues against two privately-owned banks, both of which were also licensed during the period under review. Although fit and proper checks were conducted on these two banks, the risk appetite of the MFSA in licencing a bank with a single beneficial owner, with no track record in banking, raises questions from a wider ML/FT perspective. Market entry measures and on-going fitness and properness measures are inadequate for lawyers, dealers in precious metal or stones (DPMS) and real estate agents.

- No in-depth analysis of how all types of Maltese legal persons and legal arrangements could be used for ML/FT purposes has been finalised and shared with relevant stakeholders. The authorities take a multi-pronged approach to obtaining beneficial ownership (BO) information by way of the following: (i) the TCSP and/or a lawyer or accountant administering the legal person and legal arrangement; (ii) Maltese banks; and (iii) with effect from 1 January 2018 all new Maltese legal persons and trusts which generate tax consequences in Malta were required to obtain beneficial ownership information and disclose such information to the pertinent registries. However, the registers of beneficial ownership information for legal persons are currently being retroactively populated. Therefore, the assessment team could not fully assess the effectiveness of this new mechanism. Notwithstanding this, there are some shortcomings in this multi-pronged approach, which could sometimes call into question the accuracy of beneficial ownership information held on Maltese legal persons. Taking into account the nature and scale of business undertaken in Malta, the potential fines for failing to submit beneficial ownership information on legal persons are not considered effective, dissuasive and proportionate.

- Through a combination of a supranational and national mechanisms Malta ensures implementation of the United Nations (UN) targeted financial sanctions (TFS) regimes on FT and proliferation financing (PF) without delay. Deficiencies exist in the immediate communication of the amendments to the UN lists of designated persons and entities to the subject persons. This has an impact on the immediate implementation of the relevant UNSCRs by the FIs and the DNFBPs which do not rely on automated sanctions screening mechanisms or group-level analytical systems. Most of the subject persons demonstrated awareness of their TFS obligations, but there is confusion whether

to report to the FIAU (by way of an STR) and/or to the Sanctions Monitoring Board (SMB). Several DNFBPs were not aware at all of freezing or reporting obligations. The Office of the Commissioner for Voluntary Organisations (CVO) has identified the enrolled voluntary organisations (VOs) which are vulnerable to FT abuse, and conducted extensive outreach to the enrolled VOs sector on FT. The FT risks associated with the non-enrolled VOs have not yet been analysed. A risk-based approach to monitor the VO sector has not yet been developed and implemented.

- Maltese legislation sets out a comprehensive framework for international cooperation, which enables the authorities to provide assistance concerning ML/FT and associated predicate offences. The FIAU has a broad legal basis for international cooperation and proactively and constructively interacts with its foreign counterparts by exchanging information on ML/FT. The Police are active in the sphere of international cooperation through direct communication (especially via Europol, CARIN and SIENA). However, the information-sharing via different law enforcement platforms often remains at the stage of inter-agency cooperation and is conducted in parallel with the FIU-to-FIU cooperation, without achieving adequate levels of integration or translating into requests of assistance. Overall, positive feedback on the quality and timeliness of formal and direct international cooperation provided by Malta was received from foreign partners.

Risks and General Situation

2. Malta is a relatively large international finance centre specialised in corporate and transaction banking and fund management. Malta's financial sector is bank-centric. The large and internationally exposed banking sector is highly vulnerable to ML (especially non-retail deposits, correspondent accounts, wire transfers and wealth management, but also in relation to e-gaming and foreign customers). It is estimated that Malta has a significant shadow economy. Cash is of widespread use in the country.

3. The NRA considers the ML threat related to foreign proceeds of crime to be high, a consequence of the size and international exposure of Malta's economy. The assessment team considered that organised crime (OC) and fraud generate a significant part of the foreign proceeds laundered in Malta. Domestic crime also feeds the overall ML threat, and is mainly related to local OC groups, tax crime, drug trafficking, fraud, corruption/bribery, goods smuggling and theft.

4. The NRA highlights that remote gaming is inherently vulnerable to ML due to the high number of customers, mainly non-resident, the high volume of transactions, the non-face-to-face nature of the business and the use of prepaid cards. The NRA classifies the large and non-resident oriented TCSP sector as highly vulnerable to ML. Legal professionals, accountants and real estate agents are also particularly vulnerable to ML.

Overall Level of Effectiveness and Technical Compliance

5. Since the last evaluation, Malta has taken steps to improve the AML/CFT framework. Namely, subsidiary legislation was introduced to establish BO registers for companies, trusts (that generate tax consequences), foundations and associations incorporated or administered in Malta. The National Interest (Enabling Powers) Act (which is the main legislative instrument for implementing UN and EU sanctions) has undergone significant changes. The Prevention of Money-Laundering Act (PMLA) has been amended in part to transpose provisions of EU Directive 2015/849 and in part to

further clarify and strengthen the national AML/CFT regime. However, some deficiencies remain in Malta's technical compliance framework.

6. The authorities have demonstrated a broad understanding of the vulnerabilities within the AML/CFT system (particularly the regulated sectors), but a number of important factors, particularly FT, legal persons and arrangements, the use of new and developing technology and the use of cash appear to be insufficiently analysed or understood.

7. A substantial level of effectiveness has been achieved in international cooperation and implementation of PF targeted financial sanctions. A moderate level of effectiveness has been achieved in identifying, understanding and assessing ML/FT risks, using financial intelligence, investigating and prosecuting FT, applying AML/CFT preventive measures by FIs and DNFBPs, implementation of FT targeted financial sanctions and transparency of legal persons and arrangements. A low level of effectiveness has been achieved in all other areas covered by the FATF standards.

Assessment of Risks, coordination and policy setting (Chapter 2 - IO.1; R.1, R.2, R.33)

8. Malta has made significant efforts to understand its ML/FT risks, including by conducting a formal NRA exercise in 2013/14, with some updating of statistics and findings in 2017. The resulting 2018 report is the primary document demonstrating the country's understanding of ML/FT threats, vulnerabilities and risks in Malta.

9. The NRA Report demonstrates that authorities have a broad understanding of the vulnerabilities within the AML/CFT system (particularly the regulated sectors), but a number of important factors - particularly, legal persons and arrangements, the use of new and developing technology and the use of cash - appear to be insufficiently analysed or understood.

10. The NRA report concludes that FT risk is medium-high, but this appears largely driven by a desire to be cautious and Malta's geographical location, rather than a detailed analysis of statistics, trends or activities. It is not clear that the FT analysis adequately considers the threats and vulnerabilities of any specific products, services or sectors.

11. A National Coordination Committee on Combatting Money Laundering and Funding of Terrorism (NCC) was established in April 2018. The key national policy document is the "National AML/CFT Strategy", which likewise dates from that month. The strategy sets out 7 key initiatives, designed to improve the national AML/CFT framework and an Action Plan, containing steps and timelines for deliverables assigned to the various national agencies.

12. Several agencies have taken action over the period 2015–2017, and have further revised, or are planning to revise, their operations and priorities to take account of vulnerabilities in the framework as a result of the NRA. While initial indications are positive, it is too early to assess whether either the developing supervisory arrangements or the NCC coordination role and Action Plan are, or will be, effective.

13. The private sector has not used the results of the risk assessment for revisiting their relevant policies, procedures and controls. This is mainly due to the results of the NRA being first communicated to private sector entities in late October 2018.

14. The conclusions of the NRA have not resulted in any decisions on possible exemptions from AML/CFT requirements for low-risk products, sectors or activities. However, it appears that in

practice the fund industry applies some CDD exemptions in respect to underlying investors in order to facilitate the conduct of business.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

15. The FIAU is considered to be an important source of financial intelligence for the Police in Malta for perusing investigations and prosecutions of ML, associated predicate offences and FT. However, only in a limited number of cases are the FIAU disseminations used to develop evidence and trace criminal proceeds related to ML. The authorities' focus primarily on tax collection (as opposed to conducting criminal investigation on tax-related matters and parallel financial investigations) excludes the ML elements of the cases, which raises concerns on the adequacy of the measures applied by the competent authorities in the light of the NRA conclusions about tax evasion being one of the highest threats in the country. There are also some concerns regarding the use of the STRs, mainly from the remote gambling sector concerning non-residents, as these cases are not considered sufficiently to identify possible ML taking place through Malta. There are only few FT-related investigations conducted by the Police, of which some were still on-going at the time of the on-site visit. Therefore, it is difficult to conclude on the use of financial intelligence by the authorities for the purposes of FT investigations.

16. The FIAU officers perform their functions freely and objectively without undue influence. Operational analysis carried out by the FIAU is conducted according to a detailed internal written procedure. Different factors and circumstances call into question the FIAU's ability to perform its analytical function at full capacity: a very long analytical process; the low number of disseminations to the Police and absence of feedback to the FIAU; issues related to STR reporting; and lack of adequate human and technical resources. The FIAU uses cross-border cash declarations for analytical purposes and submits relevant information to the Police and/or foreign counterparts. Other than that, the assessment team is of the opinion that the efforts of the FIAU related to conducting a strategic analysis do not adequately support the activities of the respective stakeholders.

17. ML is mainly investigated together with the predicate offence on which the investigation is centred. Parallel financial investigations are not conducted on a systematic but rather on a case-by-case basis. The investigation (and subsequent prosecution) of ML *stricto sensu* does not appear to constitute a priority for the Maltese authorities. Limited resources, both human and financial, allocated to the investigation and prosecution of ML weighs negatively on Malta's capability to effectively fight ML. ML investigations and prosecutions do not appear to be in line with the country's risk profile. There are concerns that the law enforcement authorities are currently not in a position to effectively and in a timely manner investigate and prosecute high-level and complex ML cases related to financial, bribery and corruption offences. While Malta was in principle able to provide examples of convictions for most of the different types of ML, cases of stand-alone ML are very rare and no recent case was presented in relation to professionals of the financial sector. Based on the few convictions the sanctions applied against natural persons appear to be dissuasive. Malta has not yet achieved convictions concerning legal persons.

18. The confiscation of criminal proceeds does not appear to be pursued as a policy objective. The law courts routinely order the confiscation of assets. However, shortcomings in asset-tracing, in the effective use of provisional measures and in the identification of assets in the judgments cast doubts

on the effectiveness of the system and the existence of a coherent policy. No asset-tracing has until very recently been performed in respect of assets located abroad. It was mostly directed towards assets in the name of the suspects. Very few steps have been undertaken to trace assets transferred onto the name of third parties or (very often complex) corporate structures. The shortcomings in the asset-tracing and confiscation regime are not in line with the risks faced by the jurisdiction. Cases of non-declaration of cross-border movements of cash are punished by effective and dissuasive sanctions. Despite of this, there are hardly any investigations of ML/FT initiated on the basis of the cash declaration system.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

19. Malta has a sound legal framework to fight FT. The Maltese authorities have recently instituted a few FT investigations, but it is difficult to assess whether these are consistent with the country's FT risk profile as no up-to-date and exhaustive risk assessment was provided by the authorities. There have been no prosecutions or convictions for FT in Malta so far.

20. The assessment team is of the opinion that for the period under review, taking into account the information provided and the contextual elements available, the actions undertaken by the authorities are not fully in line with Malta's possible FT risks. Recent progress has however to be noted, insofar as the competent authorities have improved their understanding of the threats and vulnerabilities and have undertaken certain actions to mitigate the risks. This includes the monitoring of certain social media and internet platforms that might be used for fundraising or fund-collection, of "at-risk individuals" in relation with certain forms of payments and money transfers and the establishment of a close cooperation and information exchange between the CVO and the competent authorities.

21. Malta has in mid-2018 elaborated a high-level national counter-terrorism strategy which could however not be provided to the assessment team (being classified information). Any assessment as to whether and to what extent the investigation of FT is integrated with such strategy is therefore impossible.

22. Through a combination of supranational and national mechanisms, Malta ensures the implementation of the UN TFS regimes on FT and PF without delay. Overall, the authorities could demonstrate a competency in coordinating their activities with respect to implementation of various TFS regimes. Although the comprehensiveness of understanding of its FT risks by the country casts some doubts, the measures undertaken to implement TFS seem to be broadly adequate to FT risks (bearing in mind the geographic location of Malta). Amendments to the lists of designated persons and entities are not communicated immediately to the subject persons. Most of the FIs and DNFBPs demonstrated a good level of understanding of obligations on identification of assets of the TFS-related persons and entities. Nevertheless, the basic screening approach followed especially by the DNFBPs is deemed insufficient, and there is confusion as to which body to report to the matches with the lists to the FIAU (by way of an STR) and/or to the SMB. Several DNFBPs were not aware of freezing or reporting obligations at all. A detailed guidance is issued by the SMB and the FIAU to support subject persons with the implementation of TFS regimes on FT and PF. The SMB constantly receives enquiries from a range of private institutions which are analysed and answered. However, there is a lack of adequate resources for supervision of the implementation of TFS on PF by the subject persons.

23. The CVO has identified the enrolled VOs vulnerable to FT abuse. However, the FT risks associated with the non-enrolled VOs have not yet been analysed. A risk-based approach to monitor the sector has not been developed and implemented. The CVO has conducted extensive outreach to the enrolled VOs' sector on FT. However, the donor community and the non-enrolled VOs have so far not been specifically addressed. Most FIs and DNFBPs consider the VO sector as higher risk irrespective of the individual VO's level of vulnerability to FT abuse. This demonstrates that the results of the VOs' risk assessment are not yet used by the FIs.

Preventive Measures (Chapter 5 - IO4; R.9-23)

24. The financial sector's appreciation of the ML/FT risk is varied across the sectors. Banks and casinos demonstrated a good understanding of the ML risks, but some non-bank FIs and other DNFBPs (including some TCSPs, legal professionals, accountants and real estate agents) were unable to clearly articulate how ML might occur within their institution or sector. Both FIs and DNFBPs were less confident in their understanding in relation to FT risk.

25. Banks, non-bank FIs, TCSPs, legal professionals and casinos demonstrated knowledge of the applicable requirements in the AML/CFT Law and relevant regulations regarding the pillars of the preventative regime, i.e. customer due diligence (CDD) (including identification of ultimate BOs and on-going monitoring of transactions/business relationships) and record-keeping. Among other DNFBPs, knowledge of AML/CFT obligations was generally demonstrated, with most common gaps being in relation to on-going monitoring of TFS regimes (although this can be the result of some DNFBPs dealing mainly with occasional transactions). Nevertheless, there remain concerns about suspicious reporting obligations with most non-bank FIs and DNFBPs unable to elaborate on typologies, transactions or activities that would give rise to a STR, particularly in relation to FT. Although the total number of STRs has been steadily growing over the period 2013-2018, there are generally low reporting rates across the sectors, compared to the inherent risks of those sectors.

26. Overall, the deficiencies in the supervision of FIs and DNFBPs, the lack of information on industry compliance with AML/CFT requirements, and the assessment of the legal framework regarding preventative measures for FIs and DNFBPs as mainly low (as confirmed by discussions with the private sector) means that AML/CFT obligations are being effectively implemented by FIs and DNFBPs to some extent, with major improvements needed.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

27. The supervisory authorities do not have adequate resources to conduct risk-based supervision, for the size, complexity and risk profiles of Malta's financial and DNFBP sectors. At the time of the evaluation the Maltese authorities were working through a comprehensive list of strategic actions to enhance Malta's AML/CFT supervisory framework.

28. Positive steps have been taken by the supervisory authorities to improve their knowledge of ML/FT risks in the banking, TCSP and remote gaming sectors. However, weaknesses in their appreciation of ML/FT risks remain for all other sectors. Moreover, there was no documented process in place setting out how subject person specific ML/FT risk-ratings drive the frequency, scope and nature of future supervisory onsite/offsite inspections.

29. While the supervisory authorities' approach to supervision is nascent, the FIAU's focus in the past has been to issue pecuniary fines for specific breaches of AML/CFT requirements, rather than

assess whether there are systemic deficiencies with a subject person's AML/CFT governance and control framework and apply the necessary remediation measures.

30. The sectorial supervisors have in place established fitness and properness checks to prevent criminals and their associates from owning or controlling FIs and most DNFBPs. However, during the period under review, the MFSA took well-publicised prudential enforcement action related to AML/CFT issues against two privately-owned banks, both of which were also licensed during the period under review. Although fit and proper checks were conducted on these two banks, the risk appetite of the MFSA in licencing a bank with a single beneficial owner, with no track record in banking, raises questions from a wider ML/FT perspective. Market entry measures and on-going fitness and properness measures are inadequate for lawyers, DPMS and real estate agents.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

31. It is acknowledged by the authorities in the NRA that Maltese legal persons and legal arrangements can be misused for ML/FT purposes, in particular that such vehicles have been used to obscure beneficial ownership. However, no in-depth analysis of how all types of Maltese legal persons and legal arrangements which could be used for ML/FT purposes has been finalised and shared with relevant stakeholders.

32. The Maltese authorities take a multi-pronged approach to obtaining beneficial ownership information in a timely manner on Maltese legal persons and legal arrangements by way of the following: (i) the TCSP and/or a lawyer or accountant administering the legal person and legal arrangement; (ii) the depositing of share capital at Maltese banks; and (iii) with effect from 1 January 2018 all new Maltese legal persons and trusts which generate tax consequences in Malta were required to obtain beneficial ownership information and disclose such information to the pertinent registries. However, the registers of beneficial ownership information for legal persons are currently being retroactively populated. Therefore, the assessment team could not fully assess the effectiveness of this new mechanism. Notwithstanding this, there are some shortcomings in this multi-pronged approach. In particular, whilst the introduction of a centralised register of beneficial ownership for companies and commercial partnerships is a positive move, the Registry of Companies does not have sufficient human resources and legal gateways to adequately verify/monitor the accuracy of the beneficial ownership information held. This could sometimes call into question the accuracy of beneficial ownership information held on Maltese legal persons.

33. Information is available publicly on the creation and types of legal persons and arrangements in Malta.

34. Taking into account the nature and scale of business undertaken in Malta, the potential fines for failing to submit beneficial ownership information on legal persons are not considered effective, dissuasive and proportionate.

International Cooperation (Chapter 8 - IO2; R. 36-40)

35. Maltese legislation sets out a comprehensive framework for international cooperation, which enables the authorities to provide assistance concerning ML/FT and associated predicate offences. While the Attorney General's Office (AGO) serves as the central authority for international cooperation through mutual legal assistance (MLA) in Malta, channels of cooperation through direct communication are used by the Police and the FIAU with respective foreign partners.

36. The FIAU has a broad legal basis for international cooperation and proactively and constructively interacts with its foreign counterparts by exchanging information on ML and FT. The assistance provided by the FIAU spontaneously and/or upon request is considered effective in terms of quality and timeliness by its counterparts.

37. Moreover, the Police are active in the sphere of international cooperation through direct communication (especially via Europol, CARIN and SIENA). However, the information-sharing via different law enforcement platforms often remain at the stage of inter-agency cooperation and is conducted in parallel with the FIU-to-FIU cooperation, without achieving adequate levels of integration or translating into requests of assistance. These factors have also affected the number of MLA requested by the AGO (which appears to be limited, especially when compared with the amount of foreign requests for MLA received in recent years).

38. The Police regularly engage in Joint Investigation Teams to deal with transnational ML schemes. Memoranda of Understanding have also been signed between the Police and foreign authorities to enhance the non-MLA relationships and promote international cooperation.

39. Overall, positive feedback on the quality and timeliness of formal international cooperation (including MLA and extradition) provided by Malta was received from foreign partners. The few instances where international cooperation was not conceived as satisfactory by foreign partners related to delay caused by difficulties experienced in collecting the requested information from FIs in cases where a lot of financial data was required by the requesting state.

40. Maltese authorities frequently exchange basic and BO information with their counterparts via various channels of communication. In order to ensure exchange of adequate and current basic and BO information with their respective counterparts the Maltese authorities use a combination of various sources of information to collect the data. The feedback provided by the AML/CFT global network is generally positive in terms of the quality and timeliness of provided assistance, and does not suggest any particular concerns in this respect either.

Priority Actions

- Malta should, as a matter of priority, take action to improve national understanding of risks, threats and vulnerabilities by:
 - a) updating statistical data to inform the analysis of ML/FT risks;
 - b) analysing the main predicate offences associated with foreign proceeds of crime;
 - c) conducting a detailed analysis of the threat from local organised crime groups (OCGs);
 - d) conducting a detailed analysis of the risks arising from the use of legal persons and arrangements;
 - e) analysing the ML/FT implications of corruption, tax evasion and the shadow/cash economy;
 - f) assessing the vulnerabilities of the FinTech sector, including virtual assets;
 - g) conducting a more detailed assessment of FT risks, particularly a detailed analysis of statistics, trends or activities; and consideration of the threats and vulnerabilities of products, services or sectors in Malta.

- Malta should ensure that the supervisory authorities have sufficient resources and expertise in place to ensure effective supervision for the size, complexity and the ML/FT risks of their respective sectors.
- Malta should ensure that the supervisory authorities introduce a coherent and comprehensive graduated risk-based supervisory model to properly assess the ML/FT risks and level of compliance in financial and DNFBPs sectors. The risk-based supervisory model should demonstrate how ML/FT risk-ratings drive the frequency, depth, scope and nature of supervisory actions; and should be consistent with the risks present in the country.
- Malta should ensure that the supervisory authorities apply proportionate, dissuasive and effective sanctions and that these are not delayed by judicial review.
- The Maltese authorities should ensure that subject persons in the legal, DPMS and real estate sectors are subject to some form of licensing, registration or other controls and on-going checks, to prevent criminals and their associates from owning or controlling these subject persons.
- Malta should enhance the use of financial intelligence in criminal investigations of tax-related offences and more proactively pursue parallel financial investigations, including the ML element of the case. The FIAU, the Malta Gaming Authority (MGA) and the Police should make a better use of financial intelligence from STRs with the involvement of non-residents from the remote gambling sector that can relate to ML, associated predicate offences or FT.
- The FIAU should reconsider its analytical process to ensure that the shortcomings identified (such as the length of the analytical process, the huge disproportion of received STRs and the low number of disseminations to the Police) do not impact its overall effectiveness.
- The authorities should increase outreach, training, develop targeted guidelines, typologies and red flags for subject persons to improve the quality and quantity of STRs, especially in the sectors where - according to the NRA - the inherent ML/FT risk is high.
- Malta should develop a full AML strategy for the investigation, prosecution and conviction of ML and ensure that the Police is reinforced with both human and technical resources to be fully able to investigate high-level and complex ML cases which are commensurate with the ML risks which Malta faces (as an international financial centre).
- Malta should introduce for its competent authorities a written policy and guidance on confiscation of proceeds of crime and instrumentalities.
- The Asset Recovery Bureau should become fully operational and be developed into an efficient tool for the tracing and management of assets, supported by sufficient resources and training for the authorities involved.
- Malta should accelerate on-going initiatives, such as the development of a national FT strategy and the establishment of an inter-agency committee to deal more specifically with FT on a regular basis.
- Malta should take appropriate measures to enhance awareness and understanding of all subject persons of the ML/FT risks in Malta, regulatory requirements, risks related to the VO sector and obligations related to implementation of the UN TFS.

- Malta should take measure to promptly communicate amendments to the lists of designated persons under relevant UNSCRs to all subject persons to ensure implementation of TFS relating to FT and PF without delay.
- Malta should ensure adequate resources for the coverage of TFS obligations in supervisory inspections.
- Malta should ensure that the authorities have a greater understanding of the ML/FT vulnerabilities of Maltese legal persons and legal arrangements and can collect accurate and up-to-date BO information.

Effectiveness & Technical Compliance Ratings

Effectiveness Ratings¹

IO.1 – Risk, policy and coordination	IO.2 – International cooperation	IO.3 – Supervision	IO.4 – Preventive measures	IO.5 – Legal persons and arrangements	IO.6 – Financial intelligence
Moderate	Substantial	Low	Moderate	Moderate	Moderate
IO.7 – ML & investigation prosecution	IO.8 – Confiscation	IO.9 – TF & investigation prosecution	IO.10 – TF preventive measures & financial sanctions	IO.11 – PF financial sanctions	
Low	Low	Moderate	Moderate	Substantial	

Technical Compliance Ratings (C – compliant, LC – largely compliant, PC – partially compliant, NC – non compliant, N/A – not applicable)²

R.1 - assessing risk & applying risk-based approach	R.2 - national cooperation and coordination	R.3 - money laundering offence	R.4 - confiscation & provisional measures	R.5 - terrorist financing offence	R.6 - targeted financial sanctions – terrorism & terrorist financing
LC	C	C	C	LC	LC
R.7 - targeted financial sanctions - proliferation	R.8 - non-profit organisations	R.9 – financial institution secrecy laws	R.10 - Customer due diligence	R.11 – Record keeping	R.12 – Politically exposed persons
C	PC	C	LC	C	LC
R.13 – Correspondent banking	R.14 – Money or value transfer services	R.15 – New technologies	R.16 – Wire transfers	R.17 – Reliance on third parties	R.18 – Internal controls and foreign branches and subsidiaries
PC	LC	PC	LC	LC	LC
R.19 – Higher-risk countries	R.20 – Reporting of suspicious transactions	R.21 – Tipping-off and confidentiality	R.22 – DNFBPs: Customer due diligence	R.23 – DNFBPs: Other measures	R.24 – Transparency & BO of legal persons
C	PC	C	LC	LC	PC
R.25 – Transparency & BO of legal arrangements	R.26 – Regulation and supervision of financial institutions	R.27 – Powers of supervision	R.28 – Regulation and supervision of DNFBPs	R.29 – Financial intelligence units	R.30 – Responsibilities of law enforcement and investigative authorities
LC	PC	LC	PC	LC	LC
R.31 – Powers of law enforcement and investigative authorities	R.32 – Cash couriers	R.33 - Statistics	R.34 – Guidance and feedback	R.35 - Sanctions	R.36 – International instruments
LC	LC	C	LC	LC	PC
R.37 – Mutual legal assistance	R.38 – Mutual legal assistance: freezing and confiscation	R.39 – Extradition	R.40 – Other forms of international cooperation		
LC	PC	C	LC		

¹ Effectiveness ratings can be either a High- HE, Substantial- SE, Moderate- ME, or Low – LE, level of effectiveness.

² Technical compliance ratings can be either a C – compliant, LC – largely compliant, PC – partially compliant or NC – non compliant.

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