COMMITTEE OF EXPERTS ON THE EVALUATION
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THE FINANCING OF TERRORISM (MONEYVAL)

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Anti-money laundering and counter-terrorist financing measures

Malta

Fifth Round Mutual Evaluation Report

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The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

The fifth round mutual evaluation report on Malta was adopted by the MONEYVAL Committee at its 58th Plenary Session

(Strasbourg, 15 – 19 July 2019).

Contents

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 DNFPBs 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, 2, 33 & 34)

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, 4, 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.1, 4, 5-8, 30, 31 & 39)

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 DNFPBs 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 – IO.3; R. 14, 26-28, 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 – IO.5; 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 – IO.2; 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 were 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 Ratings[1]

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[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.

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. The evaluation was based on information provided by the country, and information obtained by the assessment team during its onsite visit to the country from 5-16 November 2018.

The evaluation was conducted by an assessment team consisting of:

- Ms Zosha ZUIDEMA - Senior Policy Advisor, Law Enforcement and Crime Fighting Department, Ministry of Justice and Security, the Netherlands (legal expert)
- Mr Olivier LENERT - National Member for Luxembourg Eurojust (legal expert)
- Dott. Italo BORRELLO - Manager, Deputy Head of the International Cooperation Division, Financial Intelligence Unit, Italy (law enforcement expert)
- Mr Daniel AZATYAN - Head of Financial Monitoring Centre, Central Bank, Armenia (law enforcement expert)
- Mr Nicholas HERQUIN - Deputy Director, Financial Crime Supervision and Policy Division Guernsey Financial Services Commission, Guernsey (financial expert)
- Mr Hamish ARMSTRONG - Acting Head of Unit, Financial Crime Policy, Office of the Director General, Financial Services Commission, Jersey (financial expert)

MONEYVAL Secretariat

- Mr Matthias Kloth – Executive Secretary
- Ms Astghik Karamanukyan – Administrator
- Ms Ani Melkonyan – Administrator
- Ms Kotryna Filipaviciute - Administrator

The report was reviewed by Mr Gabor Simonka (FIU Hungary), Ms Katherine Hutchinson (the U.S. Department of the Treasury), the IMF and the FATF Secretariat.

Malta previously underwent a MONEYVAL Mutual Evaluation in 2012, conducted according to the 2004 FATF Methodology. The 2012 evaluation the country's 2015 follow-up report have been published and are available at https://www.coe.int/en/web/moneyval/jurisdictions/malta.

That Mutual Evaluation concluded that the country was compliant with 12 Recommendations; largely compliant with 19; and partially compliant with 9. Malta was rated compliant or largely compliant with 12 of the 16 Core and Key Recommendations. Malta was placed under the regular follow-up process immediately after the adoption of its 4th Round Mutual Evaluation Report and was removed from the regular follow-up process in December 2015.

CHAPTER 1. ML/TF RISKS AND CONTEXT

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 the three main islands Malta (the largest), Gozo and Comino. These islands altogether occupy an area of around 316 square kilometres. Malta hosts a total population of 484,000 (2018 figures).

2. Malta is a parliamentary republic. 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. The Cabinet for Malta consists 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 to Parliament.

3. Malta is a member of the European Union (EU), the United Nations (UN), the Council of Europe, the World Trade Organisation, the World Bank (WB), the International Monetary Fund (IMF) and other international organisations.

4. Malta's official currency is the Euro (EUR). Malta became a member of the EU on 1 May 2004 and is the EU's smallest Member State. Malta has the EU's smallest but fastest-growing economy (with a Gross Domestic Product (GDP) of EUR 11.13 billion in 2017, i.e. 0.07% of the EU's GDP, with an average annual growth rate of 3.7% during the period 2006-2016)[3].

ML/TF Risks and Scoping of Higher-Risk Issues

Overview of ML/TF Risks

5. The national risk assessment (NRA) considers the money laundering (ML) threat related to foreign proceeds of crime to be high, a consequence of the size and international exposure of Malta's economy. Organised crime (OC) and fraud generate a significant part of the foreign proceeds laundered in Malta. The NRA notes that 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.

6. The Maltese economy is exposed to ML through the use of cash or transferable cheques. 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). 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 trust and company services providers (TCSP) sector as highly vulnerable to ML. Legal professionals, accountants and real estate agents are also particularly vulnerable to ML.

7. The NRA also stresses vulnerabilities in Malta's institutional and legal framework: insufficient resources (including human resources) and expertise of law enforcement authorities (LEAs) to fully support investigations, prosecutions and asset recovery, translating into low levels of convictions and confiscation; lack of national coordination; and insufficiently transparent legal entities and arrangements. The NRA also highlights a number of actions taken or being taken to address these vulnerabilities.

[3] Information provided by the Ministry of Finance of Malta.

8. The NRA notes that there is little hard evidence to suggest that Malta is particularly exposed to financing of terrorism (FT) but sets the risk as medium-high to reflect the lack of data. The main threats identified are external and related to the increased terrorist risks in neighbouring countries, especially Libya.

Country's risk assessment & Scoping of Higher Risk Issues

9. Malta conducted its first NRA in 2013/2014 based on the WB assessment tool. The final and consolidated NRA report was not prepared and no analysis, findings or results were published or provided to the private sector due to competing priorities and resource limitations within the Financial Intelligence Analysis Unit (FIAU) at that time. The NRA was reviewed in 2017-2018 with the aid of external consultants. The methodology consisted of eight interrelated modules within which a number of input variables are evaluated to judge factors related to ML/FT threats and vulnerabilities. The tool is based on the understanding of the causal relations among ML risk factors and variables relating to the regulatory, institutional and economic environment.

10. The data analysed by the subgroups was used by the national ML vulnerability subgroup to generate an overall ML vulnerability rating for Malta by including into the sectorial data their own assessment of the country's ability to combat ML. After including the findings for the national FT risk, reviewed and analysed by a separate subgroup, the working group computed the overall risk level for Malta on the basis of the conclusions of the assessment.

Scoping of Higher Risk Issues

11. The assessment team identified those areas which required an increased focus through an analysis of information provided by the Maltese authorities (including the NRA) and by consulting various open sources. These were as follows:

12. **Corruption and bribery:** The level of understanding of the relevant stakeholders of the risks associated with corruption as a domestic and international source of proceeds of crime and whether mitigating measures are adequate and effective (including customer due diligence (CDD) of politically exposed persons (PEP)) received considerable attention.

13. **OC:** The assessors explored Malta's capacity to detect and pursue OC-related ML. Malta is a transit point for illicit financial flows, including associated with human and drug trafficking. In the absence of detailed analysis of the threat from local OC groups it is unclear exactly how this threat manifests itself in Malta or whether actions have been undertaken to mitigate the emerging threats.

14. **Shadow economy, the use of cash and tax evasion:** The shadow economy accounts for a significant part of the GDP of Malta.[4] Malta is a cash-intensive economy where many sectors rely significantly on cash transactions.[5] According to the NRA, tax evasion is at about 5% of GDP (vs. an OECD average of approximately 3%)[6]. Taking into account these factors, the assessors focused on the understanding of the ML risks posed by the widespread use of cash and the tax evasion. The assessment team held discussions on preventive measures applied by the subject

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[4] According to the NRA, the shadow economy comprised 25% of the official GDP. See Schneider, F., *The Shadow Economy and Work in the Shadow: What Do We (Not) Know?*, Institute for the Study of Labor (IZA), March 2012

[5] Executive summary of the NRA.

[6] Buehn, A. and F. Schneider, *Size and Development of Tax Evasion in 38 OECD Countries: What do we (not) know?*, CESifo, Working Paper No. 4004, November 2012

persons in respect to use of cash and on the measures taken by the competent authorities to prevent, detect and pursue tax-related ML.

15. **Remote gaming:** The vulnerability of gaming to ML was noted in the NRA and by the IMF, which also acknowledged the country's recent efforts to mitigate those risks[7]. The assessment team considered how well ML/FT risks are mitigated in this sector, in particular in relation to supervision and fit and proper checks (given that the sector was only subject to comprehensive AML/CFT measures since the beginning of 2018).

16. **Virtual assets:** The assessors considered whether risks emanating from the use of virtual assets have been properly assessed, taking into account the specific ML/FT risk assessment scheduled for 2018[8] and whether any mitigating measures have been developed thereof.

17. **TCSPS:** The NRA notes the vulnerability of "gatekeepers" such as TCSPs, legal professionals and accountants to ML/FT given their international client base, involvement with complex corporate structures and legal arrangements and the fact that not all TCSPs are registered[9]. The assessment team thus discussed whether the current arrangements in Malta are sufficient to prevent the misuse of legal persons and arrangements for ML or FT.

18. **Individual Investor Programme (IIP):** The assessors considered if the risks associated with IIP are understood in Malta IIP and whether the country's due diligence legal framework is adequate and effectively implemented to mitigate the risks.

19. **Supervisory arrangements and practice:** The assessment team considered the risks and vulnerabilities stemming from the current level of resources allocated to and the institutional framework for the supervision of financial institutions (FIs) and designated non-financial businesses and professions (DNFBPs), providing for a clear division of responsibilities and protection from undue influence. The NRA recognises the need to strengthen and clarify the supervisory framework. Considerable attention was also paid to the fit and proper checks conducted by the Malta Financial Services Authority (MFSA) and the Malta Gaming Authority (MGA) and the application of risk-based supervision to FIs and DNFBPs. Vulnerabilities under the current supervisory regime was acknowledged by the IMF, related with the risk-based supervisory approach applied by the FIAU and the MFSA[10].

20. **ML investigations, prosecutions and convictions; and asset tracing, freezing and confiscation:** The assessors considered whether financial intelligence provided by the FIAU is efficiently used, whether priority is given to economic crime and financial investigations by LEAs and whether the LEAs 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. The lack of stand-alone ML cases and the lack of recent cases in relation to professionals of the financial sector received considerable attention.

21. **FT risk:** The assessors have examined the actions taken by the authorities to identify, assess and address FT risks in view of the risks threat faced by international financial centres.

Materiality

22. Malta is a relatively large international finance centre specialised in corporate and transaction banking and fund management.[11] Although it comprises a broad range of activities

[7] https://www.imf.org/en/Publications/CR/Issues/2018/01/29/Malta-Selected-Issues-45591 and https://www.knowyourcountry.com/malta1111
[8] NRA Results Report, p.31-32.
[9] NRA Results Report, p.22-23.
[10] IMF Financial System Stability Report (February 27, 2019).
[11] Executive summary of the NRA, p.4

(covered by AML/CFT obligations which go beyond the scope of the FATF Standards[12]), Malta's financial sector is bank-centric. The six core domestic banks (which follow a traditional business model based on retail deposit-funded lending) hold EUR 21.8 billion of assets (around 220% of the country's GDP) and employ a total of around 3,300 employees. The five non-core domestic banks hold together EUR 2.5 billion of assets (around 25% of the country's GDP) and undertake limited business with Maltese residents. The remaining 14 international banks mostly serve large, international corporates and hold EUR 22.5 billion of assets (around 230% of the country's GDP)[13].

23. Collectively, other FIs – credit unions, leasing companies, insurance companies, pension funds and capital market participants – account for less than EUR 5 billion in financial assets.

24. Malta is developing a regulatory environment for crypto-currency related services and activities and is emerging as an international hub in this area

25. The size of the shadow economy in Malta, which is exacerbated by the widespread use of cash and tax offences, constitutes a significant ML vulnerability.

26. All types of DNFBPs operate in Malta. The gaming sector represents 12% of the GDP[14], and includes 4 land-based casinos; and 275 remote gaming companies, a sector which has been growing fast since the adoption of regulatory policies in 2004. Malta also has significant legal, accounting and other TCSPs sectors. The real estate sector in Malta, which is considered as significantly large given the size of the country, is involved in Malta's (citizenship-by-investment) IIP insofar as the latter includes a requirement to purchase or lease property in Malta.

Structural Elements

27. The key structural elements which are necessary for an effective AML/CFT regime are generally present in Malta. Malta has made a high-level commitment to address AML/CFT issues. The National Coordination Committee on Combatting Money Laundering and Funding of Terrorism (NCC) is responsible for AML/CFT policy-making and coordination. The NCC is chaired by the Permanent Secretary of the Ministry of Finance (MoF) and composed of senior officials of all relevant competent authorities.

Background and other Contextual Factors

AML/CFT strategy

28. The National AML/CFT Strategy and the related Strategic Action Plan (for the period 2018 to 2020) were approved in April 2018 based on the findings of the NRA and an assessment of the gaps in the national AML/CFT framework. The strategy was designed to address the identified shortcomings and mitigate risks. The strategy highlights seven initiatives, broken down into approximately 50 actions. It was complemented with an Action Plan document that details each of the actions and the associated steps, responsibilities and timelines. The strategy was defined with the involvement of a wide range of stakeholders.[15]

Legal & institutional framework

[12] Reg. 2 of the Prevention of Money Laundering and Funding of Terrorism Regulations
[13] Information provided by the Financial Services Authority of Malta.
[14] Executive summary of the NRA, p.8
[15] Policy-makers, supervisors, law enforcement authorities, the Office of the AG, law courts, the Asset Recovery Bureau, other government agencies and representatives of the private sector.

29. The AML/CFT legal and organisational framework in Malta is governed by the Prevention of Money Laundering Act (PMLA), and the Criminal Code (CC), along with the Dangerous Drugs Ordinance (DDO), the Medical and Kindred Professions Ordinance (MKPO), as well as a number of regulations and enforceable means (such as Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR)).

30. Since the last evaluation, Malta has taken steps to improve the AML/CFT framework. Namely, subsidiary legislation was introduced to establish beneficial ownership registers for companies, trusts (that generate tax consequences), foundations and associations incorporated or administered in Malta. The National Interest (Enabling Powers) Act (NIA) (which is the main legislative instrument for implementing UN and EU sanctions) has undergone significant changes. The 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. These included, *inter alia*, amendments to empower the Minister for Finance to set up a National Co-Ordinating Committee on Combating Money Laundering and the Funding of Terrorism; as well as a revision of the Minister's power to provide for administrative sanctions for breaches of subsidiary legislation imposing AML/CFT obligations on subject persons which have been increased. In addition, a number of regulations have been revised, including the PMLFTR.

31. The main agencies involved in Malta's institutional structure to implement its AML/CFT regime are the following:

32. The **NCC** is the Committee responsible for the drawing up of the national strategy and policies to combat ML, FT and the proliferation of weapons of mass destruction. The NCC is also responsible for co-ordinating the necessary actions to develop, implement and review the national strategy and policies, including the carrying out of NRA and actions to address risks identified.

33. The **FIAU** is Malta's Financial Intelligence Unit (FIU) responsible for the receipt and analysis of suspicious transaction reports (STR) and other information relevant to ML, associate predicate offences and FT. It is also responsible for the dissemination of the results of its analyses and for cooperating and exchanging information with counterpart FIUs, LEAs, as well as other competent authorities.

34. The FIAU is also responsible for supervising FIs and DNFBPs for compliance with AML/CFT requirements. In this task it is assisted by other supervisory authorities, namely the MFSA and the MGA (which are mainly responsible for the regulation and supervision of FIs and gaming operators, respectively). Moreover, the FIAU is tasked with the enforcement of AML/CFT obligations, and empowered by law to impose administrative sanctions for breaches of those obligations.

35. The **Attorney General (AG)** is the Public Prosecutor before the Criminal Court and the Court of Criminal Appeal, responsible for the prosecution of all criminal offences, including ML and FT. The Malta Police may also prosecute criminal offences before the inferior courts. The Office of the AG is also the government's attorney responsible for representing the Government of Malta in the Courts of Law, besides being responsible for advising the Government on all legal matters including proposed legislation. Moreover the Office of the AG is the Maltese Central Designated Authority responsible for the handling of mutual legal assistance (MLA) and extradition requests.

36. The **Malta Police Force** is the only law enforcement authority in Malta tasked with the investigation and prosecution of criminal offences including ML and FT. It is vested with the necessary powers to carry out searches, seizures and arrests, request documentation and records, take witness statements and seize and obtain evidence. The Malta Police is also

responsible for cooperating and exchanging information with foreign law enforcement authorities to assist them in the investigation of criminal offences.

37. The **Malta Security Service (MSS)** is tasked with the prevention of serious crime and the protection of national security, particularly with respect to OC, espionage, terrorism, activities of agents of foreign powers and other actions that threaten national security and democracy. The MSS carries out its role of prevention of serious crime through the gathering and exchange of intelligence with law enforcement and other competent authorities, including the FIAU, the Armed Forces, the Malta Police Force and the Customs Department.

38. The **Department of Customs** is the governmental department responsible for the control of imports and exports of goods. Among its roles, Customs is tasked with overseeing the application of cash declaration requirements at national borders, and cooperates and exchanges information with LEAs and the FIAU.

39. The **Asset Recovery Bureau (ARB)** is entrusted with the tracing, collection, storage, preservation, management and disposal, of instrumentalities and proceeds of crime or property the value of which corresponds to such instrumentalities or proceeds, in favour of the government.

40. A number of provisions of the ARB Regulations were brought into force on the 1 October 2017, to enable the setting up of the ARB and to build its capacity to be able to start functioning. The ARB started operating on 20 August 2018. Previously t**he Asset Management Unit (AMU)** within the Court Registry, which had been set up in 2012, carried out the task of conducting inquiries to trace the assets of persons charged or convicted for criminal offences. This task has been assumed by the ARB upon its becoming operational.

41. The **Commissioner for Revenue (CFR)** is the authority responsible for the administration and collection of tax, including income tax, duty owed on documents and transfers, value added tax as well as customs and excise duties. The CFR, the FIAU and the Malta Police liaise and exchange information for the purposes of the analysis and investigation of ML and/or tax evasion cases.

42. The **Judiciary** comprises those Judges and Magistrates appointed to sit in the Superior and Inferior Courts of the Maltese Law Courts, respectively. Malta has a two-tier judicial system. The Court of Magistrates, as a court of criminal judicature, is competent for offences punishable by a term of up to twelve years of imprisonment. The Criminal Court, normally composed of a judge sitting alone and a jury of nine persons, will hear criminal cases exceeding the competence of the Court of Magistrates. There are currently 22 magistrates (one of them handling all ML cases) and three criminal law judges, but appeals cases are not specifically assigned to a criminal judge with particular specialisation in financial crime.

43. Cases concerning ML/FT, including appeals from decisions on such cases, are heard and decided upon by those members of the judiciary presiding over courts with criminal jurisdiction. The members of the Judiciary determine the punishments to be imposed, on the basis of the respective punishments provided within the CC and the PMLA.

44. Magistrates are additionally empowered to issue warrants and orders for execution by law enforcement and other competent authorities, such as warrants to enter and search premises and for the arrest of persons. The Criminal Court may also issue investigation, attachment, monitoring and freezing orders in terms of the CC, the PMLA and other laws.

45. The **MFSA** is the single regulator for financial services in Malta. The financial services sector incorporates all financial activity including that of banks, financial and electronic money institutions, securities and investment services companies, regulated markets, insurance

companies, pension schemes and TCSPs. Under the Single Supervisory Mechanism (SSM), the European Central Bank (ECB) is responsible for the direct prudential supervision of significant banks and groups in the participating Member States, and for monitoring national authorities' prudential supervision of less significant banks. The criteria for determining significance are laid down in EU law and the ECB issues annually a list confirming the categorisation of all banks in the Banking Union. The ECB also grants and withdraws banking licenses and assesses acquisitions of qualifying holdings for both significant and less significant banks. For significant institutions, the ECB may take supervisory measures and may apply directly, or in cooperation with national authorities sanctions in the cases specified under relevant EU law. For less significant institutions, only national authorities may take supervisory measures and impose sanctions. The ECB may issue guidance to national authorities on how they should perform supervision of less significant banks. It can decide to directly supervise any one of these banks if necessary to ensure that high supervisory standards are applied consistently.

46. The MFSA is also the Listing Authority for the purpose of the Financial Markets Act and the Resolution Authority for the purpose of Directive 2014/59/EU and the Recovery and Resolution Regulations (L.N. 301 of 2015).

47. The MFSA also assists the FIAU in supervising for AML/CFT purposes financial services operators that are regulated by the MFSA. The MFSA may jointly with or on behalf of the FIAU carry out on-site or off-site examinations for AML/CFT purposes on subject persons falling under the MFSA's competence.

48. Moreover, the MFSA is tasked with the administration of the register for beneficial owners (BO) of trusts that are administered by trustees licensed under Maltese law.

49. The **MGA** is responsible for the governance and regulation of all gaming activities (both remote and land-based) in Malta.

50. It also assists the FIAU in the AML/CFT compliance supervision of gaming service providers that are regulated by the MGA. The MGA may, jointly with or on behalf of the FIAU, carry out on-site or off-site examinations for AML/CFT purposes on subject persons falling under the MGA's competence.

51. The **Registrar of Companies (ROC)** is a government authority responsible for managing the registry of companies and commercial partnerships. The ROC is tasked with overseeing the implementation of measures concerning the transparency of BO and the BO registry with respect to legal persons that are companies or commercial partnerships in terms of the Companies Act.

52. The Registrar for Legal Persons oversees the registration of legal persons and is also responsible for the BO registry with respect to foundations and associations.

53. The **Office of the Commissioner for Voluntary Organisations (CVO)** is responsible for regulating, monitoring and supervising voluntary organisations (VO) in Malta.

54. The **Sanctions Monitoring Board (SMB)** is the entity responsible for monitoring the implementation and operation of sanctions imposed by the United Nations Security Council (UNSCR), the Council of the European Union, or of sanctions imposed in terms of order made by the Prime Minister under the NIA.

55. The SMB is responsible for proposing persons or entities for designation by the UN Sanctions Committees, by the Council of the European Union or by an order under national law. It is also responsible for proposing the de-listing or the unfreezing of property of any designated person or entity.

56. Moreover, the SMB is responsible for enforcing the implementation of financial sanctions.

Financial sector

57. Financial services in Malta are mainly provided by the banking sector. With banking assets accounting for around 4.7 times the country's GDP, the financial sector is the second largest in the EU (after Luxembourg) relative to the size of the economy.

58. Compared with the banks, other FIs account for only a marginal market share. Detailed information is provided below.

59. Of the 25 licensed banks, 3 are Maltese majority-owned while the others originate from, *inter alia*, Austria, Australia, Belgium, Greece, Kuwait, Qatar, Turkey and the United Kingdom (UK). There are 3 branches of foreign banks in Malta. 72% of the sector's assets are foreign-owned.

60. The fund industry has grown significantly in recent years. However, it is relatively small compared to other major industries in Europe, where the NAV amounts to trillions of Euros. The NAV of funds held by the sector in Malta in 2018 amounted to EUR 10.8 billion.

61. The domestic life insurance sector is relatively small and limited to 8 licences. In terms of sales, gross written premiums for long-term insurance in 2016 amounted to EUR 3.7 billion compared to EUR 2.6 billion for general insurance. New pension products have grown rapidly since amendments were made to the regulation in 2016, as reflected both in the size of the schemes (a total of EUR 3.7 billion of assets under management[16]) and the number of products (49 schemes and 2 funds[17]).

62. The following number of banks and other FIs were subject to supervision as of 2017:

Table 1: Financial Institutions

Type of FI	**Number (September 2017)**
Banks	25
Securities[18]	202
Insurance	137
Other FIs[19]	48

DNFBPs

63. All types of DNFBPs are present in Malta. Malta has a large gaming sector (representing around 12% of GDP). 4 land-based casinos are present in Malta and 275 remote gaming companies[20].

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[16] MFSA, *Annual Report*, 2016

[17] MFSA, *Statistical Tables*, September 2017

[18] Include 160 Investment Services Providers; 16 Retirement Scheme Administrators (Retirement Schemes are schemes that are managed with the purpose of providing retirement benefits. Although they are licensed by MFSA they are not classified as FIs since it is the Scheme Administrator (not the Scheme itself) that is considered as an FI. Scheme administrators may have more than one Scheme under administration); and 26 Fund Administrators.

[19] Other FIs include Payment Institutions, E-money Institutions, and a small number of Non-deposit taking Lenders and Money Brokers, all of which are regulated under the Financial Institutions Act. There are 10 credit institutions and 5 financial institutions that provide currency exchange services. None of the credit or financial institutions offer only currency exchange services.

[20] These are the companies that are in possession of at least one licence of Class 2/2 on 4 (fixed-odds betting) or Class 3/ 3 on 4 (P2P games) in 2016 or 2017. In 2018 since the new licence regime was introduced, there is only one - B2C licence. Number of customers for fixed –odds betting in 2017 was 5.97 million and Number of customers for P2P games – 793k.

64. The following statistics were provided by the authorities in relation to the DNFBPs sector.

Table 2: DNFBPs

Type of DNFBP	Number
Trustees[21]	169
Corporate Service Providers (CSPs)[22]	188 (and 70 licensed trustees providing CSP services)
Exempt Corporate Service Providers[23] (functions performed by lawyers, notaries public, auditors and accountants)	343
Gaming	208
Real Estate Agents	111
Lawyers	246
Notaries	279
Accountants and Auditors	381
Dealers in Precious Metals and Stones	118 (estimate based on 2013 data exercise)
Persons providing VA-related services[24]	0

Materiality and level of ML/TF risks of the different FIs and DNFBPs

65. The assessors classified obliged sectors on the basis of their relative importance in the Maltese context, given their respective materiality and level of ML/FT risks. The assessors used this classification to inform their conclusions throughout this report, weighting positive and negative implementation issues more heavily for important sectors than for less important sectors. This approach applies throughout the report, but is most evident in IO.3 and IO.4:

a) **most significant**: the banking sector based on the overall market share, as well as known ML/FT typologies; TCSPs given their international client base, involvement with complex corporate structures and legal arrangements and the fact that not all TCSPs are registered;

b) **significant**: remote gaming companies based on 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; real estate agents due to their involvement in Malta's IIP and lack of registration requirements; accountants and legal professionals (both lawyers and notaries) based on exposure to ML/FT risks; and virtual assets.

c) **less significant**: other FIs, including securities providers and insurance, and other DNFBPs.

Preventive measures

66. Subject person's AML/CFT obligations are all set out in laws, regulations and guidance.

67. Since the adoption of the 4th round MER, Malta has made many necessary legislative and institutional changes in order to strengthen its AML/CFT system.

[21] The total number of clients is 12.205 (out of which number of Maltese resident clients is 2.115 and number of Non-Malta resident clients is 10.090). The total number of assets under administration is approx. EUR 13,4bln.).

[22] The total number of clients is 14.871 (out of which number of Maltese resident clients is 4.801 and number of Non-Malta resident clients is 10.070). No information is provided by the authorities on the total number of assets under administration.

[23] The Maltese AML/CFT framework exempts some DNFBPs. These are described in more detail at c.28.4, but are namely "private trustees" (i.e. those who (i) do not hold themselves out as trustee to the public; (ii) are not remunerated; and (iii) do not act habitually as trustee to more than five settlors at any time) and individuals holding 10 or less directorships and company secretarial positions and not providing TCSP services by way of business.

[24] Requests for authorisations and approvals under the VFA Act were accepted by the MFSA with effect from 1 November 2018.

68. The PMLFTR 2008 was repealed and replaced by a revised version which came into force on 1 January 2018 transposing the requirements of the 4th AMLD. The PMLFTR sets out who are the persons and entities subject to AML/CFT obligations (i.e. subject persons), their AML/CFT obligations and the applicable sanctions. The Implementing Procedures Part I pre-date the PMLFTR and the conclusion of the NRA. They were revised at the time of the onsite to reflect the new legal requirements (a consultation draft was published on 30 October 2018).

69. The most significant changes introduced under the revised PMLFTR include the following:

i. A widening of those entities considered as subject persons so as to include all gaming licensees, including remote gaming licensees, not only limited to casinos. Anyone offering safe custody services (and not already licensed as a credit institution or as an investment services provider) is also considered as a subject person. In addition, the cash transaction threshold applicable to traders in goods to be considered as subject persons was lowered from EUR 15,000 to EUR 10,000, capturing further goods and hence further trade under the AML/CFT regime.

ii. The definition of BOs has been revised.

iii. The application of CDD measures by subject persons has to be risk-based, entailing the carrying out of a business risk assessment to ensure that their policies and procedures are tackling risk where this is actually present and where it is most needed.

iv. The definition of PEPs has been extended to the effect that enhanced CDD has to be applied also with regard to domestic PEPs.

v. The situations in which a subject person may exercise reliance on another subject person have also been widened.

vi. The sanctions that may be imposed on subject persons for breaches of their AML/CFT obligations have been increased.

Legal persons and arrangements

70. Malta has seen a slow but steady growth of the sector in recent years. In early 2018, 51,000 active companies were registered with the Registry of Companies (compared to around 44,000 in 2013). This trend is also observed in the licensed sectors, with the number of corporate professional trustees and fiduciaries having increased in recent years.

71. The Maltese legal framework provides for the establishment of public liability companies, private limited liability companies, Societa Europea, European Economic Interest Groupings, Partnerships en nom collectif and Partnerships en Commandites, as well as private foundations, purpose foundations and associations.

72. For a new company or partnership to be established under Maltese law, registration with the Registry of Companies is required. Legal personality is awarded at the time confirmation of the registration is issued. Associations have the option of either registering with the Registrar for Legal Persons, in which case they obtain legal personality upon registration, or to not register, in which case they are not endowed with legal personality. On the other hand, it is mandatory for all foundations, whether they are new or whether they existed before 2008 (when the relative legislation came into effect), to register at the Public Registry, Malta. “New foundations” obtain legal personality on registration. Foundations which existed before the law came into effect in 2008 have legal personality, but are nonetheless required to be registered at the Public Registry.

73. The Registrar for Legal Persons operates under the aegis of Identity Malta.

74. There is no registration obligation for trusts, other than those that generate tax consequences in Malta. Due to this fact officially approved statistics are not available, it is however estimated[25], that authorised trustees in Malta provide services to approximately 3529 trusts, including (but not limited to) trusts created under Maltese law.

75. It is estimated that, as of June 2018, about 49% of all Maltese registered companies were fully Maltese-owned (compared to about 51% which were partially or fully foreign-owned).

76. Malta has a definition of VOs which is broader than the FATF definition. A substantial number of these VOs fall under the FATF's definition of non-profit organisations (NPOs) as they are set up primarily to receive or disburse funds to carry out their social purpose. Most VOs in Malta are organisations set up to promote hobbies, sports or social and cultural activities. In 2018, around 1600 VOs were enrolled in Malta.

Supervisory arrangements

77. The MFSA is responsible for both the regulation and the supervision of the financial services sector, including the TCSP sector.

Table 3: FIs and DNFBPs

Type of FI/DNFBP	AML/CFT Supervisor	Licensing Body (Market Entry)
Banks	FIAU assisted by the MFSA	MFSA
Securities	FIAU assisted by the MFSA	MFSA
Life Insurance	FIAU assisted by the MFSA	MFSA
Other FIs	FIAU assisted by the MFSA	MFSA
Trustees	FIAU assisted by the MFSA	MFSA
CSPs	FIAU assisted by the MFSA	MFSA
Exempt Corporate Service Providers (functions performed by lawyers, notaries public, auditors and accountants)	FIAU	Accountants and Auditors - Accountancy Board Lawyers - None Notaries - Notarial Council
Land Based Casinos	FIAU assisted by the MGA	MGA
Internet Casinos	FIAU (with effect from 1 January 2018) assisted by the MGA	MGA
Other Remote Gaming Operators	FIAU (with effect from 1 January 2018) assisted by the MGA	MGA
Real Estate Agents	FIAU	None
Lawyers	FIAU	None
Notaries	FIAU	Notarial Council
Accountants and Auditors	FIAU	Accountancy Board
Dealers in Precious Metals and Stones	FIAU	None
Virtual Assets[26]	FIAU	MFSA

International Cooperation

78. The Maltese legislation sets out a comprehensive legal framework for international cooperation in criminal matters, which enables the authorities to provide a broad range of assistance concerning ML/FT and associated predicate offences. Assistance is provided on the basis of various legal arrangements and international instruments. These include UN, Council of Europe and EU conventions, treaties and other bilateral agreements on MLA in criminal matters and extraditions, as well as EU Framework Decisions. While the AGO serves as the central authority for international cooperation for MLA in Malta, channels of cooperation through direct communication are used by the Police and the FIAU with respective foreign partners.

[25] Calculation based on the data that MFSA's collects for the supervisory purposes (data of 31 August, 2018).
[26] Requests for authorisations and approvals under the VFA Act were accepted by the MFSA with effect from 1 November 2018.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key Findings and Recommended Actions

Key Findings

- Malta has made significant efforts to understand its ML/FT risks, including by conducting a formal NRA. The resulting NRA report is the primary document demonstrating the country's understanding of ML/FT threats, vulnerabilities and risks in Malta.
- The 1st NRA exercise was conducted in 2013/14 and then an updating of some statistics and findings was undertaken in 2017. This resulted in a 2018 report that on some issues contains some analysis based upon statistics that are 4 or 5 years old.
- The NRA Report does demonstrate a broad understanding of the vulnerabilities within the AML/CFT system (particularly the regulated sectors), but certain core topics appear to be insufficiently analysed.
- In addition, there appears little detailed understanding of the significance of the ML/FT implications of important contextual factors such as corruption, tax evasion and the shadow/cash economy.
- 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.
- Several agencies took individual action over the period 2015–2017 to address some concerns arising from the 1st NRA exercise. The key national policy document outlining Malta's AML/CFT measures is the "National AML/CFT Strategy", dated April 2018. 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.
- On an individual basis, several agencies have revised their operations and priorities to take account of vulnerabilities in the framework and to improve risk-based supervision generally, strengthen and reinforce AML/CFT requirements and apply more dissuasive sanctions and remediation measures.
- Going forward, the NCC, established in April 2018, will be key in aligning the objectives and priorities of national agencies. This role is identified within the legal mandate of the NCC, and some work toward this end has begun. However, it is too early to assess whether either the developing supervisory arrangements or the NCC coordination role are, or will be, effective.
- The results of the NRA were communicated to private sector entities through a series of presentations in late October 2018 (the contents of which were also posted on the FIAU website). Most banks, other FIs and DNFBPs were aware of the contents of the NRA.
- 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.

Recommended Actions

- Malta should, as a matter of priority, take action to improve the 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 consider whether some CDD exemptions in respect to underlying investors applied by the fund industry are based on a consideration of risks and mitigating measures within funds sector. The country should consider whether these exemptions should be formally regulated.

- More detailed information on ML/FT risks, including a description of the main ML and FT methods, trends and typologies, should be shared with the private sector.

- Going forward, Maltese authorities should ensure that the objectives and activities of the AML/CFT supervisors, the FIAU and LEAs are consistent with national AML/CFT policies and the identified ML/FT risks.

79. The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 2, 33 and 34.

Immediate Outcome 1 (Risk, Policy and Coordination)

Country's understanding of its ML/FT risks

80. The Maltese authorities demonstrated commitment and undertook efforts to understand ML/FT risks. The NRA undertaken in Malta (along with a separate sectoral assessment of the gaming sector) is the primary means of demonstrating the country's understanding of ML/FT threats, vulnerabilities and risks in Malta. When discussing risk, Maltese authorities referred to the NRA as an accurate description of national risk and confirmed that this was consistent with their understanding. The NRA process began in 2013 with the collection of data and the formation of working groups, membership of which included all competent authorities and representatives of the private sector, to undertake analysis.

81. The NRA process was primarily coordinated by the FIAU, who provided staff to chair each of the sectoral working groups, and utilised the methodology provided by the WB.

82. Although this has been referred to in some documents and communications as "the first NRA", discussions with Maltese authorities on-site confirmed that the process was only partially completed, due to competing priorities and resource limitations within the FIAU at that time. This means that the output of the exercise comprised a number of draft reports prepared by the respective working groups. No final, consolidated, NRA report was prepared and no analysis, findings or results were published or otherwise communicated to the private sector.

83. Based on the abovementioned risk assessment, a further exercise was undertaken in 2017, assisted by external consultants. Maltese authorities indicate that this further work was

necessary in order to validate the conclusions of the original analysis. This involved the collection and updating of some (but not all) of the data and statistics collected in the 2013/14 exercise, and also included more qualitative input from industry representatives. This resulted in the production of a final, consolidated NRA report, dated 2018.

84. The final NRA report (2018) is classified and was not provided to the assessment team prior to the on-site visit. Instead, the Maltese authorities provided the assessment team with two documents in relation to the outcome of the NRA exercise prior to the onsite – one entitled "National Risk Assessment Executive Summary" and another entitled "Results of the ML/FT National Risk Assessment".

85. These documents, while summarising the process and providing high level conclusions , did not contain sufficient detail to enable the assessment team to reach any conclusions on either the adequacy of the NRA process, the comprehensiveness of the data and information analysed, nor the reasonableness of the national authorities' conclusions on risk.

86. During the onsite, the assessment team was provided an opportunity to inspect the full NRA report, but were not provided with a copy. The full NRA report document comprised approximately 220 pages and, as far as possible, the assessment team has considered the contents of all three documents, along with discussions with national authorities, in forming its views as set out in this section.

87. In the view of the assessment team, the fragmented process of completing the NRA, as described above, has resulted in a final document ("the 2018 NRA report") that contains some analysis based upon statistics that are 4 or 5 years old. For example: The 2018 NRA Report includes commentary on the risks of products and services, which is based on statistical data from STRs submitted and sanctions applied by the FIAU for the period from 2011-2013 (p.45); Table 29 (number of investigation orders/attachment orders) contains data for the period from 2012-2013 (p.133); Table 31 (data on convictions and penalties applied) covers the period from 2012-2013 (p.143); and information on terrorism financing and terrorism investigations is provided for the period for 2011-2013 (p.14).

88. The assessment team is concerned that the demonstrated and communicated risk understanding in several areas is already very out-of-date.

89. The 2018 NRA Report does demonstrate a broad understanding of the vulnerabilities within the AML/CFT system (particularly the regulated sectors), and there is broad consensus among the authorities on the conclusions of the NRA is this regard. A structured SRA, which was concluded in June 2017, provided guidance to remote gaming operators on the risks posed by the various games and funding methods. These findings were made available to remote gaming operators through the sector specific implementing procedures. As of the date of the on-site visit, no other sectorial assessments have been conducted by the Maltese authorities.

90. The 2018 NRA report identifies and ranks a list of ML/FT threats and vulnerabilities.

91. Banking, payment services, CSPs, lawyers, trustees and remote gaming are all considered by Maltese authorities to contain high inherent vulnerabilities. AML/CFT controls implemented across all sectors are considered to be weak, AML/CFT resourcing in industry is assessed as requiring enhancement and AML/CFT awareness in industry is assessed as generally low. As a result CSPs, lawyers, trustees and remote gaming are all considered by Maltese authorities to pose a high residual vulnerability.

92. A number of FIs and DNFBPs disagreed with these conclusions, suggesting that the analysis (particularly of the control environment within the various industry sectors) was dated and hence not particularly accurate or helpful. Several referred to substantial recent

amendments to AML/CFT laws and guidance, suggesting that the NRA findings would be very different if based upon more current information and analysis.

93. The NRA identifies issues related to the resources of the law enforcement authorities which are considered to be clearly insufficient to cope with the extensive investigative commitments and other tasks assigned to them.

94. The assessment team considers that certain core topics (particularly predicate offences, FT, legal persons and arrangements, the use of new and developing technology and the use of cash) are insufficiently analysed within the 2018 NRA report. In the absence of any other documentation or evidence of supplementary analysis, this has resulted in a demonstrated understanding of risk by Maltese authorities that is, in the view of the assessment team, insufficiently detailed in certain areas.

95. ML threat is considered to be driven primarily by the threat of foreign proceeds of crime, but there is no analysis of the main predicate offences associated with foreign proceeds of crime, nor sufficiently detailed analysis of methods or typologies of the laundering of such funds in Malta.

96. In terms of domestic threats, the 2018 NRA Report lists tax evasion, local OCGs (both "high"), drug trafficking, fraud and corruption and bribery (all "medium high") to be the highest ML threats.

97. However, there is little detailed analysis of the threat from local organised crime groups (identified as a major threat) so it is unclear exactly how this threat manifests in Malta or what action should be taken to mitigate.

98. Overall, there appears little detailed understanding or analysis of the significance of the ML/FT implications of either corruption or tax evasion (which is estimated to represent over 5% of GDP). The assessment team considers these to be important contextual factors in Malta. While tax evasion was identified as a high ML threat, there was confusion amongst FIs and DNFBPs as to whether the threat of tax evasion refers to foreign or domestic evasion, as this was not made sufficiently clear in communicating the NRA findings to industry.

99. Cash is widely used in Malta (estimated to represent over 25% of GDP), but the 2018 NRA report does not include any detail as to the degree to which cash may be used for ML/FT. There are also concerns regarding the seemingly ineffective measures at the border to detect undeclared and falsely declared cash or to understand the source or eventual destination/use of incoming cash.

100. There is no detailed analysis of the ML/FT risks arising from the use of legal persons and arrangements either in the 2018 NRA Report or elsewhere, which the assessment team considers should be a particular area of focus of Maltese authorities (given the nature of the Malta as an international finance centre). It is noted, however, that the authorities were in the process of undertaking such an assessment at the time of the on-site visit.

101. Malta has recently been active in positioning itself as a fin-tech-friendly jurisdiction, including the introduction of a regulatory regime for virtual assets in 2018. The assessment team is concerned that this regime was introduced without any risk assessment being carried out and it is unclear whether the national authorities fully understand the ML/FT risks involved or have taken adequate steps to ensure that such risks are mitigated. Authorities state that they considered existing risk analyses from other (international) bodies (such as FATF, the European Commission (Supranational Risk Assessment) and European Banking Authority (EBA)) and were in the process of undertaking such an assessment (supplemental to the NRA, and subsequent to the decision to introduce the virtual assets regime) at the time of the on-site visit.

102. The 2018 NRA Report (and particularly the high-level "findings" communicated to industry) does not contain detailed information concerning the main methods, trends and typologies used to launder proceeds of crime in Malta. The assessment team considers that the published findings of the NRA are of limited value to the private sector, which is required to take into consideration the results of the NRA in establishing internal controls. This was confirmed by the majority of FIs and DNFBPs.

103. Some competent authorities (the MSS, the FIAU, the Police and the CVO) appear aware of the FT threats, but the assessment of FT risks in the NRA is largely superficial. The NRA report concludes that FT risk is medium-high, but this appears largely driven by a desire to be cautious (due to a lack of data) and Malta's geographical location, rather than any detailed analysis of statistics, trends or activities. Although the assessment team considers that Malta has not underestimated the level of FT risk when setting it as "medium-high" it is not clear that the FT analysis adequately considers the threats and vulnerabilities of any specific products, services or sectors. In particular, the problem of cash smuggling in the FT context was not considered in sufficient depth. Authorities did not adequately assess the threat of Malta being used as a conduit for financial flows intended to finance terrorism, terrorist groups or individual terrorists in other countries, especially in areas of conflict and the risk of terrorist abuse in the VO sector assessed by the CVO did consider only enrolled VOs, and did not contain analysis on non-enrolled VOs.

104. A further risk area not considered in the NRA is the IIP. This programme, launched in February 2014, enables third country nationals to obtain Maltese citizenship, on the condition that: a) investments are made in the country; b) property is purchased or leased; and c) a contribution is made to the National Development and Social Fund. This programme has granted citizenship to approximately 3,000 individuals over almost 5 years of operation. Controls on applicants and the checking of the background of potential investors are conducted by the IIP Agency, with the assessment of LEAs, the FIAU and specialist international service providers. On-site discussions with private sector entities indicated that the risks associated with the program are perceived to be high. No specific assessment has been undertaken, nor any specific guidance provided to relevant private sector stakeholders (e.g. real estate or banking sectors) to assist in applying appropriate measures to check the background (including source of wealth) of IIP investors and the origin of the invested funds.

National policies to address identified ML/FT risks

105. Several agencies took individual action over the period 2015–2017 to address some concerns arising from the NRA exercise.

106. For example, the FIAU increased the resourcing of its compliance section from 5 officials to 14 in 2016 and the MFSA established a dedicated AML/CFT Unit in 2016. In addition, gaming operators became subject persons under Maltese law in January 2018, following the sectoral risk assessment undertaken in 2017.

107. The Malta Police has, *inter alia*, adopted a restructuring plan to reform the Economic Crimes Squad. Plans on restructuring were also confirmed by the authorities during the on-site visit.

108. The key national policy documents outlining Malta's AML/CFT measures are the "National AML/CFT Strategy", dated April 2018, and the related Strategic Action Plan (for the period 2018 to 2020).

109. The strategy sets out 7 key initiatives, designed to improve the national AML/CFT framework:

I. Establish a National Coordination Committee

II. Strengthen and clarify the supervisory framework

III. Enhance internal capabilities of the FIAU

IV. Enhance investigation and prosecution capabilities

V. Establish an effective Asset Recovery Unit

VI. Increase transparency of legal entities and arrangements

VII. Build on existing international coordination setup.

110. The Action Plan contains detailed steps and timelines for deliverables assigned to the various national agencies, some of which had already begun or been implemented at the time of the on-site visit (e.g. establishment of the NCC, the ARB and the Register of BOs).

111. These appear broadly consistent with the understanding of vulnerabilities of the framework (as set out in the NRA) and includes significant increase in resources amongst the various competent authorities, and so should (when implemented) addresses identified ML/FT risks and improve the framework overall.

112. The National Strategy was formulated in April 2018 with actions deliverable by 2020.

113. The implementation phase of the AML/CFT Strategy has already commenced with the establishment of the NCC. The various agencies demonstrated an overall commitment to implement the strategy and action plan and some work in various areas has already been undertaken, it is too early to be able to clearly demonstrate overall effectiveness in this regard.

Exemptions, enhanced and simplified measures

114. The Maltese AML/CFT framework exempts some DNFBPs. These are described in more detail at c.28.4, but are namely "private trustees" (i.e. those who (i) do not hold themselves out as trustee to the public; (ii) are not remunerated; and (iii) do not act habitually as trustee to more than five settlors at any time) and individuals holding 10 or less directorships and company secretarial positions and not providing such services by way of business. These exemptions do not appear to be driven directly by the results of the NRA or any other AML/CFT assessments.

115. It appears that, to date, the conclusions of the NRA have not directed any decisions on possible exemptions from AML/CFT requirements for low-risk products, sectors or activities. Authorities suggested that this may occur in the future and indicated that a risk assessment will be performed on certain parts of the land-based gaming sector (excluding casinos), but including gaming parlours, the national lottery, low risk games (non-profit games and commercial communication games) and bingo halls. The results of the risk assessment will inform the authorities as to whether any such businesses would warrant an exception or a partial exemption.

116. The Maltese legal framework does not contemplate any exemptions from CDD in relation to investment holdings in funds which are often held in a nominee capacity by FIs or DNFBPs acting on behalf of third parties, where the investment fund will not hold information about the natural person on whose behalf the nominee is acting. In practice, the fund industry applies such exemption in order to facilitate the conduct of business. This practice was confirmed by the supervisory authorities. This is broadly in line with the Risk Factors Guidelines[27] issued by the

[27] https://eba.europa.eu/documents/10180/1890686/Final+Guidelines+on+Risk+Factors+%28JC+2017+37%29.pdf

European Supervisory Authorities. However, this matter should be considered from the regulatory perspective, taking into account the risks within the sector.

117. Regulation 11 of the PMLFTR requires enhanced measures to be applied in relation to transactions or business relationships with natural or legal persons established in "non-reputable jurisdictions", cross-border correspondent banking relationships, dealings with PEPs and when carrying out complex and unusually large transactions.

118. In addition, subject persons are required to assess the ML/FT risk in each customer relationship or one-off transaction and apply enhanced or simplified measures accordingly. In the view of the assessment team, it is doubtful that these assessments incorporate or are demonstrably consistent with the findings of the NRA – given that the results were only shared with the industry in October 2018. In addition, the communicated results are not sufficiently detailed to provide a useful basis to support the application of risk-based enhanced due diligence (EDD). This calls into question the extent to which the results of assessments of risks are properly used to support the application of enhanced measures for higher risk scenarios, or simplified measures for lower risk scenarios.

Objectives and activities of competent authorities

119. On an individual basis the MFSA and the FIAU have revised their operations and priorities to improve risk-based supervision generally, strengthen and reinforce AML/CFT requirements and apply more dissuasive sanctions and remediation measures.

120. Supervisory authorities have demonstrated commitment to these changes in an effort to develop more comprehensive risk-based supervision, despite on-going resourcing issues. Such improvements will be key in mitigating the current deficiencies in the supervisory framework.

121. Positive initiatives have also been introduced to improve transparency of BOs, namely the introduction of four Registers of BOs in January 2018.

122. The investigation and prosecution of ML or FT does not appear to be fully commensurate with the risks posed by the country's increasing nature as an international financial centre. Tax evasion, drug trafficking and "local criminal groups" have been presented as some of the highest threats of ML in Malta. There have however been almost no investigations or prosecutions for ML of tax evasion or ML activities by "local criminal groups". This does not appear to be in line with the country's risk profile. There have been no prosecutions for FT and it is not possible to assess whether other FT initiatives are consistent with the country's FT risk profile as no adequate profile has been established in the NRA. The assessment team was presented with a few cases of on-going investigations on FT, which were however of a too recent nature (i.e. with the investigation having commenced in the course of 2018) to have already produced results which could be reported in more detail (see IO.9 for further details). The authorities interviewed by the assessors have not been in a position to precisely describe the FT risk faced by the country.

123. Going forward, the NCC, established in April 2018, will be key in aligning the objectives and priorities of national agencies with National priorities and strategies. This role is identified within the legal mandate of the NCC, and some work toward this end has begun – by way of the National Strategy and detailed action plans.

124. However, it is too early to assess whether the developing supervisory arrangements; the operation of the NCC or the National Strategy and action plans are effective in this regard.

National coordination and cooperation

125. The NCC was established by specific regulations that entered in to force on 13 April 2018 and started functioning in the same month. The Group is chaired by the Permanent Secretary of the MoF and all relevant competent authorities are represented on the NCC by senior officials.

126. The NCC is mandated to:

- Draw up national strategies and policies to combat ML, FT and the financing of the proliferation of weapons of mass destruction; and
- Co-ordinate any action that needs to be taken to develop, implement and review the national strategies and policies, including the co-ordination of national risk assessments, and the actions to be taken to address any threats, vulnerabilities and risks identified.

127. The main output of the NCC to date is the National Strategy and the associated Action Plans, which are discussed above. The establishment, membership, mandate of the NCC appear appropriate and early signs are encouraging, and its role in national coordination and cooperation can have a positive impact on the effective coordination of the efforts aimed at implementation of relevant policies.

128. At operational level, there is evidence of good recent co-operation between the authorities, particularly between the MGA, MFSA and FIAU in relation to the supervision of FIs and DNFBPs. Formal MoUs are in place and joint inspection are commonly undertaken, along with intelligence exchange (for instance, in the course of licensing).

129. The FIAU, MFSA, Customs, CFR, and the SMB also cooperate on regular basis and share statistics and other relevant information.

Private sector's awareness of risks

130. The private sector was involved in the NRA process from its earliest stages, in line with the WB methodology. This involved submission of data in 2012/13 and industry representative bodies being part of working groups undertaking analysis. Some individual entities also provided further data and information in 2017. No findings or other details of the NRA were communicated to industry during the period 2012 to 2017. The NRA report was finalised in early 2018, but has not been published.

131. The Maltese authorities did publish the National Strategy in April 2018 and the results of the NRA were communicated to private sector entities through a series of general and sector-specific presentations in late October 2018 (the contents of which were also posted on the FIAU and MoF websites).

132. Most banks, other FIs and DNFBPs were aware of the results of the NRA, albeit only some weeks before the commencement of the on-site assessment. Given the limited nature of the communications, the assessment team is doubtful whether such awareness is consistent across the whole of the private sector.

133. In most cases, private sector entities stated that the results of the assessment, as communicated, did not provide them with a clear understanding of the risks present in Malta, nor the features of their business/sector which presented a higher risk. Very few FIs or DNFBPs could explain in any detail the ML/FT risks to Malta or to their businesses.

134. Further detail on the private sectors' awareness of the results of the NRA and overall understanding of risk is elaborated in IO4.

Conclusion

135. **Malta has achieved a moderate level of effectiveness for IO.1.**

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

IO.6

- The FIAU and the Police regularly obtain information from state authorities, subject persons, legal entities and natural persons. The FIAUs direct access to a number of databases is limited, hence indirect channels to collect information are extensively used. The assessment team considers the information-gathering process to be unduly resource-intensive, and direct data access is deemed to be of particular importance for Malta.

- 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. The authorities presented successful cases demonstrating the ability of LEAs to obtain and use financial intelligence. However, only in a limited number of cases were 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.

- Based on the discussions with the representatives of the FIAU and presented sanitised cases, the assessment team concluded that 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 statistics on STR reporting demonstrates a constant upward trend. Nevertheless, underreporting and non-reporting within certain entities and sectors poses a problem. The assessment team concluded that various factors impact the effectiveness of the STR reporting. This includes a low level of awareness among the subject persons about the risks inherent to their relevant sectors and weak abilities for identifying STR due to the limited specific targeted guidelines, typologies and red flags developed for and communicated to the subject persons.

- The FIAU uses cross-border cash declarations for the purpose of both operational and strategic analysis. Based on this analysis information was submitted 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.

- Cooperation between the FIAU and other competent authorities demonstrates an upward trend. There are some measures in place to ensure confidentiality of exchanged information between the FIAU and other competent authorities.

IO.7

- In Malta, 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. This assessment seems to be confirmed by the low number of ML cases. Limited resources, both human and financial, allocated to the investigation and prosecution of ML weighs negatively on Malta's capability to effectively fight ML. This is also not commensurate with the country's increasing nature as an international financial centre and the growing size and complexity of its financial sector.

- ML investigations and prosecutions do not appear to be in line with the country's risk profile. Moreover, the assessment team is not convinced that the LEAs are currently in a position, due to several factors including resources, 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.

IO.8

- The confiscation of criminal proceeds does not appear to be pursued as a policy objective. Malta's confiscation system is based on the prerequisite of a criminal conviction, although alternative systems such as non-conviction based confiscation are being discussed. The law courts routinely order the confiscation of assets. However, shortcomings in asset-tracing, in the effective use of provisional measures (such as attachment and freezing orders) and in the identification of assets in the judgments cast doubts on the effectiveness of the system and the existence of a coherent policy. Confiscation judgments have furthermore been successfully challenged in civil courts, with the consequences that assets have been returned to the offenders.

- When detected, cases of non-declaration of cross-border movements of cash are sanctioned by an effective and dissuasive sanctioning regime. Despite of this, there are hardly any investigations of ML/FT initiated on the basis of the cash declaration system.

- No asset-tracing has until very recently been performed in respect of assets located abroad. This could be one of the reasons why no cases have been presented in respect of assets repatriated. It also appears that asset-tracing 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.

- The assessment team has taken into account that a new institution, the ARB, has only recently become operational and that a number of initiatives, ranging from the improvement in human and technical resources to the drafting of new legislation, are in the course of being implemented. It also takes note of the fact that the current problems result from previous

shortcomings in the legal framework and the resources and training so far allocated to the authorities in charge of identifying, tracing and managing both the instrumentalities and proceeds of crime. For the period under review, the assessment team however considers that fundamental improvements are still required.

Recommended Actions

IO.6

- 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 MGA and the Police should make better use of information generated from STRs, with the involvement of non-residents submitted by the remote gambling sector that can relate to ML, associated predicate offences or FT.
- The Police and the FIAU should establish an effective feedback mechanism on the use of financial intelligence in investigations.
- The FIAU should reconsider performance of 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 on 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: a) undertake measures to increase the effectiveness of information gathering, and ensure that the FIAU has direct access to the databases commensurate with its operational needs; and b) consider introducing centralised databases (such as an account register) or establishing a cash transaction reporting requirement.
- Malta should further enhance the human and technical resources, including the development of an electronic information system for the document workflow of the FIAU to enable more effective operational and strategic analysis, and the development of a secure electronic information exchange system within the competent authorities.

IO.7

- The Police should be 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). Adequate training and capacity-building should be provided.
- Malta should develop a comprehensive AML strategy for the investigation, prosecution and conviction of ML, including the prioritisation of this offence as well as addressing the shortcomings highlighted in Chapter 3 of this report.
- Malta should consider introducing measures to separate the role of the Police as both an investigative and prosecutorial authority.
- Malta should eliminate any legal and practical obstacles for pursuing criminal investigations for tax evasion, and reconsider its policy to investigate tax evasion as a mere administrative offence.

IO.8

- Malta should introduce for its competent authorities a written policy and guidance on confiscation of proceeds of crime and instrumentalities. This policy should extend to the widest possible range of asset-tracing, in order to capture criminal proceeds disguised through the use of the corporate structures available in Malta as an international financial centre.
- The ARB 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 consider introducing a system for non-conviction based confiscation to achieve better results in the confiscation of proceeds of crime.
- Malta should ensure that ML/FT suspicions are sufficiently addressed in their system of cross-border cash/bearer negotiable instruments (BNI) declarations. In particular, cash declarations should require more meaningful information to allow the authorities to analyse them with regard to possible ML/FT suspicions.

136. The relevant Immediate Outcomes considered and assessed in this chapter are IO.6-8. The Recommendations relevant for the assessment of effectiveness under this section are R.1, 3, 4 and 29-32.

Immediate Outcome 6 (Financial intelligence ML/TF)

Use of financial intelligence and other information

137. The competent authorities in the field of AML/CFT access a number of financial intelligence and other relevant information required to conduct their analysis and financial investigations, to identify and trace the assets, develop operational analysis and investigate ML/FT and associated predicate offences.

138. The FIAU obtains information required to perform its function by accessing a number of databases as provided below in Table 4, both directly and indirectly. In addition the FIAU requests information from any state authority, subject person, legal entity and natural person possessing relevant data, exercising its powers to collect information on potential ML, associated predicate offences and FT.

Table 4: Information databases accessed by the FIAU

Type of Information	Type of Access
Common Database – CDB (people's registry)	Direct
Registry of Companies/BO register[28]	Direct
Cross-border cash declarations	Indirect (information is submitted on a bi-weekly basis)
VOs	Indirect (information is submitted every 3 months)
IIP	Indirect (information is submitted to FIAU on a weekly basis)
Passenger Name Records (PNR)	Indirect (upon request of the FIAU to Police)

139. In the view of the assessment team, the number of databases to which the FIAU has direct access does not seem to be commensurate with the FIAU's operational needs. As shown in the

[28] The newly-centralised registry of beneficial ownership of legal persons will assist authorities in obtaining beneficial ownership information. However, until a competent authority has been designated to verify the information submitted to the Registries, the accuracy of the information remains questionable and it is too early to conclude on the overall effectiveness of the centralised registry.

table below, there is an upward trend in the number of requests sent by the FIAU to the other state agencies and subject persons. The information-gathering process appears to be unduly resource-intensive (as further elaborated below), and the direct data access to a number of databases is deemed by the assessment team to be of particular importance for Malta.

Table 5: Requests for information sent by the FIAU to subject persons and other state authorities

Request addressee	2013	2014	2015	2016	2017	As of July 2018
Subject Persons	1664	2001	2971	4209	5450	5017
Supervisory Authorities	27	51	54	75	114	71
Police	59	72	78	86	124	73
CFR	28	28	32	45	72	52
Other Governmental Authorities	27	39	34	39	73	50
Total	**1805**	**2191**	**3169**	**4454**	**5833**	**5263**

140. The Maltese authorities mentioned that, in order to enhance the efficiency of data access, they are taking practical steps to increase the number of directly-accessible databases. In particular, over the last year the FIAU was provided direct access to the Companies' BO register and initiated discussions to obtain direct access to the CFR-relevant databases (containing tax-related information, ownership of real estate and vehicles or other vessels, etc.), and Police database (data on criminal records). The FIAU plans to further extend its access to other databases, e.g. the land registry, vehicle registry and others. The FIAU expressed the need of obtaining direct access to the PNR, which is currently available through the Police.

141. The FIAU has stated that, despite the absence of any timeframe for the public authorities to respond to FIAU requests, in practice communication is prompt and supports the FIAU needs in performing its duties. There are no cases in which the public authorities refused to provide requested information.

142. The FIAU has also regular communication with the subject persons as provided in the Table 5 above. It appeared that, out of the total number of annual requests made by the FIAU, over 85% are made to subject persons. The FIAU explained this high rate with the fact that in the course of the analysis it circulates a request among the subject persons (mainly all banks) to identify any assets or transactions conducted through the financial sector of Malta linked to the case. As a result, for collecting information on one case, 25 requests are being made to all banks if needed, followed-up by additional requests on more specific information to relevant credit institutions. The FIAU confirmed that information provided was of a satisfactory quality, no requests were refused by the subject persons, and information was mostly provided in a timely manner (within 5 working days). Information requested by the FIAU includes CDD-related data, including BO-related data, information on the transactions or activities and all the supporting documentation. All the requests are communicated through encrypted e-mails. In the opinion of the assessment team, this method considerably impacts the efficient use of the FIAU resources and quicker access to the relevant information. Development of alternative methods, such as the establishment of a bank and payment account central database or establishment of cash transaction reporting requirement in Malta might facilitate the collection of relevant information and improve the efficiency of the current system.

143. The Police (as the competent authority for investigation of ML, associated predicate offences and FT) have a wide access to all necessary data, including through powers to use

compulsory measures. It obtains financial intelligence as well as other law enforcement intelligence from a wide variety of national and foreign (such as foreign counterparts, Europol, Eurojust, Interpol and others) sources, and the criminal investigations database. Requests for information have been sent to a number of public institutions (e.g. the Tax Authorities, Mobile and Landline Communication Services). The Police also obtain information directly from subject persons. There are no confidentiality provisions which restrict the ability of the Police to obtain information. The Police made requests to the subject persons in a number of instances (on average the Police has made 264 requests per year from 2013-2018 to banks). As stated by the Police, they do not encounter any difficulty in practice to collect this information and it has always been obtained in a timely manner (5-7 working days) and in urgent cases in a shorter period of time. There have not been any recorded cases of refusal to provide information to the Police. Refusal to provide information to the Police may result in imprisonment.

144. 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. In some instances, the Police also use the FIAU channels to obtain information from foreign FIUs or subject persons[29]. The Police seek assistance from the FIAU in relation to both financial investigations initiated on the basis of FIAU disseminations and independently, at their own initiative. In total the Police submitted 138 requests to the FIAU during the period 2014 - May 2018. As stated by the Police, the FIAU provides assistance promptly upon request. Financial intelligence provided by the FIAU to the Police cannot be used as evidence in performing investigations. Data provided by the FIAU is gathered by the Police via its own channels. The authorities presented successful cases demonstrating the ability of LEAs to obtain and use financial intelligence.

Box 6.1: Financial intelligence generated by LEAs

Recently the Police Criminal Investigation Department (CID) has been investigating a murder case which was suspected to be connected to fuel smuggling. After weeks of intensive investigations, the Police effected a raid in a notorious area in Malta, and from thereat and other locations in Malta arrested several suspects. Eventually, three persons were arraigned in Court under arrest and charged with homicide.

All three suspects are very well known to CID Inspectors for their involvement in various criminal activities. In fact, all three have been arraigned in court on numerous occasions and charged with numerous kinds of offences.

Following the arraignment initial intelligence and investigations revealed that one of the subjects, as well as two close relatives, are all unemployed but yet seem to afford a lavish lifestyle, which does not reflect their true legitimate financial situation.

In conjunction with this case the FIAU was requested to collect and collate financial intelligence on the above mentioned three subjects, as well as other immediate relatives. Additional information was requested from various legal entities in order to collect financial intelligence and to establish a financial picture of the lifestyle of the three suspects. The results showed that funds of considerable amounts were remitted to third parties. In addition, it also transpired that the suspects owned high value assets, and that bank accounts were used by a suspect to deposit funds in cash when the suspect was unemployed. Investigators interrogated the suspects who did not collaborate. Despite the lack of collaboration the investigator still considered to have enough evidence to arraign the suspects and charging them for ML offence(s). All three (3) suspects were arraigned and their respective assets were

[29] Information mostly refers to financial data, such as bank account(s), UBOs, bank account(s) balance(s) and if subject(s) are adversely known and how they are adversely known

frozen. Other investigation(s) are on-going in relation to this case.

145. There is no precise information on the number of cases where financial intelligence collected by the Police from various sources was used in criminal investigations. However, as also further elaborated in IO.7, only in a limited number of cases has financial intelligence been used to develop evidence related to ML and associated predicate offences. 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 (see also IO.9). Further information on the use of FIAU-generated intelligence by the Police is provided under core issue 6.3.

146. Turning to the specific matter of the use of financial intelligence formed by the FIAU on ML related to tax evasion, the FIAU formalised the cooperation with the CFR since the beginning of 2018 and started disseminating financial intelligence related to the cases of undeclared taxes. However, the main activities of the CFR are focused on collecting the revenue, and the CFR is empowered to apply only administrative measures. The CFR does not have the competency to deal with ML investigations related to tax crimes. The authorities consider that the administrative sanctions applied are sufficiently high, hence no parallel criminal proceedings need to be initiated. Moreover, they stressed that the administrative sanctions regime reduces the time-frames to conclude a case, lowers the burden of proof and increases efficiency. As of 31 October 2018, the FIAU disseminated 249 cases to the CFR (which launched the examination of only around 60 cases). In contrast to this, as further elaborated in IO.7, there were only 2 ML-related cases identified and submitted to the Police in 2018 by the FIAU.

147. In the light of the NRA conclusions about tax evasion being one of the highest threats in the country, the assessment team is concerned about the adequacy of the measures applied by the competent authorities (FIAU, CFR and Police) on this matter. Based on the above analysis of the situation, the assessment team concluded that 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. Having said this, and as also indicated below under IO.7, representatives of the CFR indicated a shift in the awareness of the importance of pursuing also the criminal aspect of tax evasion (and related ML).

STRs received and requested by competent authorities

148. The FIAU is the central authority for the receipt of STR from the subject persons. The STRs from all categories of FIs and DNFBPs are submitted via a secure electronic channel that is logged into by accessing the FIAU's website. In Malta, subject persons are required to report on suspicious transactions and/or activities. There is no cash transaction reporting requirement in Malta.

Table 6: STRs received by the FIAU on ML and FT

Type of subject person	2013	2014	2015	2016	2017	As at 31.10.2018
Banks	66	112	136	344	398	546
Remote Gaming Companies	17	22	32	87	218	525
Company Service Providers	15	13	18	34	50	36
Trustees and Fiduciaries	7	12	16	19	10	14
Investment Services Licensees	10	9	26	12	12	30

Insurance Licensees	1	1	7	9	12	5
Other FIs[30]	8	17	11	30	48	59
Independent Legal Professionals[31]	8	5	11	5	9	9
Casino Licensees	0	1	3	4	4	18
Retirement Scheme Administrators	0	1	1	2	2	3
Other subject persons	11	9	20	19	15	30
Total	**143**	**202**	**281**	**565**	**778**	**1275**

149. Over the period 2013-2018, the total number of STRs has been steadily growing. FIs appeared to be the major senders of STRs. Among the subject persons, the top 3 reporting institutions were credit institutions (banks and branches of foreign banks, filing 51% of STRs) remote gaming companies (filing 29% of STRs), followed by TCSPs (filing 9% of STRs). Only a very limited number of STRs were submitted by other types of FIs. The low reporting from some of the DNFBPs (namely from legal professionals) raises concerns, given their international client base, involvement with complex corporate structures and legal arrangements. Moreover, the NRA states that the inherent ML/FT risk of this sector is high (for lawyers) and medium-high (for notaries).

150. Given the materiality of the banking sector, further detailed analysis of reporting patterns of individual banks has been conducted. While the overall number of STRs in this sector has increased, there was a high level of concentration of STRs being reported by only 2 major banks, of which one has submitted 67% of the STRs and the other 10% of STRs. A very limited number of STRs were filed by other banks. Around 4-5 banks have never submitted any STR.

151. The assessment team concluded that there appear to be several reasons for the above: a low level of awareness among the subject persons about the risks inherent to their relevant sectors; as well as weak abilities for identifying STRs due to the limited specific targeted guidelines, typologies and red flags developed for and communicated to the subject persons (see also IO.4).

152. The FIAU has implemented a feedback mechanism for the subject persons to be aware of the quality and the use of the submitted STR. The quality is evaluated by the application of a 5-grade rating system, where (1) is a low-quality STR and (5) is a high-quality STR. According to the statistics, around 65-70% of STRs were assessed by the FIAU as a high-quality dissemination (i.e. obtaining the grade of (5)). This quality assessment is based on the fulfilment of the basic components (identification of ML, FT or predicate offence, supporting documentation and reasons for submitting STRs).

153. As indicated by the authorities, feedback is provided to the respective subject person for every STR that is finalised. In cases where multiple STRs made up one case, every subject person involved was provided with feedback on the outcome thereof. However, as discussed during the interviews with the private sector, the latter indicated that they do not receive a comprehensive feedback on the substance, i.e. related to the results of a final analysis-process (either on a case-by-case basis, or as a strategic observation of the quality and consistency with

[30] Under FIs, the following types of subject persons are included: Exchange Bureau, Money Remitters, Electronic Money, Payment Service Providers.
[31] Under independent legal professionals, the following types of subject person are included: Notaries, Advocates, Legal Procurators.

the ML/FT risks in the country). The FIAU has implemented a new feedback mechanism since July 2018 that contains more details. However, the effectiveness of this could not be assessed during the on-site visit.

154. As of 2017, training activities were provided or organised by the FIAU to increase AML/CFT awareness and understanding by the subject persons. In addition to the awareness-raising activities, the FIAU intensified its supervisory activity, including carrying out of off-site and on-site examinations with an increased emphasis on on-going monitoring and STR reporting. While efforts of the FIAU in this field did result in some increase of reporting from the TCSPs and the remote gaming sector, it does not yet translate into an increase of STRs from traditionally less-involved categories of subject persons.

155. The STR form contains a reference to the underlying predicate offence. Subject persons are not expected to precisely identify the underlying criminal activity when providing STRs. According to the analysis of the STRs submitted to the FIAU over 2013-2018 (while 50% of STRs are not linked to any alleged predicate offence), the following top 5 criminal activities reported by the subject persons comprise: fraud (20% of STRs); tax crimes (undeclared income) (15% of STRs); corruption (bribery) and human/drug trafficking (6% of STRs); and organised crime (1.8% of STRs). This distribution is in general terms proportionate with the threats highlighted in the NRA and with the FIAU disseminations to the respective competent authorities.

156. Based on the provided statistics, 40 FT-related STRs were submitted by the subject persons from 2014 to May 2018. Some of the banks referred to FT-related STRs submitted to the FIAU. An example was also provided by the FIAU when a case was disseminated to the Police based on an FT-related STR (see also IO.9).

157. Of the legal and natural persons who reported to the FIAU in 2017, just over 65% were either non-Maltese nationals or foreign companies. In almost 18% of the cases (or 6 cases in absolute terms) referred to the Police for further investigation due to a suspicion of ML/FT, the use of a Maltese-registered company or bank account to launder the proceeds of predicate offences carried out in foreign jurisdictions was identified. This reporting pattern is in line with the international element to which Maltese subject persons are exposed.

Box 6.2: Criminal case initiated based on STRs.

The FIAU obtained intelligence through two STRs, one filed in the last quarter of 2015 and the other at the start of 2016, indicating that subject No 1 and his associate (subject No 2), who run a business in Malta, were suspected to be involved in the encashment of a substantial number of third party cheques. The suspicion was based on the fact that the transactions in the bank accounts of the two above-indicated subjects showed that they were depositing a substantial number of cheques issued to third parties and withdrawing substantial cash amounts.

Such an illegal operation was deemed to be an operation which could have aided and abetted in the laundering of funds that may have originated from a criminal activity. The financial analysis carried out of the various bank accounts operated by subject No 1 and subject No 2 established that over three years almost EUR 3.4 million were deposited predominantly in cheques and almost EUR 3 million were withdrawn in cash.

Based on the analysis of the information available to the FIAU it was determined that there were sufficient elements in the case to reach a reasonable suspicion that both subjects were providing an unlicensed financial service and that the substantial profits emanating from this illegal activity were the proceeds of crime. The case was referred to the Police for further investigation in mid-2016.

Following the receipt of the FIAU's analytical report, investigations were initiated by the Police. During

the investigations carried out by the Police (including also physical surveillance), subject No 1 was arrested and searches were conducted. The subject confessed of having cashed several cheques issued to third parties, deposited the said cheques in his accounts which were held with four domestic credit institutions and the earnings from the encashment of these cheques, which ranges from 0.5% to 1% were either kept as part of the cash of the business or on his person to be used for business and/or family needs.

As a result the subject was arraigned, prosecuted and convicted for an offence in terms of Art. 18 (Continuous Offences) and 298C (Usury) of the CC, Chapter 9; Art. 5 of the Banking Act, Chapter 371 and Legal Notice 155 of 1999 as amended by Legal Notice 385 of 2003 (Provision of Business of Banking without a license); Art. 3 of the Financial Investment Act, Chapter 376 and the Legal Notice 357 of 2002 as amended by Legal Notice 386 of 2003 (Provision of Business of a Financial Institution without a license) and Art. 2 and 3 of the Prevention For Money Laundering Act, Chapter 373 (Money Laundering Offence). During the proceedings, the accused plea bargained and on 25 May 2018 registered an admission. As a result, he was condemned to two (2) years imprisonment suspended for four (4) years, a fine of EUR 4000 and a confiscation of EUR 36,500 (The calculated amount of the generated proceeds of crime) in favour of the Government of Malta.

158. With respect to tipping-off, the authorities and the private sector representatives informed the assessment team that there are no known cases of tipping-off both in relation to STR reporting as well as to the provision of information upon request. However, a high number of requests circulated to the private sector might increase the risk of tipping-off. In order to mitigate any potential instance, the FIAU is acting cautiously when sending requests for information on cases with the involvement of high-profile persons and/or PEPs, or when the nature of a business relationship between the subject person and the person who is the subject of the FIAU request is likely to increase the risk of tipping-off. In such cases, the FIAU only contacts subject persons as a measure of last resort and carefully chooses who to contact and contacts only selected individuals. Subject persons are warned about the serious consequences of tipping-off.

159. The FIAU receives information from the Comptroller of Customs on cross-border cash declarations, including on false declarations, non-declarations and ML/FT suspicions identified at the border. The FIAU uses cross-border cash declarations mainly for strategic analysis purposes (to identify typologies, specific patterns and individuals frequently conducting cross-border cash transactions). In addition, the FIAU is screening data against the received STRs and information received from other sources to identify potentially suspicious cases. Information on false declarations, non-declarations and ML/FT suspicions identified at the border generally instigates an analysis in order to identify any elements of ML/FT. Persons who have carried substantial sums to or from Malta with no clear purpose can also be subject to FIAU analysis. In several cases, the FIAU submitted reports to the Police based on the strategic analysis.

160. The analysis of cash declarations for the period 2013-2018 (see the table below) revealed that there was a peak of cash entering to Malta in the first three years, which then decreased in the following years. The authorities clarified that the conducted geographical analysis of these declarations revealed that the vast majority of the cash was brought to Malta from Libya (see also IO.8). This peak was described as an impact of the political situation in Libya. The assessment team was provided with a summary of the analysis conducted by the FIAU on these declarations. Based on this analysis, information was submitted to the Police and/or foreign counterparts.

161. As further elaborated under IO.8, the number of investigations for ML and FT triggered by cash movements appears low and, given the fact that the wide use of cash is considered a

vulnerability in the NRA, the assessors concluded that the criminal intelligence tools of the authorities should be improved.

Table 7: Cross Border Customs Declarations

Year	Entering Malta		Leaving Malta	
	Count	EUR	Count	EUR
2013	5,968	207,449,137	1,051	53,201,537
2014	3,278	100,014,224	948	45,140,658
2015	876	29,812,730	363	20,982,278
2016	328	12,332,898	217	5,933,148
2017	202	15,494,519	393	17,426,163
As at 03.06.2018	71	2,744,025	226	4,580,096

162. The FIAU stated that, from 2013 to May 2018, it also received some 33 STRs from the supervisory authorities (the Central Bank, the MFSA, and the MGA) identified during their supervisory or regulatory activities. These reports involve ML/FT suspicions related to fit and proper checks or unreported suspicious transactions. As a result of the analysis, the FIAU disseminated some 5 cases to the Police (in 1 case intelligence was used in an already on-going investigation, which resulted in the arraignment of two persons for misappropriation and other charges; in 2 cases intelligence was used to provide assistance to the foreign authorities which showed that subjects and legal entities in Malta were not operating illegally; in 1 case - as a result of the investigation - there were no criminal actions taken, as funds matched the income of the persons; and in 1 case not enough elements were unearthed to warrant any criminal action against the subject).

Operational needs supported by FIU analysis and dissemination

163. Operational analysis carried out by the FIAU is conducted according to a detailed internal written procedure. The operational analysis passes through three main stages: (i) initial assessment; (ii) first assessment and prioritisation; and (iii) discussion in and determination by the Financial Analysis Committee (FAC).

164. The initial assessment is conducted by an administrative support officer. No case can be closed at this stage. The second stage of the analysis (first assessment and prioritisation) is led by managers, and has as purpose to distinguish between the STRs that shall be continued and those that do not require an in-depth analysis and can be closed (due to a lack of indication of ML/FT or due to insufficient elements of ML/FT). The STRs which are not closed following the first assessment are assigned to a financial analyst. The financial analyst carries out further checks as part of a more in-depth first assessment. As part of the initial assessment, the financial analyst also seeks to identify any indicators which may become useful during the prioritisation process. This procedure also applies to suspicions of ML/FT which the FIAU may have formed on the basis of information which came in its possession (independently of any STR).

165. At the last stage, analysed cases are presented to the FAC for a final determination. The FAC is comprised of the Director and/or Deputy Director of the FIAU; the secretary, managers and senior financial analysts of the FIAU; as well as a member of the FIAU's legal and international relations section. One of the members of the FAC is also a Police Liaison Officer, who does however not have a voting right. The Committee meets once per month. However, in urgent and extraordinary cases it can be convened at any time. The FAC takes the decision on the dissemination of the cases to the Police by vote. The Police Liaison officer is present during the FAC meetings to ensure that analytical reports may be exploited fully by the Police's Anti-

Money Laundering Unit (AMLU)[32]. The Committee disseminates the case to the Police for further action when it determinates that there are reasonable grounds to suspect that ML or FT have taken place. Information is handed over to the Police via the Liaison Officer in hard copy form/CD.

166. The case analysis procedure provides for a number of technical criteria and red flags to decide upon the urgency and the prioritisation of the case, to be taken into account in the course of analysis and the decision making. This includes a possible link with FT, the volume of assets involved, criminal background of the person, involvement of PEPs, as well as the severity and type of the predicate offence. Nevertheless, a limited number of disseminations made to Police for the purpose of ML/FT investigations of identified cases suggests that the FIAU is lacking certain criteria to support the process. In managing priority throughout the case analysis procedure, regard may be given to the results of the NRA on ML/FT high risk areas, e.g. tax evasion, corruption (bribery) and organised crime.

167. A breakdown of the disseminations to each recipient (Police, foreign FIUs or other local authorities) is provided below.

Table 8: Number of disseminations based on the STRs

	2013	2014	2015	2016	2017	2018[33]	Total
Total number of STRs	143	202	281	565	778	1275	**3244**
Police	30	27	20	39	34	45	**195**
Foreign FIUs	34	50	77	135	277	534	**1107**
Disseminated to Tax Authorities	0	0	0	0	0	249	**249**
Disseminated to other local authorities[34]	0	1	3	1	0	4	**9**

168. Over the period 2013-2018 (31 October), a sizeable number of STRs were closed and no further analysis was undertaken following the prioritisation meetings within the FIAU or discussion in the FAC. In a majority of cases, the FIAU found that the information included in the STRs or obtained during the analysis of an STR is not useful for ML/FT investigations in Malta.

169. The largest percentage of disseminations was sent to foreign FIUs in the form of spontaneous disseminations. As explained by the authorities these disseminations result from STRs coming mostly from the remote gaming industry and the increase in the number of disseminations to the foreign FIUs is connected with the increase of the numbers of STRs received from this industry. A change in legislation in 2018 allowed for the spontaneous disclosure of information to the CFR and some STRs were sent to the CFR for application of administrative measures with regard to tax evasion. The Police, which is responsible for ML/FT investigation, received only 195 STR-based disseminations.

170. Upon detection of an STR received from a Maltese subject person (mainly from the gaming sector) which concerns a non-resident, the FIAU disseminates in most of the cases the intelligence sourced from the STR to the respective foreign FIU. The authorities explained the high number of STRs for non-residents with the fact that Malta is a gambling centre which provides gambling service platforms internationally. The assessment team is concerned about the approach on the use of financial intelligence adopted by the Maltese authorities. Given that the involvement of non-residents does not exclude that the ML is not taking place mainly

[32] Since 1 December 2018 the APMLU is the AML squad under Financial Crimes Investigations Department.
[33] As at October 2018
[34] MFSA, Security Service, Comptroller of Customs.

through the Maltese remote gambling sector, there is capacity for the FIAU, the MGA and the Police to make better use of information generated from such STRs.

171. Concerning the mechanism for taking a decision on cases involving tax matters, the FIAU adopted in January 2018 a procedure to deal with cases relating to tax evasion whereby it was agreed that: (i) those cases which contain no other suspicion than tax evasion and which do not exceed a threshold value[35] of undeclared income per year are not undergoing an in-depth analysis and the results of the preliminary analysis are disseminated to the Commissioner of Inland Revenue; (ii) those cases in which the only predicate offence seems to be tax evasion, but for which the amount of undeclared annual income exceeds the threshold value, an in-depth analysis is carried out by the FIAU and the case is presented to the FAC for final determination; and (iii) those cases in which there is a suspicion of other predicate offences besides tax evasion are subject to an in-depth analysis by the FIAU and presented to the FAC for final determination. If in scenario (ii) and (iii) the case passes the FAC with a positive decision on dissemination, it is sent to the Police. As indicated above, the FIAU submitted to the Police only 2 ML-related cases which involved tax evasion (please see IO.7 for further details). The assessment team considers that the low number of criminal investigations for tax evasion is of particular concern, given that the NRA considers tax evasion as one of the highest ML/FT threats in the country.

172. It should be noted that the FIAU disseminates the cases to the Police when there are reasonable grounds for ML/FT suspicions. In some of the cases when a STR received relates to the predicate offence or the attempt of it (such as attempted fraud), the FIAU contacts the subject person and suggests addressing the Police directly.

173. Over the period from 2013 to mid-2018, the FIAU has disseminated around 9 FT-related and 186 ML-related cases to Police. The Police initiate investigations automatically based on the disseminations provided by the FIAU.

174. Concerning the FT-related disseminations, the authorities clarified that in the majority of cases the FT-related suspicions were not confirmed as a result of additional checks by the Police and the MSS. A limited number of these STRs have recently generated formal Police investigations, of which some were still on-going at the time of the on-site visit.

175. Figures provided by the authorities on ML/FT prosecutions suggest that over the respective period of time there have been only 5 ML cases prosecuted by the Police based on FIAU disseminations. This raise concerns on the effective use of financial intelligence (see also IO.7).

176. The FIAU has in a number of cases postponed transactions to determine whether there is a reasonable suspicion that the transaction is related to ML or FT. Overall, the FIAU has the power to postpone a suspicious transaction for a maximum of three working days. The FIAU is empowered to apply the suspension, based on a STR provided by the subject person, information received from the national competent authorities, a request of foreign counterparts or on its own initiative (if the FIAU becomes aware of a pending transaction by any means). As a result, as demonstrated in the table below, over the past two years the FIAU exercised its powers on 17 occasions.

Table 9: Number of postponed transactions and applied attachments

Year	Number of Postponements	Total Value	Number of attachment orders	Total Value
2017	4	EUR 621,670.00	0	0

[35] Determined by the FIAU Policy.

2018	13	EUR 929,672[36] USD 9,496,211	9	EUR 805,644 USD 9,496,211

177. The FIAU does not have adequate IT tools to efficiently support the case analysis and case-management process, including an electronic information system for document workflow. Moreover, all STRs are printed out after the initial assessment and circulated within the FIAU in a hard copy. The collected information and responses from domestic and foreign counterparts related to the case are also used in a hardcopy and attached to the STR. The assessment team has been informed that the FIAU is taking steps to enhance its IT tools.

178. The case analysis conducted by the FIAU (before it is sent to the Police) takes in average 7-12 months. The assessment team is concerned with this duration, which appears to be the result of numerous formal procedures to be conducted in the course of the analysis, a lack of direct data access, heavy paper-based workflow, a lack of clear and more detailed criteria for carrying out analysis, as well as a lack of human resources. The authorities indicated that in urgent cases (e.g. FT-related cases) case analysis is conducted in shorter timeframes.

Table 10: Case analysis duration

Year	Number of Cases sent to Police	Average number of days taken
2013	30	180 days
2014	27	174 days
2015	20	248 days
2016	39	209 days
2017	34	287 days
2018 (as at 31.10.2018)	45	359 days

179. There are no specialised resources dedicated to strategic analysis. There is only some limited work conducted by the FIAU. As provided by the authorities the competent section of the FIAU reviews on an annual basis the cases disseminated to the police for further investigation to identify the predominant predicate offences as well as sectors, methods, products and services used to channel funds suspected to be linked to ML/FT and analyses cross-border cash declarations. The findings on cases disseminated to the Police are published in the FIAU's Annual Report along with other relevant information in the section titled "Operations"[37]. As mentioned above, the FIAU has conducted also a strategic analysis of cross-border cash declarations. However, considering that the FIAU does not receive a regular feedback on the use on the disseminated cases, it might be questionable to which extent the FIAUs efforts are adequately streamlined. 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.

180. Turning to the human resources of the FIAU, the assessment team concluded that, as of the date of on-site visit, it was under-resourced. Around 40% of positions (including operative and managerial positions) were vacant. In the light of the growing annual number of STRs received by the FIAU, the current staffing situation raises concerns.

181. The assessment team discussed the issue of operational independence and autonomy at length with various representatives of the FIAU who explained that the latter's analysis and

[36] The figure includes of EUR 928,092 and SEK 17,002.

[37] As stated by the authorities, as from 2018 the FIAU has started reviewing all STRs received and not only those that result in a dissemination to the Police to identify trends and typologies as mentioned above, to be published in the Annual Report. However, this falls out of the scope of the evaluation.

dissemination function has never come under any political, government or industry pressure, influence of interference. They have also presented sanitised cases (involving PEPs) which were disseminated to the Police in order to prove their arguments. Despite the fact that the law does not provide specific mechanisms and procedures for the appointment of the Director as indicated under c.29.7, the assessment team concluded that the officers have always performed their functions freely and objectively.

182. However, the assessment team concludes that different factors and circumstances call into question the FIAU's ability to perform its analytical function at full capacity: (i) a very long analytical process; (ii) the low number of disseminations to the Police and absence of feedback from the latter which could improve the dissemination process; (iii) a huge disproportion of received STRs, considering also a high level of concentration of STRs being reported by only two major banks; and (iv) issues identified under IO.3 on the effective risk-based supervision which could also negatively impact the level and quality of STRs.

Cooperation and exchange of information/financial intelligence

183. Cooperation and communication among the authorities is carried out on a daily basis, through various meetings and multilateral discussions. In general terms, the authorities expressed satisfaction with the cooperation with the FIAU. The FIAU stated that it does not encounter difficulties when exchanging information with domestic authorities. There is no indication that the cooperation between the authorities is not conducted effectively.

184. As of 2018, the FIAU powers to disseminate results of its analysis were considerably enhanced. While the FIAU was previously empowered to only share information with the Police, the supervisory authorities (MFSA and MGA) and the Comptroller of Customs, it can now also disseminate its findings to other competent authorities (such as the MSS, the SMB, the CFR, the CVO and the ARB). Although there is no legislative requirement, the FIAU has initiated negotiations to conclude MoUs in order to streamline cooperation with the provided authorities. To this effect, the FIAU has already concluded MoUs with the MFSA, MGA and the CVO.

185. The FIAU cooperates with various supervisory authorities for the purposes of ascertaining the "fitness and properness" of persons holding senior positions within licensed entities, receiving and responding to over 2000 requests over 2014-2018. In addition, over the recent period the FIAU enhanced cooperation with the CVO, conducting screening of administrators of enrolled VOs, to supporting the FT preventive initiative. Moreover, the FIAU cooperates closely with Identity Malta with respect to the implementation of the IIP.

186. There are some measures to ensure the confidentiality of the information exchange between the FIAU and other competent authorities. In cases where information is exchanged via e-mail, the system used is secured and encrypted. In the unlikely event that secure information needs to be shared via email and the receiver does not support TLS encryption, the document is password-protected and communicated to the receiver, using a different method of communication. Nevertheless, the FIAU continuously utilised a hard-copy/CD when disseminating information to the Police.

187. During the on-site visit, the assessment team was informed that various security measures are implemented to protect information held within FIAU premises, including information received from other FIUs, and to ensure that such information is being handled by the appropriate personnel and in line with the FIAU's functions.

188. Moreover, certain measures have been taken to prevent the recurrence of previous incidents in 2017, when highly-confidential information was leaked and subsequently published by local and international media. The information in question consisted of two reports which

had been disseminated by the FIAU to the Police for further investigation, and contents from an internal draft analytical report. A compliance report was also leaked.

189. The FIAU has been obtaining full criminal records of persons who are offered a position within the FIAU. As of recently and in addition to the MSS and criminal conduct related checks, as detailed in c. 29.6 the FIAU has started undertaking checks and searches itself in relation to all persons prior to them being offered a position with the FIAU. These checks are carried out by the managers or the most senior members of the Financial Analysis section and are treated with utmost confidentiality. Recently the FIAU implemented additional scrutiny process for members in very sensitive positions, whereby the persons are subject to further tests. The FIAU have to update and finalise its staff recruitment procedure, to ensure that persons who have been selected or will be invited for a sensitive position within the FIAU undergo a greater degree of scrutiny.

190. In light of these events, and in order to prevent, as far as possible, possible future cases of leakage of information, the FIAU also acknowledged the importance of investing in hardware and IT systems.

191. Nevertheless, considering, that these security measures were taken recently, the assessment team was not able to conclude on the effectiveness of the initiatives undertaken by the FIAU to prevent possible new cases of information leakage.

Conclusion

192. **Malta has achieved a moderate level of effectiveness for IO.6.**

Immediate Outcome 7 (ML investigation and prosecution)

ML identification and investigation

193. Malta has a legal system and a designated institutional framework enabling the investigation and prosecution of ML. The Malta Police have the responsibility to investigate ML and associated predicate offences. Within the Police, the Economic Crimes and AML Squad is responsible for investigating criminal offences of a financial nature. A designated AMLU is tasked with the investigation of ML offences. ML investigations can also be carried out by other sections of the Malta Police, such as the Drug Squad (in conjunction with the investigation of drug-related offences). The AMLU is generally tasked with the investigations of more complex ML cases, while less complex ones would usually be of the remit of the unit investigating the predicate offence. The Economic Crimes and AML Squad was at the time of the on-site visit composed of 13 Police officers and two analysts. Another two analysts are to be recruited in the near future. Prior to June 2018, the AMLU was only composed of two officers, which since then has been raised to five officers.

194. The decision to investigate and to prosecute lies with the Police, who will present their case before the Court of Magistrates, while the AGO will represent the prosecution before the Criminal Court. The AGO has no power to initiate investigations or prosecutions, but may act as a *consul* to the Commissioner of Police and provide advice of a non-binding nature. The AGO further plays an important role in the determination of the competent court, i.e. whether the case is heard by the Court of Magistrates or the Criminal Court. It is also solely responsible for the role of the prosecution in appeal cases. In relation to tax crimes, it should be noted that the Police do not have the power to prosecute (although they can initiate investigations). Such prosecutions require the authorisation of the CFR.

195. The discretion to investigate and prosecute ML offences and related predicate offences lies with the Police, bound by the principle of legality. The authorities confirmed that an initial

suspicion would be sufficient to commence an investigation for ML, which could also be triggered by reports from third parties or media reports. However, Maltese law recognises a number of exceptions to the general rule that the cases (based on automatically launched "investigations") are only brought forward at the discretion of the Police. Any party can file a complaint or file a report with, or provide information to, a Magistrate who can thereupon - should the facts constitute a criminal offence carrying three years or more imprisonment - institute a magisterial inquiry. The magistrate, leading the investigation, may appoint experts and require Police assistance. Upon conclusion of the investigation, the magistrate draws up a *process verbal* in which s/he may direct the Police to institute criminal proceedings against a person, in which case the Police cannot unilaterally decide not to prosecute.[38] This decision lies with the AG.

196. Potential ML cases are mainly identified following the receipt of an analytical report of the FIAU to the police, during the investigation of a predicate offence, upon complaint or on the basis of information received from a foreign authority. The table below provides an overview of the number of investigations and prosecutions during the period 2014-2018:

Table 11: Number of investigations and prosecutions

Year	FIAU reports to Police	Investigations by Police based on a FIAU report[39]	Prosecutions ML based on FIAU a report	Investigations ML without FIAU report	Prosecutions ML without FIAU report	Total Prosecutions ML
2014	27	23	1	4	4	4
2015	18	20	0	4	4	4
2016	39	38	1	4	4	5
2017	34	24	2	4	4	6
2018[40]	45	41	0	10	1	1

197. Based on the statistics provided, the majority of ML investigations (by the Police) are based on FIAU reports, although almost none of those investigations seem to lead to prosecutions (bearing in mind that the Police has also the role of prosecution service). The majority of prosecutions, which still represents a small number (4 prosecutions opened per year during the period 2014 - 2017), are based on investigations initiated in the absence of a FIAU report. Malta achieved the following numbers of ML convictions in the past five years for natural persons: 6 convictions (2014), 5 convictions (2015), 4 convictions (2016), 8 convictions (2017) and 3 convictions (until November 2018). The predominant predicate offences for these ML offences were: theft, drug trafficking, fraud, corruption/bribery and misappropriation.[41]

198. A significant number of ML investigations have originated in the last three years in magisterial inquiries: 1 in 2016, 4 in 2017 and 8 in 2018.[42] Most of these are however on-going and the assessment team could not be provided with information on possible prosecutions due

[38] Another exception to the monopoly of the Police lies in the "challenge proceedings": should the Police fail to investigate and prosecute upon a complaint, report of information, the plaintiff can apply to the Court of Magistrates in order that the latter orders the Police to initiate the investigation process.

[39] Difference in the number of FIAU reports and investigations may occur because, *inter alia*, reports being sent by the end of a calendar year, or several reports pertaining to the same investigation.

[40] Numbers only take into account the period until the onsite visit (i.e. November 2018).

[41] In detail, the predicate offences in ML convictions were as follows: 2014 (theft/fraud; drug trafficking (2x); excessive currency; false documents; misappropriation); 2015 (bribery; misappropriation; drug trafficking (2x); undeclared cash); 2016 (fraud; link to prostitution; misappropriation; drug trafficking); 2017 (theft; fraud (2x); fraud, corruption/bribery (2x); misappropriation (2x); link to tax evasion); 2018 (illegal banking and financial activities; drug trafficking (2x)).

[42] The number of ML investigations without FIAU reports and the magisterial inquires for ML do partially overlapping.

to the confidentiality of such investigations. The related predicated offences are mostly corruption and fraud. Only one case is related to drug trafficking.

Table 12: Crimes reported – examples of offences that potentially generate proceeds

	2014	2015	2016	2017
Theft	8198	9687	8821	8255
Fraud	430	505	500	787
Drug trafficking	192	166	217	310
Corruption/bribery	2	13	6	1
Abuse of public authority	3	7	5	3
ML	0	0	0	17

Table 13: Cases investigated by special branches of the Police not recorded in the National Police System (NPS) (and Table 12) – from 2017 onwards cases have been progressively recorded in the NPS

	2014	2015	2016	2017
Theft	26	107	36	18
Fraud	46	75	156	6
Drug trafficking	69	77	58	46
Abuse of public authority	2	13	6	4
ML	27	20	39	17

199. The overall number of investigations, prosecutions and convictions for ML is low, in particular when compared to the number of potential predicate offences. The assessors acknowledge that not every reported crime can lead to a formal investigation (and prosecution) for the predicate offence and/or its ML aspects. However, even if only the cases investigated by special branches and the FIAU reports were to be considered, an average of around 5 ML prosecutions per year does cast doubt on Malta's ability and capacity to pursue ML offences.

200. Based on statistical data and interviews the assessors are of the opinion that the Police were rather focusing on the prevention and repression of predicate criminality and that ML was not prioritised as an offence worth pursuing for its own sake. The majority of cases that lead to prosecution for ML appear to be initiated by the Police in the course of the investigation on the predicate offence. For the period 2014 to 2018, these were mostly fraud, drug or theft cases.

201. Investigations seem to have focussed on domestic crimes and offenders, where the proceeds are located in Malta; this assessment seems to be corroborated by the very low number of MLA requests sent abroad. Investigations appear to be limited to front persons and do not go beyond or through complex corporate structures. No investigations have been initiated prior to 2018 against legal persons.

202. Parallel financial investigations have not been conducted on a systematic but rather on a case-by-case basis. The financial aspects of the crime and the fund flows were analysed mainly to establish the offence and the identity of the offender. Financial investigations were not focussed on the financial situation of the suspect, nor were - at least before the establishment of the ARB in August 2018 - efforts undertaken to pursue these financial investigations with information to be obtained from abroad. There was no proactive element in the LEAs approach to ML. A case-management system regarding on-going investigations was only recently introduced.

203. On a more positive note, the motivation, dedication and awareness of all the authorities in charge of investigating ML met during the onsite visit is high. Moreover, recent examples of on-going investigations (and which can hence not yet be assessed in a definitive manner) could

reflect a shift in focus by the Police. This is also reflected in a recent rise in the number of ML investigations (with ten investigations for 2018 by November of that year) and allocated financial and human resources.

204. Investigators and prosecutors will however need adequate resources and possibly changes in the legal system (e.g. as regards the double role of investigator and prosecutor vested in the same person) in order to have this translated in a more effective investigation and prosecution of ML. The Police informed the assessment team that a reform process was envisaged until mid-2020 which would convert the current Economic Crimes and AML Squad into a new Financial Crimes Investigation Department with the personnel of 100 staff. It also indicated plans to institute its separate prosecution section. In this context, the assessment team also notes the recent opinion on constitutional arrangements and separation of powers in Malta by the European Commission for Democracy through Law (the "Venice Commission"), which recommended in December 2018 the establishment of an independent Directorate of Public Prosecution who takes over prosecuting powers and corresponding staff from both the AGO and the Police (as well as the function of magisterial inquiries) and whose decisions not to prosecute should be subject to judicial review.[43]

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

205. In the document entitled "Results of the ML/FT National Risk Assessment", the Maltese authorities present the threat level of ML of domestic proceeds of crime as follows:

Table 14: Threat level of ML of domestic proceeds

Sub-category	Threat level
Tax evasion	High
Local criminal groups	High
Drug trafficking	Medium-high
Fraud & misappropriation	Medium-high
Bribery and corruption	Medium-high
Smuggling (goods)	Medium
Theft	Medium

206. The subsequent offences (among others illegal gambling, human trafficking and smuggling of persons) are rated "low". While there appeared to be at least one human trafficking-related ML case pending before the courts, the assessors note that some of the authorities considered that the ML-risk posed by human trafficking appeared to be higher than identified in the NRA and reflected in the statistical data for ML offences. The overall rating of the ML threat for domestic proceeds is "medium-high". As regards the ML threat of ML of foreign proceeds of crime, the rating is "high". No additional information is provided, other than the fact that the "*ML of foreign proceeds of crime threat level has been calculated for a number of countries*."

207. Compared to the actual number of prosecutions for ML, per year and per related predicate offence, the table below shows the situation of the past five years as follows:

[43] Council of Europe, Opinion on constitutional arrangements and separation of powers, adopted by the Venice Commission at its 117th Plenary Session (Venice, 14-15 December 2018), paras. 64 *et seq*. (CDL-AD(2018)028-e).

Table 15: Predicate offences in ML prosecution

Predicate offence in ML prosecution	2014	2015	2016	2017	2018[44]
Tax evasion	0	0	0	0	0
Drug trafficking	1	3	3	3	3
Fraud & misappropriation	3	1	1	2	3
Corruption	0	0	0	0	0
Smuggling	0	0	0	0	0
Theft	0	0	1	0	0
Other	0	0	0	1	2
Total	**4**	**4**	**5**	**6**	**8**

208. Tax evasion, drug trafficking, "local criminal groups" and fraud have been presented as being the highest threats of ML in Malta. While it appears both from the interviews and the cases submitted by the Maltese authorities that drug offences, fraud and misappropriation are frequently investigated and prosecuted, the number of prosecutions for ML in relation to these predicate offences remains low, and below what is to be expected given the attributed threat level.

209. Furthermore, there are barely any investigations and no prosecutions for (domestic or foreign) tax offences, or the laundering of their proceeds. In particular, no cases were investigated involving professionals to build complex legal structures to evade taxes and launder the proceeds from such offences. Tax offences (allegedly concerning mainly cases of underreporting at the domestic level) when detected are dealt with directly by the tax authority, the Commissioner for Revenue, at administrative level with regard to the tax offence (but not the ML-aspect). The payment of the due tax and an administrative fine are usually sought from the offender, although no statistical data regarding the recovery rate could be provided. The authorities explained this approach with historical and strategic reasons, notably a strong focus on revenue collection which is easier to achieve through administrative proceedings. Administrative fines in individual cases are not made public and are generally dissuasive. The authorities further explained that the current system, where the possible offender has to be heard by the tax authorities to assess the defrauded amount, could create possible issues of *ne bis in idem* and defence rights' infringements (i.a. the right to remain silent) in a later judicial procedure.

210. As a consequence of the foregoing, almost no cases are denounced by the tax authorities to the Police for further criminal investigations. Few investigations for tax offences and ML thereof have been presented by the Police to the assessors in their written submissions. Most of these cases were however still with the Commissioner for Revenue for further assessment, and almost none has led to a formal prosecution (the assessors could only find traces of one prosecution of ML of tax crimes, where the accused was however acquitted). It should be noted that, when the Police investigates direct infringements to the Income Tax Act (without the ML-aspect of such offences), it can only be provided with information by the Commissioner for Revenue upon lifting of the professional secrecy by the Prime Minister.

[44] Numbers only take into account the period until the onsite visit (i.e. November 2018). Note also that the category "local criminal groups" as mentioned in the NRA has not been taken into account in this table, as it is not a crime type.

Table 16: Tax crime cases referred by the Police to the tax authorities for assistance

Year	Number of Cases	SUBJECTS		FIAU Generated	Police Generated	Number of Cases referred to:		Comments *[concluded or pending]*
		Natural	Legal			IRD	VAT	
2013	1	1	1	1	0	0	1	Concluded - no further investigation(s)
2013	1	1	1	1	0	0	1	Concluded - no further investigation(s)
2014	1	1	1	1	0	1	0	In progress
2016	1	3	0	0	1	1	0	In progress
2017	1	1	1	1	0	1	0	In progress
2018	1	1	1	1	0	1	0	In progress
Total	**6**	**8**	**5**	**6**	**1**	**4**	**2**	

211. The authorities have however mentioned that neither the fact that the Commissioner for Revenue had to agree with a prosecution, nor the fact that the Prime Minister's consent is required for the Police to obtain information from the Commissioner for Revenue in direct tax investigations, had in the past been an issue. Representatives of the Commissioner for Revenue nevertheless indicated a shift in the awareness of the importance of pursuing also the criminal aspect of tax evasion, in particular with regard to serious and large-scale cases. The authorities stated that the maximum criminal sanctions for tax evasion (6 months with regard to income tax and 1 year with regard to VAT tax) is currently considerably less than for ML (18 years). Hence a ML conviction could also have a much stronger dissuasive effect on tax offenders. The Police confirmed that discussions are underway to put stronger emphasis on a criminal response to tax evasion.

212. The item "local crime groups", ranked as another high threat of ML, seems to refer to ML arising from activities of such OCGs in Malta, alone or in cooperation with international criminal associations. Besides drug cases and some cases concerning oil smuggling, the assessment team has however not been provided with information as to specific actions undertaken against such groups to tackle this ML threat on a strategic and proactive level. No cases referred to investigations for laundering of proceeds by international OCGs. This absence is striking given the fact that the authorities observed in the NRA "*a growth of foreign OCGs who use corporate structures set up in Malta by Maltese professionals who use licensed companies in the financial and gaming sector to give an appearance of legitimacy to funds of illicit origin*". The NRA mentions further that "*there is evidence of cash being brought into Malta by OCGs which is subsequently laundered through the set-up of trading operations and the purchase of real estate and luxury items*." The assessment of the threat posed by foreign OCGs does not seem to have been followed-up by a particular operation or concerted action. The number of MLA requests for ML sent abroad during the period 2014-2017 seems to confirm this, as the following table demonstrates:

Table 17: Number of MLA requests for ML sent abroad

Outgoing MLA requests concerning:	2014	2015	2016	2017	2018[45]
ML	2	4	0	4	14
Tax offences	0	0	0	0	0

[45] Numbers only take into account the period until the onsite visit (i.e. November 2018).

Corruption	0	0	0	0	0

213. Bribery and corruption are considered by the Maltese authorities to present a medium-high treat of ML. The assessors have been provided with summaries of some investigations, but not with evidence of recent successfully-completed prosecutions for ML of corruption proceeds. No MLAs have been sent to other jurisdictions with regard to bribery/corruption. This despite the NRA stating (with regard to corruption/bribery cases dealt with at FIAU level) that *"(in) the vast majority of cases subject to FIAU analysis, the subjects were foreign nationals who were believed to have used Maltese companies and bank accounts to launder the proceeds of corruption*".[46]

214. During the present evaluation, a number of investigations into high-level cases for alleged corruption and other financial offences (and related ML) have been debated in Parliament and have attracted strong local and international media attention (in particular following the assassination of the Maltese journalist Daphne Caruana Galizia in October 2017). In the same manner, high-profile cases with regard to banks and public allegations for their implication in ML and related financial crimes (see in more detail under IO.3) were under scrutiny. At the time of the onsite visit, these cases were still in the investigatory phase, so that the authorities could not communicate thereon. The majority of these cases were subject to magisterial inquiries, which are confidential. The Police stated that it remained informed of the magistrate's findings, including reports by magistrate-appointed experts whose findings are crucial for the continuation of their investigations. Due to the confidentiality of the investigations, the assessors could not be provided with any information as to whether the police investigations had originally been initiated *ex officio* or as a response to already existing magisterial inquiries (commenced at the initiative of third parties). Therefore, the assessors were not in a position to form a final opinion as to the effectiveness with which Malta pursues such alleged high-level cases related to ML.

215. As a consequence of the above and the limited resources within the Police for these highly complex and sensitive matters, a decision on whether or not to prosecute these cases could take many years. While the Police stated that it could prioritise cases (despite operating under the principle of legality), in practice the scarce resources (currently five persons in the AMLU) would put limits to such prioritisation. The Police stated that a reinforcement of the AMLU on an *ad hoc* basis by other colleagues would be hampered in practice by the lack of sufficient training of colleagues with regard to financial crimes. In light of this, 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, if appropriate, prosecute) such high-level and complex cases, which could create within the wider public the perception that there may exist a culture of inactivity or impunity. In this respect, the assessment team notes that the NRA uses remarkably strong language as to the capacity in the Police to this effect, referring to the fact that staffing in the past had been clearly insufficient to cope with the extensive investigative commitments and that the lack of adequate resources appeared to be the main reason for the growing sense of helplessness among the officers concerned.[47]

216. Based on how the highest threats of ML are dealt with by the competent authorities, the investigation (and subsequent prosecution) of ML does not appear to constitute a priority for the Maltese authorities, despite the willingness of the individual officers to perform their duties. This is not commensurate with the risks posed by the country's increasing nature as an

[46] NRA, p. 33.

[47] NRA, p. 138. Even though it is conceivable that this statement may have referred to the previous staff situation within the AMLU, the assessment team considers that it would still be valid even after the rather modest recent staff increase in that unit.

international financial centre and the growing size and complexity of its financial sector. The low number of ML cases confirms this assessment.

217. Among the major shortcomings, the following could be identified by the assessment team:

- no official guidance or AML strategy and no prioritisation of AML for the period under review;
- a lack of expertise of the competent authorities only recently addressed by efforts in staff training;
- only very recent improvements in terms of material resources of the Police and other competent authorities;
- limited human resources at Police level that are strained even more by the fact that the same persons who specialise in AML/CFT have both a role as investigators and prosecutors while having to represent Malta in the numerous international organisations, agencies and fora dedicated to policing in general and AML/CFT in particular;
- very few financial investigations, limited asset tracing (none abroad) and insufficient use of international cooperation channels such as MLA requests; and
- the length of the proceedings, due to a lack of resources but also to time-consuming and cumbersome proceedings for instance in respect of compiling evidence.

218. The Maltese authorities themselves have recognised a number of these shortcomings in the NRA. As a consequence, some of these have been addressed in the AML/CFT Action Plan of February 2018. Recent actions concern the increase of staff at Police level, the adjunction of "civil" financial analysts, the draft guidance on prioritisation of ML cases, new IT systems and investigative tools, as well as plans to have a special corps in charge of prosecution. While these efforts are laudable, the assessment team considers that they are too recent and/or too preliminary to produce tangible results for the purposes of this assessment. Therefore, significant further improvements are still needed.

219. Overall, the assessment team concludes that, as regards investigations and prosecutions of ML, Malta's actions - both on a strategic and case-by-case level - are not consistent with the country's risk profile.

Types of ML cases pursued

220. Malta's legal system is in principle sufficiently equipped to achieve convictions for all types of ML offences, in particular since neither a conviction for the predicate offences is required nor a necessary proof to establish from precisely which predicate offence the proceeds in question are derived from. A conviction for ML may be achieved on the basis of factual circumstances, even though reference was made in the NRA that the level of proof of the predicate offence required for the ML offence was not consistently applied by all judges.[48] As a consequence, the authorities were able to provide examples of convictions for most of the different types of ML. However, the cases presented to the assessment team were mostly cases of self-laundering, i.e. the laundering of proceeds by a person who was involved in the commission of the predicate offence. These examples mainly related to drug and fraud cases. The table below gives an overview of the various types of ML convictions achieved by Malta in the past five years:

221.

[48] NRA, p. 145.

Table 18: Types of ML convictions achieved

Year	Self-laundering	Stand-alone	Third party	Fiscal	Guilty	Acquitted	Appeal pending
2014	3	4	0	0	6	1	0
2015	1	0	4	0	4	0	1
2016	4	1	1	0	3	2	1
2017	8	2	1	1	6	4	2
2018[49]	2	2	0	0	3*	0	0

* Note that in one case, the accused passed away during the proceedings and the case was subsequently dismissed.

222. The authorities were able to present cases of third-party and stand-alone ML. However, no recent case was presented in relation to so-called gatekeepers and other professionals of the financial sector (hence no conviction of professional launderers figured amongst the examples of third-party ML). Moreover, the reduced number of cases makes it difficult to draw any general conclusion from these figures.

223. Whereas the legal framework allows for the prosecution of ML of the foreign predicate offence, no major recent case-example was provided in this respect. This is despite observations by the authorities in the NRA that a large number of cases subject to FIAU and law enforcement analyses and investigations concern foreign nationals and residents who were believed to have used Maltese companies and FIs to launder the proceeds of crime.

Effectiveness, proportionality and dissuasiveness of sanctions

224. Malta's CC provides for sanctions which are potentially proportionate and dissuasive: sanctions for ML are a fine not exceeding EUR 2,500,000 and/or imprisonment not exceeding 18 years. In practice, the prosecution always seeks a fine cumulatively with imprisonment in more serious cases. As most judgments provided concerned prosecutions of both the predicate offence and ML, it is however difficult to determine whether the sanctions imposed in practice in relation to ML are effective and dissuasive in view of the aggregation of penalties in convictions for multiple crimes.

225. In the past five years prior to the onsite visit, aggregated fines ranged from EUR 5,000 as the lowest sentence to EUR 110,000 as the highest. Custodial sentences ranged from 3 months to 12 years' imprisonment. Prison sentences at the lower end (i.e. up to two years' imprisonment) were very often suspended, with judges taking into consideration the scale of the offence, recidivism, victim restitution and other factors before suspending a sentence.

226. Based on the few convictions available for stand-alone ML and judging from the sentences handed in cases of convictions for both the predicate offence and ML, the sanctions applied against natural persons appear to be dissuasive and proportionate. Interviewed prosecutors and members of the judiciary confirmed this assessment.

227. Malta has not yet achieved convictions for ML concerning legal persons.

Alternative measures

228. To a limited extent, Malta is able to apply other criminal justice measures in cases where a ML investigation has been pursued but where it is no possible, for justifiable reasons, to secure a ML conviction. While the country does not have instruments for non-conviction based confiscation, the CC (Art. 23C(3)) provides for the possibility to confiscate instrumentalities and proceeds from a criminal offence for which the accused person cannot be convicted (because the person is not fit for trial or has absconded), provided that the court is fully convinced that

[49] Numbers only take into account the period until the onsite visit (i.e. November 2018).

the proceedings would have otherwise led to a conviction. Malta was able to demonstrate with a recent example that this provision is applied in practice, albeit in a context unrelated to ML.[50]

Conclusion

229. **Malta has achieved a low level of effectiveness for IO.7.**

Immediate Outcome 8 (Confiscation)

Confiscation of proceeds, instrumentalities and property of equivalent value as a policy objective

230. After the adoption of the last MER in December 2012 (where Malta received a low rating under the previous R.3, due largely to effectiveness issues as regards the identification of assets and their management), the AMU was set up within the Court registry, tasked to trace the assets of persons charged or accused of criminal offences. As this entity – which was composed in 2018 of six staff members, who were however not exclusively working for the AMU - had no capacity to manage assets, the Maltese authorities decided in 2015 to set up the ARB. Following a number of further legislative enactments, it finally became operational on 20 August 2018, although it is not yet fully staffed and lacks certain premises. From that date onwards the ARB has been in charge of asset-tracing and management, while the AMU's remit being the finalisation of assignments made prior to that date. The present assessment will focus on the work of the AMU, as the ARB's inception and preliminary results are too recent to have any tangible impact on the effectiveness analysis for the period under consideration.

231. Malta has a legal system in place allowing the confiscation of both proceeds and instrumentalities of crime, which is routinely done by the courts upon conviction in the cases presented to them. However, the confiscation of criminal proceeds does neither appear to be pursued as a policy objective nor as a political priority, at least for the largest part of the period under review.

232. This is evidenced among others by the absence of any policy, formal or informal (although draft guidelines in the form of an internal circular are being elaborated), the lack of resources - both human and financial - allocated to this task, the lack of expertise and training, the fact that no asset-tracing had ever been effected abroad until October 2018, and the lengthy process required to set up the ARB. All these shortcomings have been duly recognised by the Maltese authorities in the NRA and elaborated upon in the AML/CFT Action Plan. Having said that, a number of recent initiatives have been taken in 2018 that can be considered as a certain change of policy by Malta.

Confiscations of proceeds from foreign and domestic predicates, and proceeds located abroad

Financial investigations

233. As discussed under IO.7, financial investigations are not systematically conducted, but rather on a case-by-case basis and mostly to establish the predicate offence, the fund-flows and the identity of the offender. Although the Police have the investigative tools and access to a variety of databases required to obtain relevant information on a suspect's assets (such as

[50] In that case, the Court of Magistrates ordered on 5 November 2018 the confiscation of cash, two vehicles, several mobile phones and a computer of a person charged with drug trafficking in Malta. The criminal proceedings were discontinued because the person had absconded to Italy where he was convicted for the same offence he had been charged with in Malta (hence the *ne bis in idem*-principle justifiably prevented a criminal conviction in Malta). It should however be noted that this case did not entail a charge for ML, but only for the predicate offence.

registers for land, transport and companies), such an investigation is rarely conducted because of resource and training issues.

234. Cooperation with the FIAU has taken place, but very few requests for financial analysis have been made by the Police to the FIAU. The Police have explained this with the fact that they have access to the same information themselves. The table below indicates requests by the Police to the FIAU:

Table 19: Requests by the Police to the FIAU to conduct a financial analysis

Year	Requests to FIAU by Police
2014	0
2015	1
2016	1
2017	8
2018[51]	5

235. When assets are identified, the Police may request the AG to apply to the courts for an attachment order (prohibiting the transfer of the assets concerned). It is limited to the pre-arraignment phase and is valid for a period of 45 days, renewable once under certain conditions. The duration will be longer for persons not present in Malta, as the order has to be notified in order for the 45 days' deadline to start running (which is in practice only done once the person re-enters Malta). The use of the attachment order was rather infrequent for the period under review, although there has been a notable increase over the last year. The interviewed authorities explain this by a lack of resources and strategic reasons, i.e. not to reveal an on-going investigation at a premature stage.

236. After the suspect has been arraigned, the courts can issue a freezing order on all property of the accused. In the framework of the freezing order (which will be published in the Official Gazette), the AMU will establish a compendium of assets, defining the scope of the freezing order. The AMU will in that framework contact all relevant entities (registries, FIs etc.). This is a time-consuming exercise for which the AMU has not been sufficiently staffed. Moreover, the asset tracing performed by the AMU has in the past been limited to assets situated in Malta. Most enquiries did not bring results, as no assets could be found. It also appears that asset tracing was mainly 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 complex corporate structures. The table below gives an overview of investigation and attachment orders in the past five years:

Table 20: Investigation and Attachment Orders

Year	2014	2015	2016	2017	2018
Investigation & attachment orders [52]	6	5	4	1	17
Freezing orders[53]	57	67	33	28	51

237. Although the statistics provided are somewhat incomplete, the amounts of assets seized, frozen and confiscated is rather low. This has also been recognised by the Maltese authorities in their written submissions, the NRA and during the interviews. The available information further

[51] Numbers only take into account the period until November 2018.

[52] Some of these orders have been issued in respect of MLA requests and not necessarily domestic investigations. Most orders have been issued in relation to ML of fraud PO cases.

[53] Pursuant to the Malta Police, the freezing orders were issued "*in cases principally related to drugs trafficking, money laundering, fraud, misappropriation, corruption and organised crime*"; they also encompass orders issued on behalf of foreign authorities on the basis of MLA requests.

demonstrates a major discrepancy between the assets attached and frozen, confiscated and ultimately recovered. The table below provides the numbers of seized, frozen, confiscated and effectively recovered property for the period 2013-2018, both for ML and predicate offences:

Table 21: Conviction-based confiscation during the period 2013-2018

Year	Property attached	Property frozen	Property confiscated	Property effectively recovered
2013	---	EUR 166,464	---	---
2014	EUR 18, 186,440.21	EUR 26,312	EUR 1,453.59 in bank deposits, 9 cars, 1 truck, immovable assets and gold	EUR 1,453.59 in bank deposits, 1 car, gold
2015	EUR 603,801.73	EUR 51,224	EUR 109,627 plus two flats	---
2016	EUR 14,143,096.75	EUR 946,253	EUR 30,140.92, share of an immovable asset, maisonette and 1 car	Negligible amount of liquid assets (some recovery procedure still underway)
2017	EUR 2,451,583.17	EUR 124,777	EUR 9,519, 6 cars, 4 trucks and 1 van	EUR 14,728 and a car that was subsequently scrapped
2018	EUR 32,867,478.99	EUR 114,935	EUR 12,565	EUR 12,565

238. Malta has confiscated instrumentalities during the period 2013-2018, but the amounts are likewise rather low (with a total of EUR 1,073,105) as shown in the table below:

Table 22: Confiscated instrumentalities

Year	Amount
2013	EUR 152,336
2014	EUR 88,368
2015	EUR 18,449
2016	EUR 98,456
2017	EUR 602,498
2018[54]	EUR 112,968
Total	**EUR 1,073, 105**

239. While a lack of financial investigations and patrimonial enquires (in Malta and abroad) and the limited use of provisional measures (such as attachment orders) explains these shortcomings, there are further reasons for the low figures in terms of confiscations and recovered assets.

240. Firstly, the accused can request provisional measures to be lifted for an amount of approximately EUR 14,000 per year to cover his/her minimum living costs. As it frequently takes several years for the court procedures to be concluded and a final judgment to be handed down, the seized amounts will be considerably reduced.

241. Secondly, as regards confiscated immoveable goods, it appears that the judgments ordering their confiscation are systematically challenged before the civil courts. Applicants have been successful in having the civil courts reverse the confiscation, as it could not be established beyond the required certainty under civil law that they constituted proceeds of crime. With the standard of proof being different in civil and in criminal courts (i.e. in the former only requiring the proof on the basis of probabilities), applicants frequently met the burden of proof even where the onus is on them to demonstrate the legitimacy of the assets. Following the NRA and some interviewed authorities, the judgments did not (or could not, absent enough preliminary investigations) sufficiently list and specify the proceeds of crime to be confiscated, which

[54] *Ibid*.

increased the likelihood of success of challenges in front of civil courts. The amount of what should be confiscated was also not sufficiently specified in some judgments, according to the NRA.

242. Malta does not have a system for non-conviction based confiscation, although the confiscation of proceeds is possible in certain circumstances even in the absence of a conviction (such as in the case of a perpetrator having absconded or being unfit for trial, as provided by Art. 23C, paragraph 3 of the CC; see further under IO.7, core issue 7.5). A non-conviction based confiscation system could be an effective tool in a scenario where the proceeds are located domestically, but the offender is not. This seems to be frequently the case in the investigations undertaken by the Malta Police. The authorities interviewed by the assessment team would welcome such a system and underlined that there would be no constitutional or other legal impediments to introduce it.

243. As regards the management of seized property, the AMU had no capacity to effectively and efficiently perform this task. Frozen proceeds of crime (immoveable but also moveable, such as yachts, cars etc.), if not money or assets in bank accounts or safes, were left with the accused to manage. The accused is however deprived of the possession of instrumentalities which are presented as evidence in court. The ARB should for the future have both the legal means and sufficient human resources to initiate a more effective asset management policy.

Confiscation of falsely or undeclared cross-border transaction of currency/BNI

244. Malta applies a cash declaration system, according to which all persons entering, leaving or transiting the country have to declare cash in excess of EUR 10,000. This obligation applies irrespective of whether the persons arrive from or depart to other EU member states or third states. False or non-declarations are criminal offences under the Cash Control Regulation. Although cargo and mail transportation of cash are not covered by that regulation, the sending of cash in mail is limited to EUR 10 by law. Information obtained through the declaration process as well as information on discovered breaches is kept in a database and transmitted to the FIAU on a bi-weekly basis (and for amounts exceeding EUR 100,000 immediately). Customs also liaise with the Police and the MSS on possible ML/FT suspects carrying cash at the border. Customs are obliged by law to seize any amount above EUR 10,000 (or, if indivisible, the whole amount).

245. When detected, cases of false or non-declaration of cash are sanctioned by the confiscation of all sums exceeding 10,000 EUR and a fine of 25% of the overall amount (with a maximum of EUR 50,000). EUR 10,000 are being returned to the offender in case the overall amount is not indivisible, unless formal ML/FT investigations are started. This appears to be an effective and dissuasive sanctioning regime, although the assessment team was informed that this regime has recently come under attack by a constitutional complaint challenging it, *inter alia*, on the grounds of proportionality.

246. The tables below demonstrate declarations made for the period 2013-2018 with regard to both incoming and outgoing cash:

Table 23: Number and sums of declarations for incoming and outgoing cash (land and territorial waters)

Year	Entering Malta	Sum	Leaving Malta	Sum
2013	5344	EUR 251,941,837	889	EUR 52,556,813
2014	2816	EUR 99,895,902	815	EUR 44,970,209
2015	713	EUR 28,035,843	307	EUR 20,360,093
2016	261	EUR 12,340,651	182	EUR 5,933,148

2017	166	EUR 15,864,432	331	EUR 18,625,346
2018 (until 31 May)	55	EUR 2,744,25	174	EUR 3,822,400

Table 24: Cash declarations outside territorial waters[55]

Year	Entering Malta	Sum	Leaving Malta	Sum
2013	1	EUR 60,000	20	EUR 4,129,210
2014	3	EUR 401,579	17	EUR 5,207,233
2015	2	EUR 428,360	5	EUR 746,102
2016	3	EUR 129,397	7	EUR 188,166
2017	NA	NA	8	EUR 188,808
2018	NA	NA	18	EUR 343,870
Totals	**9**	**EUR 619,336**	**75**	**EUR 10,803,389**

247. The assessment team noted the significant peak in incoming cash in 2013 (more than EUR 250 million), decreasing continuously and significantly in the five subsequent years. The authorities explained this peak as being a direct consequence of the political situation in neighbouring Libya and by the fact that a large number of Libyan refugees entered Malta with cash after the fall of the Gaddafi-regime. Likewise, a smaller peak in 2013 of outgoing cash may also be related to the same events.

248. From January 2013 until March 2018, Customs detected 20 cases of undeclared cash, amounting to a total of EUR 946,956 in seized cash. The table below provides an overview of examples of these cases during the past two years, with charges usually brought under Art. 3 of the Cash Control Regulations (SL233.07). Such charges were regularly not brought together with charges for ML or FT, although the authorities stated that the focus was recently increased on these aspects.

Table 25: Cash control investigations and seizures (2017-2018)

Date	Place of Seizure	Amount involved	Charges given	Result of case
8/2017	Airport	EUR 16,106.38	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 4,026.60 and confiscation of EUR 6,106.38
7/2017	Airport	EUR 22,000	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 5,500 and confiscation of EUR 6,000
7/2017	Out at sea	EUR 22,290	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 5,747.50 and confiscation of EUR 12,990
8/2017	Airport	EUR 23,000/ Egyptian pounds 2,060/ Dinars 140	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 3,948.44 and confiscation of EUR 1,448.44
8/2017	Airport	EUR 13,650	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 3,412.50 and confiscation of EUR 3,650
9/2017	Airport	EUR 36,355	Art. 3 (SL233.07)	Case is still Sub-Judice before the Magistrates Court

[55] This term is used to those situations when a person declares cash prior to boarding any vessel departing from Malta and leaves the territorial waters, or likewise upon arrival in Malta from outside the territorial waters of Malta.

10/2017	Airport	EUR 30,000	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 6,305.90 and confiscation of USD 19,340
12/2017	Airport	EUR 16,500 STG 2,397	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 4,500.31 and confiscation of EUR 6,500 and EUR 2,700
5/2018	Airport	EUR 15,000	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 3,750 and confiscation of EUR 5,000
9/2018	Sea Passenger Terminal	EUR 20,230	Art. 188C (Chapter 9) (Counterfeit Currency) & Art.3(SL233.07)	Decided (guilty) with fine of EUR 7,557.50 confiscation of EUR 20,230 and Thirteen (13) months imprisonment suspended for two (2) years
10/2018	Yacht Marina	EUR 18,860	Art. 3 (SL233.07)	Decided (guilty) with fine of EUR 2,217 and confiscation of EUR 8,860
10/2018	Airport	EUR 24,970	Art. 3 (SL233.07)	Case is still Sub-Judice before the Magistrates Court

249. Given the amount of declared cash moving in and out of Malta, and even leaving aside the exceptional peak of 2013, and taking into account the size of the jurisdiction, the assessment team is not convinced that enough has been done by the authorities in respect of the detection of undeclared cash and cash movements in general.

250. This assessment is supported by the fact that the NRA considers cash, especially the "volumes of cash being brought physically (from Libya) into Malta", to be one of the main issues as regards potential FT threats and notes that "very little is done to ascertain the source of the funds and to investigate what the funds are used for". With regard to ML, the NRA notes that the "threat posed by the inflow of cash from Libya, nonetheless, should be highlighted as posing a very high risk to the jurisdiction and should prompt immediate actions by the authorities" and "in some cases, substantial amounts of cash were used to purchase high value goods such as yachts or immoveable property".

251. Based on available statistics and interviews, Customs do not appear, for the period under review, to have had an extensive ability to identify non-declared cash due to a shortage in human and technical resources. Whenever a person makes a declaration - unless exceptional circumstances and suspicions trigger Police intervention - no action is (and can be) undertaken to determine whether cash may be related to criminal offences. This is because Customs have no power to provisionally retain the person for the duration of such enquiries, nor do they have access to relevant databases. In case of false declarations, Customs may retain the person for two hours; the Police are immediately called and can arrest the offender.

252. The assessors note that the explanations for cash movements by the interviewees were not very specific and mostly related to Malta's geographical position and proximity to Libya. Given the threats and risks duly identified by Malta in its NRA, one would have however expected a somewhat more focused approach to the potential ML and FT risks. In this regard, the assessors consider that the criminal intelligence tools of the respective authorities to identify the sources, origins and routes of cash movements should be improved. Moreover, whenever cash is declared on the basis of the declaration form, it appears that the information provided is too general (usually only requiring at airports name, birthdate, flight number and the purpose for taking cash) to form a reasonable view about its legal or illicit origins.

253. The number of investigations for ML and FT triggered by cash movements appears low. Only one case, which had been successfully investigated and prosecuted, has been presented to the assessors.

254. The Custom representatives met by the assessment team recognised that there are deficiencies. Since 2017, they have addressed some of these shortcomings by recruiting a number of specialised officers and other investigative means (e.g. a new "K9 section" with specialised dogs trained for cash detection) to improve the detection rate. Representatives were also sent on working/training visits to the custom authorities of larger EU member states. Moreover, draft legislation is being elaborated increasing the power to retain persons by Customs as well as their access to information. Other measures, such as a "cash movement information system" to disseminate information to the FIAU and the Police in real time, are envisaged for 2019. Mail orders will also be subject to specific legislation (although the current postal legislation, prohibiting the sending of cash over EUR 10, already addresses this to a certain extent).

Consistency of confiscation results with ML/FT risks and national AML/CFT policies and priorities.

255. The absence of criminal investigations for tax evasion (see above, IO.7), which was identified as one of the main ML risks in the NRA, also have a direct effect on the confiscation regime. No amounts with regard to tax evasion were confiscated in Malta in the period under review. Apart from the ML offence itself, property has been frozen, seized and/or confiscated mainly for predicate offences such as drug trafficking, fraud, trafficking in human beings, bribery/corruption, robbery and counterfeiting currencies. For other predicate offences ranked high in the NRA, such as smuggling and theft, confiscation results were negligible. Moreover, the confiscation results mainly relate to asset-tracing with regard to the individual named in the criminal investigations (or a family member). Bearing in mind the situation of Malta as a regional international financial sentence, with a multitude of legal arrangements available to separate assets from their actual owner (and to blur their connection), the confiscation results are not in line with the ML risks faced by the country. No assets were confiscated with regard to FT.

Conclusion

256. **Malta has achieved a low level of effectiveness for IO.8.**

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

IO.9

- 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.
- 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.
- 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.

IO.10

- Malta utilises a combination of supranational and national mechanisms that ensures implementation of the UNSCRs 1267/1989, 1988 and 1373 without delay.
- The SMB is the competent body in Malta responsible for the implementation of UNSCR and EU sanction regimes (including designation of persons or entities domestically and proposing designation to UN Committees, de-listing, unfreezing and providing access to frozen funds or other assets). The SMB's mandate was recently strengthened further and the number of member-authorities has increased.
- The SMB has not yet identified individuals or entities or proposed any designations to the UN sanctions under 1267/1989 or 1988. Malta has adopted domestic measures to implement UNSCR 1373 which also enable the listing of EU internals. However, these procedures have not yet been tested in practice.
- Although no assets have been identified and frozen pursuant to the sanctions regimes under UNSCR 1267/1989, 1988 or 1373, subject persons demonstrated awareness of the TFS regime through the existence of false positives.
- 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 implementation of the relevant UNSCRs by the FIs and the DNFPBs that do not rely on automated sanctions screening mechanisms or group-level analytical systems.
- Most of the FIs and DNFBPs demonstrated a good level of understanding of obligations of the identification of assets of the TFS-related persons and entities. However, the basic screening approach which is followed by some of subject persons (especially the DNFBPs) is deemed

insufficient. Although most of the subject persons demonstrated awareness of their TFS obligations, there is confusion whether to report sanctions matches with the UNSCR lists to the FIAU (by way of an STR) and/or to the SMB. In addition, several DNFBPs were not aware at all of freezing or reporting obligations.

- Although the comprehensiveness of understanding of its FT risks by the country casts some doubts, the measures undertaken to implement TFS measures are broadly adequate to the FT risks related to the country's geographic factor.
- The CVO has identified the enrolled VOs which could potentially be vulnerable to FT abuse. However, the FT risks associated with the non-enrolled VOs have not yet been analysed.
- Although the CVO assessed the risk of FT abuse in the VO sector, a FT risk-based approach to monitor the sector has not been developed and implemented.
- Most FIs and DNFPBs consider VO sector as higher risk irrespective of the individual VO's level of vulnerability to FT abuse. Whilst some subject persons apply enhanced scrutiny, some consider the VOs outside their risk appetite.
- 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 addressed specifically.

IO.11

- The SMB, which is the competent body for implementation of PF-related UN and EU sanctions regimes, demonstrated sophisticated awareness of PF-related sanctions-evasion risks. The SMB is involved in the decision-making process on a range of activities related to combating the proliferation of weapons of mass destruction (WMD) and dual-use goods.
- Through combination of supranational and national mechanisms, Malta ensures the implementation of UNSCRs 1718 and 1737 without delay. However, deficiencies exist in the immediate communication of the amendments to the UN lists of designated persons and entities to the subject persons, and awareness among some subject persons of their freezing and reporting obligations.
- No assets subject to freezing under the UNSCR 1718 or 1737 have been identified in Malta to date, but Malta has provided information on a successful case under the EU PF-related TFS regime. Detailed guidance is issued by the SMB on TFS to provide support to the subject persons for implementation of PF-related TFS. The SMB constantly receives enquiries from a range of private institutions which are analysed and answered.
- There is a lack of adequate resources for supervision of the implementation of UN TFS by the subject persons.

Recommended Actions

IO.9

- Malta should make a more detailed analysis of its FT risks, in particular with regard to money remittances, cross-border cash declarations and possible links between organised crime and terrorism.
- Malta's border cash control mechanism should be strengthened by giving the competent authorities the legal powers and the resources to perform analyses and investigations related to FT.

- 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.
- The level of FT sanctions, in particular with regard to the financing of individual terrorists or specific terrorist acts (currently punishable by a maximum sentence of only four years imprisonment) should be further raised to a fully-dissuasive level.

IO.10

- Malta should ensure that amendments to the lists of designated persons and entities pursuant to UNSCRs 1267/1989, 1988 and 1373 are communicated immediately to all reporting entities.
- Malta should conduct regular outreach in order to enhance the awareness and understanding of the subject persons of FT-related TFS obligations, including actions to be taken under the freezing mechanisms, and reporting to the SMB.
- Malta should expand its assessment of the risk of FT abuse to the whole VO sector.
- Malta should develop and implement a FT risk-based approach to monitor the VO sector.
- Malta should reinforce the outreach to VOs, reporting entities and donor community with regard to the FT vulnerabilities and risks within the sector.
- Malta should consider widening the scope of the persons scanned by the CVO and including other actors that can influence the activities of VOs.

IO.11

- Malta should ensure that amendments to the list of designated persons and entities pursuit to UNSCRs 1718 and 1737 are communicated immediately to all subject persons.
- Malta should reinforce outreach to the subject persons, especially non-bank FIs and DNFPBs, in order to raise the awareness and understanding of the implementation of PF-related TFS obligations, including actions to be taken under the freezing mechanisms, and reporting to the SMB.
- Malta should ensure adequate resources for coverage of TFS obligations in supervisory inspections.

257. The relevant Immediate Outcomes considered and assessed in this chapter are IO.9-11. The Recommendations relevant for the assessment of effectiveness under this section are R. 1, 4, 5-8, 30, 31 and 39.

Immediate Outcome 9 (FT investigation and prosecution)

Prosecution/conviction of types of FT activity consistent with the country's risk-profile

258. Malta has generally a sound legal framework to combat FT, except as regards the dissuasiveness of sanctions (cf. TC analysis under R.5). The Maltese authorities involved with countering FT are the Police (via its counter-terrorism unit (CTU) and the AMLU), the AGO, the MSS, the FIAU, Customs (with regard to cross-border cash movements) and the CVO (with regard to the potential abuse of VOs for FT).

259. There have so far been no prosecutions or convictions for FT in Malta. In order to assess whether this is in line with Malta's risk profile, the assessment team took into consideration the following: Malta assesses the threat level of FT to be "medium-high" while at the same time determining the treat level of terrorist attacks to be "low". In their written submissions and

during interviews, the authorities justified the threat level by different factors, such as the size of the financial centre, the geographical proximity to Libya and other regions in which terrorist networks are active and migratory flows from high-risk countries and territories. The assessment team is of the opinion, confirmed by the authorities, that the conclusion appeared largely driven by a desire to be cautious and to maintain a certain degree of vigilance and alertness by both the competent authorities and the private sector, rather than any detailed analysis of statistics, trends or activities (see above, IO.1). The FT analysis performed in the NRA, dating back mostly as regards FT to 2013 and not updated since, is minimalistic and very limited compared to the ML analysis, and does not adequately consider the threats and vulnerabilities of any specific products, services or sectors. The same applies for the risks associated with massive cash movements, especially from Northern Africa, the NRA limiting itself to listing some rather vaguely-formulated vulnerabilities. As a consequence, neither the document entitled "Results of the ML/FT National Risk Assessment" made available to the assessors nor the NRA itself contains a proper risk assessment or risk profile as regards FT.

260. The NRA lists some vulnerabilities relating to the use of cash (lack of follow-up investigations or systematic FIAU analysis) more generally relating to the financial sector (insufficient supervision, complex structures set-up to disguise real ownership, low level of awareness) and finally the lack of systematic training of the competent authorities. Some of these shortcomings (which could date from pre-2013, as the NRA is not always up-to-date) seem however, based on the interviews during the on-site visit, to have meanwhile been addressed, especially as regards the awareness, readiness and training of the authorities in charge of FT.

261. Possible links between OCGs and FT were discussed during the on-site visit with the authorities who informed the assessment team that they were monitoring (in collaboration with foreign counterparts) various aspects of local and cross-border criminal activities ranging from fuel smuggling, drug trafficking, smuggling of counterfeit goods (e.g. cigarettes) to trafficking of human beings, the proceeds of which could potentially support both OCGs and terrorist organisations. However, pursuant to the interviewed authorities, so far there was no concrete intelligence that the OCGs had actually provided financial or material support to terrorist organisations or terrorists.

262. The Maltese authorities also highlighted the fact that Malta is not affected by the phenomenon of "foreign terrorist fighters", as Maltese citizens have not travelled to any conflict zones to join terrorist groups, nor have such fighters left these conflict zones to settle in Malta. Although Malta has to a certain extent "at-risk communities" the authorities maintain contacts to them. Potential recruitment, radicalisation and collecting of funds via the internet and in particular social media are also monitored. In this respect, the assessment team notes that Malta has sufficiently criminalised the travels for the purpose of terrorist activities, the providing or receiving of training in terrorist activities, as well as the financing or otherwise facilitating of such travels. While the country has signed in 2016 the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism (which requires a number of related acts to be domestic criminal offences with regard to foreign terrorist fighters), the ratification thereof would be welcomed.

263. The authorities were aware of media reports on the alleged illegal sale or fraudulent acquisition of Schengen visa for Libyan nationals and associated risks of possible terrorists entering Malta with such visas. They however, stated that those visas had been mainly obtained on medical grounds and that recent legislations had excluded the possibility that persons holding such visas could be accompanied, thus excluding the possibility that potential terrorists could enter the country. While those having received the visas are under scrutiny, the

authorities stated that the number of visas potentially obtained fraudulently had been greatly exaggerated in the media and would at a maximum be in their tens.

264. The authorities acknowledge the fact that, as an international financial centre, Malta can be potentially exposed to FT through a high amount of cross-border transactions, be it through the movement of funds as a transit jurisdiction or through the management of foreign funds.[56] Given that Malta as an international financial centre has some inherent FT risks, one could have expected some analysis or more reliable data on the financial in- and outflows through the Maltese economy and other information available (such as STRs), on involved actors and available financial products in order to address these risks by establishing some form of formal risk profile.

265. Absent a formal risk assessment and based only on the information available or communicated during the interviews to the assessors, where no complete risk profile could be provided, it remains difficult to assess the adequacy of Malta's response to FT. The assessment team is however of the opinion that, considering the period under review and taking into account both the information provided and the contextual elements available, the actions undertaken by the authorities - were it in terms of analysis of financial transactions and products, STRs and other intelligence, the analysis of risks and keeping it up-to-date (not done in a formal way since 2013), some recent cases (cf. infra) and finally the low number of FT investigations (and absence of any prosecution) - are not fully in line with Malta's possible FT risks. The assessment team considers that Malta has at least not underestimated the level of FT risk when setting it as "medium-high".

266. However, the assessment has also noted recent progress. The competent authorities (namely the FIAU, the Police, the MSS, but also Customs and the CVO) have taken a number of actions and initiatives in order to mitigate the FT threats, such as 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. These measures seem to be in line with the country's current situation and threat level as perceived by the authorities. The public nature of this report does however not allow for a more detailed description of these measures.

FT identification and investigation

267. FT is identified through intelligence collected by the Police and the MSS, STRs submitted to the FIAU and through international cooperation (in particular MLA requests).

268. For the period under review, the number of STRs related to FT is relatively low, although steadily increasing. The FIAU also updated its STR form in order to increase awareness of subject persons to FT. A limited number of these STRs, together with FIU generated cases, have been submitted by the FIAU to the Police and have resulted in formal Police investigations. Some investigations were still on-going at the time of the on-site visit. In none of the concluded Police investigations was evidence of FT established and consequently no prosecutions were carried out as at the time of the on-site visit.

[56] In order to better understand the potential risks, Malta has participated in a workshop held in Monaco in February 2018 which brought together a number of regional financial centres in Europe and FT experts in order to develop "Guidance on Identifying, Assessing and Understanding the Risk of Terrorist Financing in Financial Centres". The authorities should ensure that this outcome document, endorsed by MONEYVAL in July 2018, is sufficiently disseminated amongst all stakeholders.

Table 26: STR-generated cases, investigations, prosecutions and convictions for FT

Year	STR/FIAU generated cases	FIAU reports to Police for investigation	Police investigations without FIAU report	Prosecutions	Convictions
2015	2	1	0	0	0
2016	12	2	0	0	0
2017	17	5	0	0	0
2018[57]	9	1	2	0	0

269. The FIAU gives automatic priority to STRs on FT (with a first assessment carried out immediately) and routinely brings these to the attention of the management, regardless of the amounts involved. The names of potential suspects in STRs are immediately checked against the information held by the other competent authorities, even before finalising the analysis. Moreover, information is immediately shared with the CTU, likewise ahead of the completion of the analysis. The CTU and the FIAU engaged in a one-off project which allowed the FIAU to use a list of potential suspects for its database to be screened with regard to STRs, with a more regular exchange of such data under negotiation. The FIAU stated that it usually does not receive any feedback from the MSS or the Police. In some cases, the FIAU has, rather than transferring the information to the Police for investigation, spontaneously disseminated the content of its analysis to foreign counterparts. The FIAU stated that its access to information for FT-related analysis could be improved, for example by giving it direct access to passenger-name records or by introducing a central bank account registry (which would put an end to the cumbersome process of contacting banks individually on such information).

270. Within the Police, FT cases are investigated by the AMLU, in liaison with the CTU, the unit of the Police responsible for the collection, analysis and dissemination of intelligence with a view of combatting terrorism and related offences (the latter's resources having been raised from three officers in 2003 to currently 12 officers, which may still not be fully sufficient). Such information is collated and analysed in the same manner as for ML. Prioritisation would be dependent on the presence of funds in Malta, and the likelihood of their transfer to other jurisdictions. The AMLU collaborates closely with the CTU which has direct access to intelligence databases related to counter-terrorism and ancillary matters. Meetings with the MSS are held on a weekly basis. The AMLU has also regular contacts with foreign counterparts and is a member of several international networks. Information is shared with these partners on a regular basis. Moreover, the Police have a number of bilateral agreements with other competent authorities, such as the MSS and the Armed Forces. The CTU regularly requests information from the FIAU, and has done so in 98 cases in the last five years.

271. The assessment team was presented with a few cases of on-going investigations on FT, which were however of a too recent nature (i.e. with the investigation having commenced in the course of 2018) to have already produced results which could be reported in more detail. One investigation concerned the financing of a terrorist organisation through proceeds derived from human trafficking by a group of foreigners who are resident in Malta and with the use of companies registered therein. Another case concerned a national of another EU member state which held a bank account in Malta and who allegedly had an active role in two legal persons which were under the suspicion of being linked to radical Islam. The Maltese authorities issued an attachment order and froze that person's bank account with an amount of EUR 123,420. Both investigations are on-going. While one investigation was initiated upon information received from another EU member state, the other was initiated following STRs received by the FIAU.

[57] Numbers only take into account the period until 18 October 2018.

Although not reported as FT suspicions, such STRs were in the course of the analysis identified as an FT related case by the FIAU.

272. As already indicated under IO.8, cross-border cash movements and declarations (and offences against the underlying cash control regulation) have not resulted in any FT investigations. The authorities were however of the opinion that, during the climax of incoming and outgoing cash in 2013 with regard to Libya, ISIS had not yet been established in that country (and cash movements from and to Libya have significantly declined since that year). Cross-border cash movements and declarations are within the remit of the Customs department. During the interviews, the authorities showed awareness, but the Customs Department admitted that it does have neither the legal powers nor the resources to perform any analysis or investigation. It is e.g. not possible for Customs to retain a person for the time to make some prima facie checks on the suspected person, although draft legislation is in preparation to address this shortcoming. Customs cooperate with the Police and MSS. They are also monitoring the activities of Malta's Freeport trans-shipment hub, from which a considerable number of goods are shipped to/from the Maghreb and Mashreq, and inform the competent authorities in case of any suspicion of FT (or terrorism). As explained under IO.6 (para. 158) the FIAU uses cross-border cash declarations for strategic analysis purposes (to identify typologies, specific patterns, and individuals frequently conducting cross-border cash transportation) and to also identify potential FT suspicions. Such strategic analysis led to the opening of ML operational analytical cases by the FIAU, however no TF links were identified to initiate analytical cases.

273. In addition to the formal detection via the FIAU and Police investigations, the MSS plays an active role in the fight against FT, within the limits of its mandate. A number of actions taken by the MSS, in respect of cash movements, couriers, money remittance and persons of interest have been described to the assessment team. These measures include the gathering of intelligence and information on persons suspected to be connected to FT. Actions taken involve the monitoring of travellers arriving or departing from destinations deemed to be high risk, the gathering of intelligence on the collection and transfer of funds potentially carried out by high risk target groups or individuals, analysing whether persons of interest are remitting funds to high risk jurisdictions as well as evaluating possible links between organised crime groups and FT. In addition, information is also obtained through the monitoring of open source intelligence and social media platforms. These measures are taken for the purposes of uncovering cases concerning the collection of funds for FT as well as sharing of information with international and national partners in order to uncover other possible local or international leads or cases.

274. The FT threats are similarly taken into account in their work by Customs and the CVO. The CVO has taken various initiatives as explained in further detail under IO10.

275. In order to improve the identification of FT cases, the Maltese authorities have improved training for their staff, sometimes with the help of foreign experts. For example, in November 2016, the FIAU held a training session for subject persons on how to identify FT cases, which was attended by around 400-500 participants (mainly banks, other FIs and TCSPs). The FIAU also devotes time on FT with regard to its sector-specific AML/CFT trainings, which it held in the past for TCSPs, notaries and real estate agents. The authorities also increased their human resources and provided some guidance to the private sector, such as a "Guidance Note on Funding of Terrorism" issued in 2018. This guidance was based on existing FATF guidance, but tailored and edited to meet the specific situation of Maltese subject persons. Other initiatives were however of a rather recent nature and the team could not assess their effectiveness. Moreover, the adequacy of human resources for effective CFT also remains a concern.

FT investigation integrated with -and supportive of- national strategies

276. Malta has, during the summer of 2018, adopted a high-level CT Strategy, based on the EU Counter Terrorism Strategy. The document is classified and could neither be given nor shown to the assessment team; the only information provided during discussions with the authorities is that it sets high-level objectives under the so-called four pillars, i.e. "Prevent, Protect, Pursue and Respond".

277. Under the auspices of the Ministry for Home Affairs and National Security, a CT Action Plan is currently being elaborated in accordance with the strategic objectives set out in the high-level national CT strategy. A new specialised inter-agency committee (composed of members of the AGO, the Police, the MSS, the FIAU and Customs), which should be dealing more specifically with FT aspects, is also envisaged.

278. As the assessment team could not be provided nor be granted access to the national high-level CT Strategy nor to any other draft document relating thereto, it is not in a position to express any opinion, as to whether and to what extent the investigation of FT is integrated with and used to support such strategy.

279. The team noted that in recent years, the authorities investigated two cases for terrorism. One case related to charges of terrorism against two persons affiliated to the former Libyan regime who were involved in the hijacking of a Libyan aeroplane in 2016 which they landed at Malta International Airport. The other case related to the threat of committing terrorist act by a woman who was later declared to be of unsound mind. Having discussed these cases with the authorities, the assessment team agreed that those cases would not have been suitable FT investigations and that there was no failure on the part of the authorities for not further looking into the cases from a FT-angle.

Effectiveness, proportionality and dissuasiveness of sanctions

280. In the period under review, there have been no FT prosecutions and convictions. Therefore, the evaluators were unable to assess whether sanctions or measures applied in practice against natural persons convicted of FT offences are effective, proportionate and dissuasive.

Alternative measures used where FT conviction is not possible (e.g. disruption)

281. The Maltese authorities have not applied alternative measures in lieu of proceedings with FT charges.

Conclusion

282. **Malta has achieved a moderate level of effectiveness for IO.9.**

Immediate Outcome 10 (FT preventive measures and financial sanctions)

Implementation of targeted financial sanctions for FT without delay

283. Malta has a sound legal framework in place to implement FT-related TFS. As an EU member state, Malta utilises a combination of supranational and national mechanisms to implement UNSCRs 1267/1989, 1988 and 1373 without delay. Pursuant to amendments of the NIA, UNSCRs imposing sanctions or applying restrictive measures are automatically binding in their entirety in Malta and constitute a part of the domestic law thereof. The UNSCR and the EU Regulation imposing freezing measures and the annexes thereto are immediately tantamount to a freezing order upon publication, having the force of law in Malta. Hence a time-delay imposed by the transposition of UNSCRs and amendments to the relevant EU Regulations does not exist in Malta.

284. The SMB is the competent body responsible for implementation and operation of the UN and EU sanctions regimes (including designation of persons or entities domestically and proposing designations, de-listing, unfreezing and providing access to frozen funds or other assets). The SMB's mandate and powers were recently strengthened through amendments to the NIA. The number of involved members increased from ten up to eighteen (and currently includes also representatives from the FIAU, the MSS and the ministries responsible for maritime, aviation, lands and immigration).[58] The SMB meets on a regular basis (approximately once a month) or on an ad-hoc basis should a specific case or incident require immediate attention. The SMB convenes to discuss, amongst other items, coordination between the competent authorities, as well as amendments to the relevant legislation. The SMB participates also in the NCC to contribute information from their work to the AML/CFT framework.

285. Malta has not yet identified individuals or entities or proposed any designations to the UN Security Council Committees pursuant to resolutions 1267/1989 and 1988. In this context, it may however be noteworthy that Malta has proposed a designation under another UNSCR regime[59], thereby demonstrating the country's general ability to take actions within the context of UN designations.

286. The competence regarding designation of persons or entities at national level lies with the Prime Minister who is empowered to order a designation after considering the recommendations of the SMB and the AG. However, Malta did not yet have an occasion to test the national designation mechanism in practice. There have also not yet been orders issued by the Prime Minister for EU internals.

287. Malta has not received a request from a foreign jurisdiction for designation pursuant to UNSCR 1373 or made a request to another country to give effect to the actions initiated under the freezing mechanisms. Nevertheless, procedures are established in Malta and the SMB is provided with the respective powers for dealing with such requests both within the framework of EU and national legislation, should the occasion arise.

288. Malta applies diverse mechanisms for communicating designations to the FIs and the DNFBPs. The SMB website contains links to the UN and EU consolidated sanctions list. In addition, the MFSA informs licensed entities twice per year of changes to the lists, as confirmed by the FIs. Larger FIs and DNFPBs mentioned that, as a source for designations in practice, they primarily rely on automated and internationally recognised screening mechanisms or group-level analytical systems. Smaller FIs informed the assessment team that they would perform the screening of clients every time they receive updated lists from the MFSA. Smaller DNFPBs noted that they are relying on manual checks performed against publicly available information. At the same time, several DNFBPs stated that they are not aware of any sanction lists or other material being provided by the Maltese authorities. Overall, communication of lists by the Maltese authorities does not appear to be effective. The authorities do not communicate the updates to the lists to the subject persons immediately. This has an impact on the implementation of the relevant UNSCRs in particular by FIs and DNFPBs that do not rely on automated sanctions

[58] The SMB currently is comprised of eighteen officials, acting collectively and representing the following ministries/authorities: Ministry for Foreign Affairs and Trade Promotion (Chairman); Office of the AG; FIAU; MSS; Malta Police; Office of the PM; Ministry for Home Affairs; Ministry responsible for Defence; MoF; Ministry responsible for the Economy; Trade Department; Customs Department; Central Bank of Malta; MFSA; Ministry responsible for maritime affairs; Ministry responsible for aviation matters; Ministry responsible for lands; and Ministry responsible for immigration matters.

[59] The Maltese authorities have indicated that they have made the first proposal to the UN Security Council Committee pursuant to UN Resolution 1970 concerning Libya to designate a vessel. The proposal is currently being considered by the relevant UN committee.

screening mechanisms or group-level analytical systems (and in particular on those which rely entirely on the communication by the MFSA which only occurs twice per year).

289. Most of the FIs and DNFBPs demonstrated a good level of understanding of obligations of the identification of assets of the TFS-related persons and entities. Most subject persons conduct checks against the TFS lists when on-boarding and monitoring customers in the course of a business relation. However, some subject persons met during the on-site visit mentioned that the screening frequency of an on-boarded customer depends on his/her risk level, and the screening may take place only once every 2 years or in even later intervals. Hence some FIs and DNFBPs might not identify a potential match of existing customers with the UNSCR lists in a timely manner.

290. The subject persons stated that the screening against the UN lists also covers BOs. While some FIs and DNFBPs verify BO information using Maltese and foreign registers of legal persons or legal arrangements, most of them obtain BO information and evidence independently. Hence the deficiencies related to the accuracy of data available in the registries, as described below under IO.5, do not have any considerable impact on the activities of subject persons with respect to the screening of the BOs.

291. The SMB has issued a detailed guidance document on the implementation of TFS in 2018 (which is publicly available on its website). Since 2011 the FIAU has included a short section on the implementation of TFS obligations in its Implementing Procedures. The SMB also conducts regular outreach on TFS and provides upon request additional guidance on a case-by-case basis. As further described under IO.11, the SMB demonstrated that it engages in TFS-related communication with the subject persons.

Targeted approach, outreach and oversight of at-risk non-profit organisations

292. The CVO plays a central role in the prevention of abuse of the Maltese VO sector. It was set up by the Voluntary Organisations Act (VOA) in 2007 with the task to strengthen the voluntary sector through various initiatives (with the specific aim of promoting the work of VOs as well as encouraging their role as partners with the government in various initiatives).

293. As of November 2018, amendments have been made to the VOA aimed at, *inter alia*, widening the function and responsibilities of the CVO to also review periodically new information on the voluntary sector's potential vulnerabilities to AML/CFT and requiring mandatory enrolment.

294. At the time of the on-site the CVO consisted of 7 staff members. The assessment team was informed that in order to ensure adequate resources of the CVO (especially considering the widening of its functions and responsibilities), it is planned to considerably increase the budget and the staff in 2019[60]. Considering the increasing scope of the CVO activities, including due to the recent legislative amendments, the assessment team welcomes the decision to increase the budget which would further strengthen the operational capacities of the CVO.

295. The Commissioner is responsible for maintaining an accurate and up-to-date register of VOs. In accordance with the provisions of the law all information contained in the VO Register is available to the public in hard copy at the office, through scanned documentation via email or online for some VOs[61]. This allows for a greater transparency of the VO sector.

[60] The authorities confirmed that the budget of the CVO was increased fivefold in 2019, with further plans for an eightfold increase in the future.

[61] An on-going project aims at populating the on-line database of VOs, scheduled to be accomplished by the end of 2019.

296. In autumn 2018, the CVO has carried out a risk assessment exercise of all enrolled VOs using various adequate and relevant characteristics and ranking them as having a high, medium or low risk. The CVO has identified around 360 out of 1610 enrolled VOs[62] that potentially have a high risk factor of ML/FT. Out of these, 47 VOs were classified as potential high risk for FT due to their international activities conducted in high risk jurisdictions. The VOs that are not enrolled have not been assessed so far.

297. The CVO conducts a prudential monitoring of VOs. The administrators of all enrolled VOs have been screened by the FIAU and the Police in 2018. The CVO also coordinates with and seeks the assistance of the MSS. Changes to administrators of enrolled VOs and all administrators of newly-enrolled VOs will be screened through the same sources when handling the application for registration. At the time of the onsite visit, enrolment had been refused in two cases due to the fact that the subjects were known to the Police through the FT-related investigations[63]. While acknowledging this effort, the assessment team considers that the CVO might need to widen its scope by giving more consideration to other actors that can influence the activities of the VOs, such as founders, members, managers, executives or the prompters of VOs.

298. The CVO annually monitors the administrative reports, annual returns and annual accounts of VOs. All the annual reports are vetted. Reference to the Tax Compliance Unit is made whenever investigations of these accounts by the CVO raise suspicion of tax-related offences. In all other cases where the CVO identifies a suspicion, including possible FT-related matters, it will report the case to the Police. During the period under consideration sanctions were applied in cases where a breach of the VOA was identified, including warnings and the removal of three administrators. These cases where however not related to FT-matters. Overall, although the above-mentioned transparency measures are intended to reduce the vulnerability of VOs at FT risk and the CVO assessed the risk of FT abuse in the VO sector, Malta has not developed and implemented a FT risk-based approach to monitor the sector.

299. The CVO has conducted extensive outreach to the VO sector on FT. One seminar and seven workshops have been organised by the CVO just before the on-site visit for VOs on the safeguards from misuse for ML/FT purposes with participation of the FIAU. The material of the seminar was distributed to all enrolled VOs. In addition, a supporting toolkit to safeguard VOs from abuse has been developed and circulated to all VOs. VOs met during the on-site were aware of these outreach activities. However, the donor community and the non-enrolled VOs have so far not been addressed specifically.

300. Most FIs and DNFPBs consider VOs as higher risk clients without making a distinction between VOs that pose a high, medium or low FT risk. Some of the subject persons indicated that they prefer serving the EU funded VOs. Some other subject persons highlighted that VOs fall outside their risk appetite. The representatives of VOs brought to the attention of the assessment team that the subject persons, particularly FIs, would apply a higher level of scrutiny when considering establishment of business relations with them, which consequently results in discouraging the VOs from engagement with them. The authorities informed the assessment team that they have not yet assessed the impact of the financial exclusion, but are concerned by the issue and negotiate with the major banks on this matter. The assessment team is concerned with the approach applied by the FIs, which demonstrates that the results of the VOs risk assessment were not yet used by the FIs.

[62] According to Art. 4(1) of the VOA, "Any voluntary organisation may apply to become enrolled with the Commissioner and, once enrolled and subject to the observance of applicable provisions of law, may enjoy the privileges contemplated by this Act and any regulations made thereunder".
[63] No further information has been disclosed by the authorities as both investigations are in progress.

Deprivation of FT assets and instrumentalities

301. Although no assets have been frozen pursuant to the sanctions regimes under UNSCR 1267/1989, 1988 or 1373, the authorities have demonstrated that they are able to take actions under other UNSCR sanctions regimes[64]. This includes freezing of assets, unfreezing of funds and providing access to frozen funds. Each of these cases are comprehensively analysed by the SMB, using the powers, competencies, and the expertise of the 18 members representing the state authorities. Decisions are taken expeditiously on an individual basis. The SMB has cooperated closely with its foreign counterparts and the UN on these matters at operational level.

302. A number of FIs and DNFPS mentioned that they came across false positive matches under UNSCRs 1267/1989 and 1988. In the past 5 years, one sanction hit appeared, as a result of which the bank reported to the SMB and froze the account (EUR 2000). Considering the level of awareness of the obligations under the TFS regime demonstrated by most of the subject persons, the assessment team concluded that the subject persons would also be capable to identify and freeze assets in case of an actual match.

303. FIs were aware of their freezing and reporting obligations. However, there was some inconsistency in FIs and DNFBPs' understanding of whether to report matches with the UNSCR lists and assets freezing to the FIAU (by way of an STR) and/or the SMB. In addition, several DNFBPs (some representatives of investment funds, trustees and notaries) were not aware of freezing or reporting obligations at all, stating that they would simply refuse the transaction or exit the customer relationship (see also below, IO.4). The assessment team considers that this negatively impacts the effective implementation of the TFS obligations.

304. In the absence of prosecutions/convictions, restraint orders or confiscations for FT in Malta (see above, IO.9), no other measures to deprive terrorist of assets have been applied.

Consistency of measures with overall FT risk profile

305. Although the comprehensiveness of understanding of its FT risks by the country casts some doubts (see above, IO.1), the steps taken to implement TFS measures, seem to be broadly adequate. This assessment is supported by the measures taken by Malta in the framework of the UNSCR 1970 concerning Libya in light of the geographical risks. However, shortcomings related to communication of designations and the knowledge gap of some subject persons (as described in the analysis above) weaken the effectiveness of the FT-related TFS regime in Malta.

306. The concerns on the FT risk-understanding have a greater impact on the assessment of the adequacy of the preventive measures with respect to the VO sector. The risk of terrorist abuse in the VO sector assessed by the CVO did consider only the enrolled VOs, and did not contain any analysis of non-enrolled VOs. The assessment team acknowledges the importance of the recently enacted amendments in relevant laws, and steps taken to improve the cooperation between authorities for assessing and monitoring potential FT abuse in the VO sector. Nevertheless, improvements are needed to ensure a risk-based approach towards supervision and monitoring of VOs at risk of FT abuse and sustainable outreach to the VO sector, subject persons and the donor community.

Conclusion

307. **Malta has achieved a moderate level of effectiveness for IO.10**.

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[64] The Maltese authorities have demonstrated to the assessment team that measures have been taken under the UNSCR 1970 concerning Libya.

Immediate Outcome 11 (PF financial sanctions)

308. Malta is a relatively large international finance centre specialised in corporate and transaction banking and fund management. Malta's financial sector is bank-centric, oriented to providing financial services to foreign customers. Malta also has a relatively large international trading economy. Bearing in mind the nature and scale of business undertaken in Malta and the geographic location of Malta, the country is exposed to potential PF activities (through financial and trading channels and the misuse of legal persons and legal arrangements). SMB demonstrated a sophisticated understanding of exposure of Malta to PF. The assessment team acknowledges the measures that Malta has put in place to mitigate the PF-related risks, including amendments of the NIA and the detailed guidance document of the SMB on TFS. When determining the materiality of the shortcomings Malta's exposure to PF is seen as an important contextual factor.

Implementation of targeted financial sanctions related to proliferation financing without delay

309. As an EU member state, Malta utilises a combination of supranational and national mechanisms to implement UNSCRs 1718 and 1737 without delay. The TFS legal and institutional framework described under IO.10 also applies to the PF-related TFS regime.

310. Pursuant to the NIA, UNSCRs constitute a part of the domestic law. The designations at the UN level apply directly in Malta without the need for EU transposition. Hence, a time-delay imposed by the transposition of UNSCRs and amendments to the relevant EU Regulations does not exist in Malta.

311. The SMB is the body in Malta responsible for implementation and operation of PF-related UN and EU sanctions regimes. The SMB has demonstrated sophisticated awareness of sanctions-evasion risks in particular with regard to PF. The SMB is also involved in the decision-making and the licensing on a range of activities related to combating the proliferation of WMD and dual-use goods, which was evidenced by the provided case examples[65]. Furthermore, the SMB, in conjunction with the Directorate for Trade Services and Projects, is the licensing authority for all arms and related material. The SMB has experience in conducting PF-related investigations, and an on-going case of a DPRK company in Mata was shared with the assessment team.

312. Malta has mechanisms for communicating designations to the FIs and the DNFBPs relating to UNSCRs 1718 and 1737. However, as described above in IO.10, the authorities do not communicate the updates to the UN list of designated persons and entities to the subject persons in a timely manner. This has an impact in particular on the FIs and DNFBPs that do not rely on automated sanctions screening mechanisms or group-level analytical systems.

Identification of assets and funds held by designated persons/entities and prohibitions

313. Malta has not identified and frozen assets of persons linked to the PF-related UN TFS regime. However, the authorities and the subject persons met could demonstrate that they are able to freeze and unfreeze assets[66].

314. There have been no assets identified and frozen under the DPRK UNSCRs. According to the Maltese authorities this is commensurate with the very limited economic and trade ties between

[65] The SMB has an experience of supporting designations through the EU channels, providing analytical data and other information, which served for re-designation of many Iranian entities, controlled or owned by the Islamic Republic of Iran Shipping Lines Group

[66] The SMB shared a case, triggered by a FI report and related to an Iranian entity designated under the EU PF-related TFS regime. This case demonstrated the ability of the FI to identify the match with the designated entity, followed by the immediate report to the SMB and freezing EUR 4,6 million. The assets were unfrozen after the entity was de-listed.

Malta and the DPRK, as well as the absence of any significant diaspora in Malta. The assessment team was informed about one case related to the DPRK which is described in the following box.

Box 11.1Case DPRK students

In September 2017, the Ministry of Foreign Affairs and Trade Promotion (MFTP) was informed that two DPRK students had applied for the International Maritime Law Institute academic programme. Information received indicated that one of the students belonged to a UN listed entity. MFTP, through Malta's permanent representation to the UN, sought guidance from the UN Sanctions Committee as to whether training may be provided to these two DPRK students. The 1718 Sanctions Committee replied that, given the student's involvement with the listed entity, it was unable to determine that the proposed training would not contribute to the DPRK's proliferation of sensitive nuclear activities or ballistic missile-related programmes. Accordingly, the SMB did not approve the training to be provided to the students. No bank accounts had been opened or funds been transferred by the students to Malta.

315. Based on the above-provided examples the assessment team concluded that the legal and institutional framework of Malta is sufficiently operational in order to prevent designated persons or entities from operating or executing financial transactions related to proliferation.

FIs and DNFBPs' understanding of and compliance with obligations

316. Most of the FIs and DNFBPs demonstrated a good level of understanding of the TFS-related obligations. As already described under IO.10, the REs mostly conduct checks against the TFS when on-boarding and monitoring the clients, and they do not encounter difficulties in identifying and verifying the BOs. However, some subject persons met during the on-site visit mentioned that the screening frequency of an on-boarded customer depends on the risk level of the customer, and the screening can take place once every 2 years or even in longer intervals. Hence, some FIs and DNFBPs might not identify a potential match with the UNSCR lists of existing customers in a timely manner.

317. As already described under IO.10, larger FIs and DNFBPs mentioned that (as a source for designations in practice) they rely primarily on automated and internationally-recognised screening mechanisms or group-level analytical systems, also with regard to the implementation of PF-related TFS.

318. FIs were aware of their freezing and reporting obligations. However, there was some inconsistency in FIs' and DNFBPs' understanding of whether to report matches with the UNSCR lists and assets freezing to the FIAU (by way of an STR) and/or the SMB. In addition, several DNFBPs (some representatives of investment funds, trustees and notaries) were not aware of their freezing or reporting obligations at all, stating that they would simply refuse the transaction or exit the customer relationship (see also below, IO.4).

319. The SMB plays an important role in pursuing understanding and compliance with the TFS obligations by the subject persons. It issued a detailed "Guidance on TFS Imposed Pursuant to EU Regulations and the NIA under UNSCRs Related to Terrorism and FT, and Proliferation", providing description of obligations, mapping the steps to be taken and sanctions set up by Malta for non-compliance with the freezing and reporting obligations for any and all natural and legal persons in Malta. Since 2011, the FIAU has included a short section on the implementation of TFS obligations in its Implementing Procedures. The SMB also conducts seminars and outreach on the implementation of PF-related TFS.

320. The SMB provided the assessment team with a number of examples of inquires received from a range of private institutions engaged in trade with clients of Iranian origin (persons and legal entities) or on investment of assets in Iran. In all of the cases the SMB conducted an analysis of the circumstances and the involved parties and answered inquires.

321. Awareness of PF-related risks by most FIs and DNFBPs is generally limited to the operational risks related to implementation of freezing requirements. Although some outreach and educational activities for FIs and DNFBPs have already been conducted by the competent authorities to raise their appreciation of evasion schemes, this should be further enhanced.

Competent authorities ensuring and monitoring compliance

322. The SMB is also a body responsible for the monitoring of implementation of the UN TFS in Malta, and has entered into a multilateral MoU on 31 May 2018 with the FIAU, MFSA and MGA to further refine the exchange of information with these three authorities, and to formalise their cooperation with respect to the supervision of FIs and DNFBPs. Through the MoU the FIAU, MFSA and MGA agree to check TFS-related aspects as part of their supervisory engagement, including in the context of on-site inspections. The Maltese authorities have stated that the practice of covering TFS as part of the AML/CFT on-site inspections has been applied for many years prior to signing the MoUs.

323. On-site inspections are currently focused on some specific aspects of implementation of the AML/CFT measures, and implementation of PF-related TFS received relatively less supervisory attention. Some of the FIs and DNFBPs stated that they have not been inspected with regard to the implementation of the TFS regime. The Maltese authorities provided statistics of the inspections that resulted in findings and breaches with regard to the implementation of the TFS regime. However, no further data were provided to the assessment team on the types of reporting entities inspected, the characteristics of breaches identified, the TFS regimes these breaches refer to, or the measures taken to overcome the deficiency and to prevent the repetition of a breach. Therefore, it is not possible to fully assess the adequacy and dissuasiveness of applied corrective measures (see IO.3).

Table 27: Statistics on inspection of implementation of TFS by REs

Year	Type of a subject person	Examinations with Findings in relation to Sanctions	Reprimands Issued	Sanctions Imposed
2014	FIs	10	2	1 (EUR 750)
	DNFBPs	6	2	0
2015	FIs	0	0	0
	DNFBPs	26	1	0
2016	FIs	3	1	0
	DNFBPs	52	1	0
2017	FIs	25	0	0
	DNFBPs	18	0	0

324. In addition, the monitoring of PF-related TFS compliance is also limited in light of the resource issues faced by the supervisor (see IO.3). It did not become apparent that adequate human resources that are dedicated to the supervision of TFS matters are available. Hence the assessment team concluded that there is a lack of adequate supervision of the implementation of the TFS regime by the subject persons in Malta.

Conclusion

325. **Malta has achieved a substantial level of effectiveness for IO.11**.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

- It is apparent that the understanding of ML/FT risks is varied across the sectors. Banks and casinos demonstrated a good understanding of the ML risks to which they are exposed, but some non-bank FIs and other DNFBPs (including some TCSPs, legal professionals, accountants and real estate agents) were less clear in relation to ML risks and were unable to clearly articulate how ML might occur within their institution or sector. However, problems related to ML/FT reporting, including the number of STRs, suggest that there might be problems with the overall understanding of the risks among the subject persons.

- In relation to FT risk, FIs (particularly non-banks), and DNFBPs (including some TCSPs, legal professionals, accountants and real estate agents) were less confident in their understanding, with most stating that further guidance (including relevant sector-specific typologies) would assist.

- Most banks, non-bank FIs, TCSPs, legal professionals and casinos demonstrated good understanding of their AML/CFT obligations. Among other DNFBPs, knowledge of AML/CFT obligations was generally demonstrated, with most common gaps being in relation to on-going monitoring of TFS.

- All Banks and most non-bank FIs and DNFBPs (including TCSPs), described risk-based procedures, including a business risk assessment (BRA) and risk-based application of CDD and monitoring. Several DNFBPs stated that their BRAs are not regularly updated, and it is not clear to what extent the BRAs and risk-based measures are effectively considering and mitigating all the risks to which reporting entities are exposed.

- FIs and DNFBPs have in place control measures that include all the general elements of CDD, on-going monitoring and record-keeping. FIs and DNFBPs explained their policies and procedures in relation to beneficial ownership, which included the collection of extensive information on structures, control and source of funds and wealth. However, some concerns remain on the quality of CDD conducted by FIs and DNFBPs considering the recent cases identified in Malta.

- In relation to PEPs, FIs and DNFBPs described PEP screening at on-boarding and thereafter, and did not distinguish between foreign and domestic PEPs. Most explained that PEPs would not be serviced due to their institutional risk appetite, but those that did service PEPs understood and implemented appropriate additional measures.

- FIs that were actively using or considering new technologies were clear that ML/FT risk assessments would be undertaken as part of any new business/product approval mechanism.

- All private sector representatives could describe their suspicion reporting obligations. However, most non-bank FIs and DNFBPs were unable to elaborate on typologies, transactions or activities that would give rise to a STR, particularly in relation to FT, with the majority of interviewees suggesting that more guidance in this area is required. 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.

- Internal controls to ensure compliance with the AML/CFT requirements were described to include an AML function and additional compliance/audit functions in FIs and some DNFBPs

(particularly TCSPs). All FIs and DNFBPs described formal, written procedures, including at financial group level (where applicable).

- The deficiencies in the supervision of FIs and DNFBPs (set out under IO.3); the lack of information from the supervisors on specific findings and compliance rates in relation to the various requirements; and the Maltese authorities' assessment of the legal framework regarding preventative measures in FIs and DNFBPs as mainly low (see results of NRA), as well as the findings based on the discussions with the private sector, means that - in the view of the assessment team - it has not been demonstrated that such obligations are being effectively implemented.

Recommended Actions

- Maltese authorities should take appropriate measures to raise awareness of all FIs and DNFBPs of the ML/FT risks in Malta, with a specific focus on distinct risks facing each sector and relevant mitigating measures to be taken, prioritising TCSPs, legal professionals, accountants and real estate agents; and ensure that all FIs and DNFBPs have a comprehensive understanding of the risk based approach and its implementation, particularly with respect to correspondent banking, higher risk jurisdictions and EDD measures taken in relation to PEPs.
- Maltese authorities should take appropriate measures to raise awareness of all FIs and DNFBPs (particularly legal professionals, accountants and real estate agents) of the ML/FT risks in Malta, with a specific focus on reporting obligations; criteria on suspicion specific to the sector; and methods, trends and typologies relevant to each sector.
- Maltese authorities should enhance awareness in the DNFBP sectors of the regulatory requirements in relation to on-going monitoring of a business relationship and the monitoring and reporting obligations concerning TFS.
- Malta should amend legislation to address the technical deficiencies described in the TC Annex.

326. The relevant Immediate Outcome considered and assessed in this chapter is IO.4. The Recommendations relevant for the assessment of effectiveness under this section are R.9-23.

Immediate Outcome 4 (Preventive Measures)

327. Assessors' findings on IO.4 are based on interviews with a range of private sector representatives, as well as the experience of supervisors and other competent authorities concerning the relative materiality and risks of each sector. The assessment team grouped the obliged sectors into categories in terms of their significance for the overall picture of compliance, see Chapter 1.

Understanding of ML/FT risks and AML/CFT obligations

328. From discussions with the private sector during the onsite visit, it is apparent that the understanding of ML/FT risks is varied across the sectors.

Banks

329. In general, the banks demonstrated a good understanding of the ML/FT risks to which they are exposed and have implemented tools which allow them to mitigate those risks. All the banks also demonstrated a good understanding of their AML/CFT obligations.

330. Banks carry out risk assessments, including customer, product or service risk, operational risk, country-based risk and/or geographical risk. The risk assessments are comprehensive and most of the banks demonstrated that their assessments are updated regularly.

331. Risk assessments generally take into account the groups' assessment of risks (where the bank is part of a group) but do not yet include any results of the Maltese NRA, due to the results of the NRA being communicated very recently.

332. Generally, most banks agreed with the high-level risks identified in the NRA, but suggested that the sectoral analysis appeared to be based on out-of-date statistics or information. Several banks commented that the identification of the threats to Malta in the communicated findings were inconsistent with their own understanding (which emphasised cash transactions, foreign tax evasions and trade finance).

333. Banks risk-rate their customers prior to establishing business relationship, generally using low, medium or high ratings. Most banks described themselves as having a conservative risk appetite, with several suggesting that they will not bank foreign PEPs, non-resident legal persons, or persons from countries which do not apply the FATF standards. Several also suggested that they will not bank any TCSP business, virtual currency business, clients from high risk jurisdictions, gaming business or individuals making use of the IIP.

334. Understanding of FT risk by banks as well as related obligations is generally good, except that banks did not demonstrate sufficient understanding of FT risks inherent to international financial centres. Banks viewed FT risk as low or medium primarily based on their own risk assessments and not necessarily informed by any national view of risk.

Non-banks FIs

335. Understanding of AML/CFT obligations by non-bank FIs is generally good. The understanding of ML/FT risks varies among non-bank FIs. Understanding of ML risks to the country in general was adequate, but there was not sufficient understanding of the risks specific to the nature of their business. Most non-bank FIs consider FT risk to be low but there is relatively insufficient understanding of the risks, with most FIs being unable to clearly articulate how FT might occur within Malta, their institution or sector.

336. Non-bank FIs all advised that they do not deal with cash (except in some strictly controlled circumstances). All suggested that they refuse the establishment of business relationships when risks are not understood, but all confirmed that they lack knowledge of sector-specific risks (particularly on FT) and that there is a need for further guidance or training for the sector.

337. Non-bank FIs were all aware of the NRA and had attended the presentations or otherwise viewed the communicated results thereof. Most commented that the analysis and information was high level and not sufficiently detailed to be of practical assistance. Several disagreed altogether with the assessments of their particular sectors, suggesting that the analysis was out-of-date, given the major changes in the legislative framework and industry controls over the last several years.

338. Non-bank FIs generally described high risk customers as foreign PEPs, non-resident legal persons, or persons from countries which do not apply the FATF standards.

339. The MVTS sector in Malta is represented by large international money transfer companies which provide their services through their agents. These agents apply the MVTS company's policies and use the dedicated IT equipment and monitoring tools provided by the MVTS company. The agents on-board and identify customers; the MVTS companies operated screening of customers and monitoring of transactions. The MVTS agents' understanding of ML/FT risks was insufficient, and generally agents could not demonstrate how their sector could be used for FT.

DNFBPs

340. Understanding of ML/FT risks among the DNFBP sector is not sufficient, with the exception of casinos (land-based and online/remote). DNFBPs were generally unclear in relation to ML/FT risks and were unable to clearly articulate how ML or FT might occur within their institution or sector, with most stating that further guidance (including relevant sector-specific typologies) would assist in this regard.

341. DNFBPs were mostly aware of the results of the NRA (with a few exceptions), but did not find them useful for their sector.

342. Understanding of ML/FT risks in the TCSP sector is mixed, with some TCSPs unable to clearly explain how ML or FT might occur within their institution or sector. TCSPs were aware of the results of the NRA (having attended the briefing session or viewed the authorities' websites), but did not consider them useful. TCSPs demonstrated knowledge of AML/CFT obligations and generally have in place control measures in the required areas (as detailed below).

343. Several DNFBPs (e.g. notaries and real estate agents) stated that any risks in their business are mitigated since they do not deal in cash and most transactions are conducted via Maltese banks, which assessors do not agree. Mostly, DNFBPs classify customers as high risk when they are foreign PEPs or resident in high risk jurisdictions.

344. Knowledge of AML/CFT obligations was generally demonstrated as detailed below, with most common gaps being in relation to on-going monitoring of TFS (although this can be the result of some DNFBPs dealing mainly with occasional transactions), as further described hereunder in paras. 370-371, and in the IOs 10 and 11.

345. Casinos (land-based and online/remote) demonstrated a good understanding of ML/FT obligations including on-going monitoring and TFS.

346. Notaries' involvement is mandatory for real estate transactions in Malta. All notaries, along with lawyers, met by the assessment team demonstrated adequate knowledge of their AML/CFT obligations.

347. Real estate agents and accountants demonstrated relatively low level of understanding of the NRA and ML/FT risk. Accountants were unable to clearly articulate how "control" is determined in relation to BO of legal persons and arrangements.

Application of risk mitigating measures

348. As noted above, most FIs and DNFBPs (including TCSPs) described the application of risk-based procedures, including a BRA, the requirement for which was introduced in January 2018.

349. FIs and DNFBPs described risk-based application of CDD and monitoring, with customers categorised on the basis of the level of risk and simplified, standard or EDD measures applied as a result.

350. Almost all FIs and DNFBPs refuse to conduct transactions or to establish business relationships when the proposed relationship or transaction was outside their risk tolerance.

351. Subject persons have been required to establish risk-based procedures and, in particular, to conduct customer risk assessments since 2008. The formal requirement for a BRA was introduced relatively recently and the results of the NRA (which would support the implementation of the BRA requirement) were only recently communicated to the industry. This means that it is not clear to what extent the BRAs and risk-based measures are effectively considering and mitigating all the risks to which reporting entities are exposed. In addition, as

set out at para. 399, there is a lack of comprehensive records of supervisory findings or compliance rates to evidence how well FIs and DNFBPs have applied mitigating measures.

Application of enhanced or specific CDD and record keeping requirements

352. FIs and DNFBPs (including TCSPs) have in place control measures that include all the general elements of CDD, on-going monitoring and record-keeping. All reported that they would not undertake a transaction or establish a business relationship with a customer when they fail to collect the required information and evidence, although in practice refusals are mainly on the grounds of the institution's risk appetite, as opposed to incomplete CDD.

353. FIs and DNFBPs explained their policies and procedures in relation to beneficial ownership, with identification and verification procedures being applied to directors/representative of legal persons as well as BOs.

FIs' and DNFBPs' procedures involve the collection of extensive information on structures, control and source of funds and wealth. In particular, banks indicated a very low risk tolerance for customers, in particular legal persons and arrangements, with most indicating that they obtain all original/certified CDD documents themselves and do not place reliance, according to R.17 on intermediaries, TCSPs or other professionals[67]. Most TCSPs reported that they find it difficult to bank their clients in Malta, as banks are cautious about TCSPs related risk; this was also confirmed by majority of interviewed banks. Several banks that still maintain business relationship with TCSPS reported maintaining a list of reliable TCSPs. List of reliable TCSPs is developed on the basis of assessment of TCSPs' internal AML/CFT control environment.

354. Several FIs and DNFBPs verify BO information using Maltese and foreign registers (with several having applied and been granted access to the newly implemented Maltese Register of BO), although most described obtaining BO information and evidence independently.

355. Most stated that failure to verify the identity of the UBO would result in a refusal to establish a business relationship, although in practice problems mainly occur in verifying source of funds and source of wealth.

356. Although, as indicated above, the FIs and TCSPs demonstrated good knowledge of the AML/CFT obligations, there are nevertheless grounded concerns on the quality of CDD conducted by FIs and TCSPs considering the discussions with the private sector and the cases identified in Malta (referred below and at IO.3) which relate to the lack of internal AML control conducted, monitoring transactions in terms of legitimacy and economic rationale or lack of due diligence measures applied. In the absence of data on the nature of breaches identified by the supervisors, it is difficult for the assessment team to conclude on the overall effectiveness of implementation of relevant AML/CFT requirements.

357. With regard to the timing of verification of identity, Maltese law allows for the delay of verification until after the establishment of business relationships, provided the risks are mitigated. However, delayed verification is not a common practice for the private sector, with the exception of casinos.

358. Casinos operate by obtaining identity information and evidence (e.g. passport or identity card) upon the first visit of a customer to the casino. Address verification is only requested upon the second visit, as new customers generally do not carry a proof of address.

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[67] Discussions with the supervisors confirmed, that reliance, according to R.17, is not common practise in the banking sector. In the view of supervisors, the former legal framework for reliance (pre-December 2017) was restrictive and, although the PMLFTR 2018 offers more flexibility, no increase in the application of reliance provisions has been noted.

359. Real estate agents demonstrated a low level of understanding of BO requirements and generally took comfort from the involvement of a notary and or lawyer in the transaction.

Application of EDD measures

360. FIs and DNFBPs (including TCSPs) generally have in place control measures that include enhanced measures in the required areas.

PEPs

361. The Maltese legal framework covers both foreign and domestic PEPs. FIs and DNFBPs have a good understanding of the enhanced measures required in relation to PEPs, and generally have adequate measures in place to determine whether a customer or BO is a PEP. Despite the fact that there have been some high profile cases involving PEPs, the Maltese banks were fully aware of the PEP status and associated obligations.

362. FIs and DNFBPs mainly use a self-declaration and independent PEP screening at on-boarding and thereafter, and did not distinguish between foreign and domestic PEPs. Some explained that PEPs would not be serviced due to their institutional risk appetite, but those that did service PEPs described appropriate additional measures, including approval from a senior manager, additional measures to establish the source of wealth and funds, and more stringent monitoring.

363. All FIs and most DNFBPs use commercial PEP screening tools and/or databases, but several DNFBPs suggested that they would simply recognise a domestic PEP "since Malta is a small country".

364. Several FIs (namely MVTS agents and FIs providing currency exchange services) referred to obtaining additional source of wealth information in relation to PEPs, but were unaware of the obligation to obtain senior management approval or to enhance monitoring.

New Technologies

365. All FIs had awareness of the requirements in relation to the use of new (developing) technologies and were clear that ML/FT risk assessments would be undertaken as part of any new business/product approval mechanism. FIs referred to the assessment of monitoring tools, including anti-fraud systems, biometric solutions, new products, etc. In addition, banks specifically mentioned that they consider potential partnerships with the block-chain technologies. However, they had not developed any such products by the time of the onsite visit. No national-level risk assessment in relation to new (developing) technologies has been undertaken, nor any specific guidance produced, in order to assist FIs.

366. There was confusion amongst DNFBPs regarding the obligations, mainly arising from the fact that such new technologies were not being actively used or considered in their businesses.

Opening and maintaining correspondent relations

367. 20 of the 28 banks operating in Malta are reported as providing correspondent banking services to respondent institutions. These are mainly provided to EU/EEA banks, but 11 Maltese banks also provide such services to non-EU banks, including banks across Asia, the Middle East and North Africa.

368. In addition, correspondent relationships are maintained by other FIs licensed under the Financial Institutions Act.

369. Awareness of and compliance with requirements with regard to correspondent relationships appear to be in line with the required standards. It should be noted that oversight and monitoring by correspondent banks (including detailed reviews of policies and procedures,

as well as on-site audits/inspections) appears to be a major driver for standards in some of Maltese banks, including what is described as a change in risk appetite and reluctance to service higher risk customers/products" (as described in IO.3).

Implementation of Targeted Financial Sanctions

370. In relation to TFS, most FIs and DNFBPs have a good level of awareness of UN and EU designations and apply automatic described screening of customers at on-boarding.

371. Most FIs implement daily (or in some cases weekly) screening of client and UBO databases against UN and EU lists, with the notable exception of some investment firms. Regular screening was not a consistent feature of DNFBPs' procedures, with some accountants, Trustees, company service providers and insurance agents indicating that this was undertaken as part of regular client reviews, which could be up to 2 years or more after take-on of the client. This raises concerns that existing customers who become subject to TFS may not be identified in a timely manner.

372. Although certain banks demonstrated advanced awareness of the importance of transaction monitoring to detect possible sanctions evasions, this was not conducted by some smaller FIs and most of the DNFBPs (including all types).

373. Most FIs and DNFBPs were reliant on commercially provided sanctions lists and several DNFBPs were unaware of any sanction lists or other material being provided by Maltese authorities.

374. FIs were aware of their freezing and reporting obligations, describing the role of the SMB. However, there was some inconsistency in DNFBPs' understanding of whether to report sanctions "hits" to the FIAU (by way of an STR) and/or the SMB.

375. In addition, several DNFBPs were not aware of freezing or reporting obligations at all, stating that they would simply refuse the transaction or exit the customer relationship.

Application of wire transfer rules

376. Money remittance services (considered to be higher risk due to the cross-border nature of payments and typologies involving transfer of funds) are provided through banks, payment institutions and various agents of global MVTS providers (e.g. MoneyGram and Western Union). Entities were aware of the applicable requirements and described appropriate procedures, including adequate wire transfer information, screening, and requests for additional information accompanying transfer of funds, where necessary. In addition, risks in relation to higher risk countries are understood and supported by adequate guidance (see paras. 376-381). Maltese authorities confirmed that there have been no examinations on payment service providers that specifically consider obligations in relation to wire transfers and therefore there is no conclusions can be reached as to levels or adequacy of compliance with these obligations.

Approach towards jurisdictions identified as high-risk

377. All FIs and DNFBPs demonstrated appropriate awareness of their obligation to include country risk when assessing whether there is higher risk of ML/FT. Most FIs and DNFBPs referred to countries identified by the FATF as non-compliant with the Standards and countries subject to EU or UN sanctions.

378. Other than banks, most entities referred to FATF, UN and EU lists as the source of information for higher risk countries. Several also referred to circulars or other information provided by the Maltese authorities.

379. Banks and several other FIs had stricter requirements on the country risk, also referring to countries with significant levels of corruption or other criminal activity; and the use of high risk jurisdiction lists provided by the entity's group.

380. Maltese law contains the concept of "non-reputable jurisdictions", meaning countries identified by the FATF or EU as non-compliant with the Standards.

381. Where a FI or DNFBP proposes to deal with a "non-reputable jurisdictions" that is subject to an international call for the application of counter-measures (i.e. FATF category 1 jurisdictions), it is required to notify the FIAU, who will inform the entity of appropriate counter-measures to be applied. However, no FI or DNFBP had any experience of reporting and receiving such instructions and there was confusion amongst FIs and DNFBPs as to when, if ever, relationships and/or transactions with "non-reputable jurisdictions" were to be notified to the authorities.

382. The majority of FIs and DNFBPs referred to exiting/refusing the relationship or transaction or taking enhanced measures themselves (determining source of wealth and enhanced monitoring were the most commonly referred to).

Reporting obligations and tipping off

383. Almost all private sector representatives could describe their suspicion reporting obligations and were aware of the role of the FIAU in this regard.

384. However, several notaries stated that they would refuse the establishment of a business relationship or to conduct a transaction in case of suspicion, and were unaware of the obligation to report a suspicious attempt when the business was refused.

385. Some non-bank FIs and DNFBPs have not made any STRs nor identified any suspicions internally. Most non-bank FIs and DNFBPs were unable to elaborate on typologies, transactions or activities that would give rise to a STR, particularly in relation to FT. The majority of DNFBPs expressed the view that their businesses are unlikely to be vulnerable to ML or FT (in direct contrast to the communicated findings of the NRA).

386. The majority of both FIs and DNFBPs suggested that more guidance in this area is required, particularly sector-specific indicators.

387. In light of the dominance of banks in the financial sector, it is reasonable that the majority of STRs are submitted by banks, which provided 51% in 2017. However, reporting by banks appears highly uneven (77% of the STRs filed by banks were sent by the two major banks operating in Malta). Remote gaming companies provided 29% of STRs filed in 2017. A limited number of STRs were filed by other subject persons and in particular by DNFBPs (e.g. legal professionals sent a total of 9 STRs in 2017). The assessment team considers that these are low reporting rates, compared to the inherent risks of those sectors, particularly TCSPs which filed 9% of STRs in 2017 (see IO.6 for further details).

388. All FIs and DNFBPs understood the risks arising from, and had appropriate measures in place to prevent tipping off. All suggested that feedback from the FIAU in relation to suspicious potential transactions was very prompt, alleviating any practical tipping-off concerns.

389. In addition, several suggested that more general feedback from the FIAU in relation to the quality of the STR had been received, although this was not consistent across entities interviewed. The assessment team considers that the feedback provided is of limited nature (e.g. no feedback on the substance of the STR, nor any strategic observation of the quality and consistency with the ML/FT risks in the country). The FIAU has implemented a new feedback

mechanism since July 2018. However, the impact of this could not have been assessed during the on-site visit.

Internal controls and legal/regulatory requirements impeding implementation

390. Internal controls to ensure compliance with the AML/CFT requirements include an AML function and additional compliance/audit functions in FIs and some DNFBPs (particularly TCSPs). All sectors have formal, written procedures.

391. Larger entities (particularly banks) implement group-wide policies and procedures for the prevention of ML/FT and have appropriate control systems, including multiple lines of defence, internal audit, automatic transaction monitoring, periodic reporting to the management etc.

392. Smaller entities have internal controls that appear appropriate for the risks associated with the business. ML Reporting Officers (MLRO) were however often also involved in customer relationship management and/or business development, which may lead to actual or perceived conflicts of interest.

393. There are no legal or regulatory requirements which impede the implementation of internal controls and procedures to ensure compliance with AML/CFT requirements, including information sharing between group entities.

394. In relation to legal and regulatory requirements, substantial amendments were made to legal obligations and/or guidance during the 12 months prior to the on-site visit.

395. The PMLFTR, largely transposing the provisions of the EU's 4th AMLD, came into force on 1 January 2018, i.e. it was in effect for 10 months prior to the on-site visit. The Implementing Procedures Part I (which contain binding AML/CFT requirements as well as providing guidance on how to comply with legal requirements) are dated 27 January 2017, i.e. they pre-date both the PMLFTR and the conclusion of the NRA. It should also be noted that the Implementing Procedures Part I were being further revised at the time of the on-site visit (a consultation draft was published on 30 October 2018).

396. Some sector-specific requirements also predate both the PMLFTR and the conclusion of the NRA, namely the "Implementing Procedures Part II – Banking" (19 February 2013, but currently under revision) and the "Implementing Procedures Part II – Land-based Casinos" (25 September 2015).

397. Other sector-specific requirements are still being developed, e.g. "Implementing Procedures Part II – CSPs"; "Implementing Procedures Part II – Insurance Sector"; and "Implementing Procedures Part II – Trustees and Fiduciaries" (all in progress at the time of the on-site visit); and "Implementing Procedures Part II – Virtual Financial Assets" (issued for consultation on 31 October 2018).

398. Similarly, while it is positive that important guidance has been provided to industry, the assessment team notes that much of this is of a very recent nature, including the following: "Guidance Note on Transfer of Funds having Missing or Incomplete Information" (25 Oct 2018); "Guidance Note on AML/CFT Obligations in relation to Payment Accounts with Basic Features" (15 October 2018); "MFSA Guidance on PEPs" (8 October 2018); "Guidance Note on Funding Of Terrorism – Red Flags and Suspicious Activities" (7 February 2018); "Supervisory Guidance Paper on ML and FT Institutional/Business Risk Assessment" (2 February 2018); and the "Implementing Procedures Part II - Remote Gaming companies" (July 2018).

399. This means that some of the legal requirements and guidance necessary to ensure practical implementation of the FATF Recommendations were introduced very late in the

period that is the subject of this report. Industry compliance with such obligations cannot be demonstrated over the requisite period.

400. Furthermore, although the AML/CFT supervisors were able to discuss risk understanding and compliance by FIs and DNFBPs in general terms and with anecdotal observations of general improvements in both understanding and implementation of AML/CFT requirements, there are no comprehensive records of supervisory findings or compliance rates that would evidence such general observations. The assessment team considers that the lack of supervisory data on compliance was alleviated somewhat with respect to banks and larger DNFBPs, where compliance could be demonstrated by way of correspondent banking relationships (see para. 368) and by group audit and compliance functions.

401. These factors, combined with the deficiencies in the supervision of FIs and DNFBPs (set out under IO.3), as well as the Maltese authorities' assessment of the legal frameworks for AML/CFT preventative measures in FIs and DNFBPs as mainly low (see results of the NRA, October 2018) leads the assessment team to conclude that the FATF obligations are being effectively implemented by FIs and DNFBPs to some extent, with major improvements needed.

402. **Malta has achieved a moderate level of effectiveness for IO.4**.

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key Findings

IO.3

- The supervisory authorities, in particular the FIAU as the lead AML/CFT supervisor, do not have adequate resources to conduct AML/CFT risk-based supervision and monitoring, for the size, complexity and risk profiles of Malta's financial and DNFBP sectors. Malta's drive to encourage high risk complex business such as virtual assets will put a further strain on the FIAU's limited resources. In April 2018 the Maltese authorities devised a comprehensive list of strategic actions to enhance Malta's AML/CFT framework, one being to strengthen and clarify the supervisory framework by extending the breadth and depth of supervision and increasing resources. Consequently, at the time of the evaluation the supervisory authorities were in the midst of overhauling their policies, procedures and operations.

- The level of knowledge of ML/FT risks in Malta varied across the supervisors. The FIAU and sectorial supervisors have a broad appreciation of ML/FT risks in the respective sectors. They have taken positive steps to improve their knowledge, including through the circulation of extensive data collection questionnaires for the banking, TCSP and remote gaming sectors. Weaknesses in their appreciation of specific ML/FT risks remain with respect to all other sectors due to the significant limitations with the Annual Compliance Report which informs the FIAU's understanding of ML/FT risks. Moreover, at the time of the evaluation, 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.

- It would appear that the general lack of resources devoted to AML/CFT supervision has had a significant cumulative impact on the effectiveness of the authorities' day-to-day AML/CFT supervision, although the appointment of external experts recently did provide relief in the handling of exceptional examinations.

- While changes are afoot the authorities' primary focus in the past has been to issue pecuniary fines for specific breaches of AML/CFT requirements. Only in a limited number of cases did the FIAU assess whether there were systemic deficiencies with a subject person's AML/CFT governance and control framework, and apply the necessary remediation measures. Moreover, no sanctions had been applied on a subject person's senior management. Therefore, sanctions are not considered effective, proportionate and dissuasive. Notwithstanding this, the FIAU's appetite to apply higher penalties has recently increased. However, the vast majority of sanctions imposed in 2018 by the FIAU are not yet in force, as they are subject to judicial appeal.

- 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. The MGA has engaged an external provider to undertake continuous adverse media and UN sanctions-screening on individuals with a known connection with its licensees to assist with preventing criminals and their associates from owning or controlling casinos and online gaming licensees. However, the MFSA does not undertake similar continuous on-going screening of FIs and TCSPs.

- There is no specific law regulating lawyers, DPMS and real estate agents. Therefore, there are no adequate market entry measures and on-going fitness and properness measures for these persons.

- The FIAU was unable to quantify the impact of its supervision, as it was not in a position to provide statistics on the nature of breaches identified and what action was taken to remediate the underlying cause of these breaches. However, the FIAU does organise and participate at a number of seminars, provides consultations and was considered by the private sector representatives interviewed as open and co-operative. Moreover, the staff in the Legal Unit and International Relations within the FIAU has increased, and this has led to an increase in the production of guidance notes in 2018.

Recommended Actions

- The FIAU and the sectorial supervisors should further increase the frequency and depth of onsite inspections and ensure that they have sufficient resources and expertise in place to effectively supervise the size, complexity and the ML/FT risks of their respective sectors. The authorities should ensure that their supervisory staff has the appropriate skill base to undertake risk-based supervision for the wide variety of financial services, gaming, trust and company services and virtual assets serviced in Malta. The SMB should ensure through supervisory measures that the UN TFS are implemented in a timely and appropriate manner, and that any identified violation is remedied.

- The FIAU and sectorial supervisors should review their existing inspection model and introduce a coherent and comprehensive graduated risk-based supervisory model, which demonstrates how ML/FT risk-ratings drive the frequency, scope and nature of supervisory onsite/offsite inspections. The FIAU and the sectorial supervisors should continue to enhance their knowledge of sectorial and subject person-specific ML/FT risks and ensure that this enhanced knowledge includes an appreciation of wider group ML/FT risks.

- FIAU and the sectorial supervisors should ensure that inspections adequately consider the ML/FT risks of subject persons' business models and assess whether their AML/CFT governance and control frameworks mitigate these ML/FT risks, and if not, apply the necessary remediation measures. Should systemic AML/CFT deficiencies be identified, supervisors should ensure that proportionate, dissuasive and effective sanctions are applied to subject persons, and if appropriate, their directors and/or senior management. As part of this action, the authorities should: 1) develop comprehensive procedures to guide inspections and to ensure appropriate outcomes; 2) assess how the FIAU's approach to imposing remedial actions and/or sanctions can be streamlined to ensure timely outcomes and ensure that supervisory actions are not delayed by judicial review; and 3) develop processes to ensure that appropriate measures are also taken by the relevant sectorial supervisor.

- The MFSA should ensure that consideration is appropriately given to the wider ML/FT risks associated with the ownership structure of its applicants, particularly banks with a very limited number of beneficial owners. As part of this action, the MFSA should continue with its initiatives to enhance authorisation procedures for all types of licence applications.

- Due to the international nature of Malta's finance sector, the MFSA should undertake regular adverse media and UN sanctions screening to prevent criminals and their associates from owning or controlling FIs and DNFBPs. This would bring them in line with the approach taken by the MGA.

- 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.

- The FIAU should routinely collate feedback and statistics on the impact of their supervisory actions. This should include introducing systems for maintaining statistics on the numbers and trends of findings to enable them to target their outreach and ultimately demonstrate the impact of their supervision of AML/CFT.
- Malta should continue issuing sector-specific guidance targeting higher risk sectors.

403. The relevant Immediate Outcome considered and assessed in this chapter is IO.3. The Recommendations relevant for the assessment of effectiveness under this section are R.14, 26-28, 34, and 35.

Immediate Outcome 3 (Supervision)

404. As part of the NRA the Maltese authorities identified a number of gaps in relation to the supervisory framework. One of these gaps was the limited evidence of the effectiveness of supervision. Following the gap assessment the Maltese authorities devised a comprehensive list of strategic actions to enhance Malta's AML/CFT framework. One of these actions was to strengthen and clarify the supervisory framework by extending the breadth and depth of supervision and increasing resources. These strategic actions include a number of recommendations, such as: increasing the supervisory capacity and skills of the FIAU, MFSA and MGA; enhancement of entity-level risk assessment tools; improving enforceability of AML/CFT obligations and sanctions; requiring registration of all subject persons, such as real estate agents; and increasing outreach to industry. It is anticipated that all of the supervisory actions be completed by the first quarter of 2020.

405. Meanwhile the FIAU developed its own strategy and action plan to fundamentally strengthen its supervisory and enforcement functions. This included a complete overhaul of its policies and procedures, developing - amongst others - a clear risk-based strategy on how to carry out risk-based supervision, and revising its CMC procedures and sanctioning policy to ensure a more effective use of sanctioning measures and remedial actions. Work on the implementation of this action plan was on-going at the time of the on-site visit. The FIAU indicated that it was collaborating closely with the EBA and the European Commission throughout this process and planned to complete the implementation of this action plan by March 2019.[68]

Licensing, registration and controls preventing criminals and associates from entering the market

MFSA – FIs and TCSPs

406. The MFSA applies fitness and properness measures to prevent criminal and their associates from holding, or being the beneficial owner or holding a management function respectively in FIs and TCSPs. FIs and TCSPs are required to obtain the written consent of the MFSA in the following cases: (i) for a new licence; (ii) to amend an existing licence; (iii) to approve the appointment of a senior position (including but not limited to directors, shareholders, or officials which occupy a senior role); and iv) to approve change in shareholding. This is the responsibility of the MFSA's Authorisations Unit, which currently consists of 34 staff, but is anticipated to rise to 46 by 2020.

[68] The FIAU advised post-onsite visit that to a great extent it had completed its action plan by March 2019 (after the onsite visit to Malta), and thus has not been subject to analysis by the assessment team.

407. Fit and proper decisions are made through the EU SSM for members of the management board and supervisory board of the significant banks in Malta, and for qualifying shareholders of all banks.[69]

408. MFSA applies a fit and proper test to the applicant, beneficial owners of the institution, the persons who will effectively run the institution as well as other key function holders such as the compliance officer and MLRO and their associates. The fit and proper test comprises three main factors: integrity, competence and solvency and applies to all types of FIs and TCSPs. Qualifying shareholders, directors, controllers and key function holders are required to complete a Personal Questionnaire and provide an original certificate of good conduct issued by the police, in order to certify that the applicant has no criminal background (including a certified translation if the good conduct certificate is from a foreign country). A criminal conduct record (fedina penale) is also requested on a risk-based approach. By signing the Personal Questionnaire, the potential applicant takes ownership of all the information submitted and authorises the MFSA to undertake due diligence with third parties for the purpose of determining his integrity, competence and solvency. The authorities have advised that all the information submitted in the Personal Questionnaire by the applicant is corroborated with third parties to check its authenticity and accuracy. As part of its due diligence procedure, the MFSA will carry out a number of checks including: (i) requesting information from the FIAU; (ii) checking EU/UN sanction lists; (iii) checking the Shared Intelligence Service (SIS) database operated by the UK's FCA[70]; (iv) making open-source enquiries; and (v) checking third-party screening databases. Where relevant, the MFSA also sends due diligence enquiries to a foreign competent authority with the aim of obtaining any additional relevant information that will assist it in its assessment of the fitness and properness of an applicant. In addition, the authorities advise that EDD reports from external intelligence companies are commissioned on subjects with a high-risk profile, *inter alia*, in the following scenarios:

(i) Risk profile of the activity to be licensed (e.g. in relation to activities for which MFSA has articulated a low risk appetite);

(ii) Risk profile of the individual - depending on the background of the individual, risks associated with jurisdiction of residence/jurisdictions where an individual has been involved; and

(iii) Where any of the checks cited above yield adverse information which on a risk-based approach needs further analysis.

409. 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 licensing a bank with a single beneficial owner with no track record (i.e. competence in banking) raises questions from a wider ML/FT perspective.

410. The assessment team was informed that the MFSA had recently enhanced its application processes to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest, or a management function of FIs and TCSPs by, *inter alia*,

[69] The ECB has the power to make fit and proper decision only for the banks which are considered as significant. National authorities are responsible for fit and proper decisions in relation to less significant banks.

[70] This is a mechanism for UK regulatory bodies, designated professional bodies and recognised investment exchanges to collect and share material on individuals and firms – MFSA is a member of this mechanism).

introducing: (1) closer liaison with the FIAU and the MFSA's prudential supervisors throughout the application process; (2) increased scrutiny of an applicant's business model and corporate governance structure from an AML/CFT perspective; (3) increased scrutiny of dominant shareholders; and (4) increased scrutiny of the source of wealth and source of funds of those persons holding significant or controlling interests. The tables below detail: (1) the number of applications that have been processed by the MFSA from 2014 to 2018; and (2) the number of applications processed by type of entity for 2018. While the MFSA has not refused an application, the assessment team was advised that, when the MFSA identifies issues concerning fitness and properness, additional information is requested by the MFSA, which ultimately leads to the withdrawal of an application. The assessment team was advised that the sharp increase in the number of withdrawals in 2017/2018 was largely a result of company service providers becoming subject to regulation, and the subsequent consideration of applications by the MFSA of existing company service providers who had previously been operating in an unregulated environment.

Table 28: Number of licence applications received by the MFSA (2014-2018)

Licence Applications	2014	2015	2016	2017	2018
Received	304	282	224	288	203
Approved	299	276	217	258	153
Withdrawn	5	6	7	30	50
Refused	1	0	0	0	0
% Withdrawn and Refused	2%	2%	3%	10%	25%

Table 29: Licence applications by the type of subject person (2018)

Type of Entity	Number of Applications Received	Number of Licences Issued	Number of Licence Applications Withdrawn	Percentage of Licence Applications Withdrawn
Insurance undertakings including PCCs and cells	10	6	4	40%
Insurance intermediaries	56	53	3	5%
Company service providers (both corporate and individual)	36	19	17	47%
Credit institutions	0	0	N/A	0%
FIs	3	1	2	66%
Retirement schemes (personal & occupational)	2	2	0	0%
Service providers to retirement schemes	3	3	0	0%
Investment services licence holders and recognised persons	16	13	3	19%
Collective investment schemes	35	24	11	31%
Additional sub-funds of licensed collective investment schemes	37	29	8	22%
Trustees, fiduciaries and administrators of private foundations	5	3	2	40%
Total	**203**	**153**	**50**	**25%**

411. The MFSA also applies the aforementioned fit and proper measures to proposed directors, shareholders or key function holders in existing licensees. Fit and proper checks are also carried

out before onsite inspections and during routine supervisory desk top monitoring. However, the MFSA does not subject persons holding a significant or controlling interest or management function in an FI or TCSP to regular UN sanctions and adverse media screening, other than on a risk-based approach, and therefore is reliant on its licensed community to self-report any convictions or intelligence provided by third parties such as the general public and other competent authorities or any triggers from onsite inspections or complaints. Regular on-going monitoring could assist in the identification of triggers and the undertaking of regulatory actions and would be particularly beneficial in the context of Malta which is an international finance centre, and therefore a large proportion of its supervised entities are beneficially owned by persons located outside of Malta. At the time of the onsite visit the issue of more effective monitoring was being considered by the authorities.

412. The following CSPs are exempt in the CSP Act from registration with the MFSA: advocates, notary public, legal procurator or certified public accountants in possession of a warrant, as well as authorised trustees under the Trusts and Trustees Act. However, these persons are subject persons and are required to notify the FIAU that they are acting as CSPs by way of business. The authorities have advised that as at 31 October 2018 there were 588 CSPs of which approximately 343 persons are lawyers, auditors and accountants (excluding authorised trustees under the Trusts and Trustees Act), which are not subject to MFSA market entry requirements.

413. In 2014 the MFSA made rules under Art. 8 of the CSP Act which provide an interpretation of what is intended by the provision of company services by way of business. The rules contain a de minimis rule which states that, for the purposes of establishing whether an individual is holding himself out as providing directorship services by way of business (and therefore subject to registration under the Act and considered a subject person under the PMLFTR), the MFSA shall consider whether such individual holds an aggregate of more than ten directorships and company secretarial positions in companies other than those licensed, recognised or authorised by the MFSA in terms of any one of the laws for the purposes of which the MFSA has been designated as the competent authority. In establishing whether an individual may be considered to be providing company services by virtue of the directorships and/or company secretarial positions held, it is recommended that a final determination is sought from the MFSA (the MFSA provided examples of such determinations). However, in the absence of statistics on the number of individuals acting as director/company secretary in a third-party capacity for 10 or less companies, the assessment team was unable to assess the impact of this de minimis rule.

414. Entities which are not authorised by the MFSA, but are found to be undertaking activities in or from Malta for which they require a licence by the MFSA, are investigated by the MFSA's Enforcement Unit. Such instances may be brought to the attention of the Enforcement Unit, *inter alia*, as a result of supervisory work carried out by other MFSA Units; reports made by individuals to the MFSA; reports received from other local regulatory authorities; and reports received from foreign competent authorities. The investigation may result in the MFSA issuing a public warning and possibly taking other regulatory measures against the entity and/or the individuals involved. The case may also be reported to the Malta Police and/or the FIAU if it involves suspected criminal activity and/or money laundering.

MGA – Casinos and Online Gaming

415. Land-based casinos and online gaming providers are required to be licensed by the MGA. Cruise casinos operating in Maltese territorial waters are required to hold a permit which is issued by the MGA. This is the responsibility of the MGA's Authorisations Unit, which currently consists of 13 staff. The assessment team found that the MGA was the sectorial supervisor most alive to the risks of its subject persons being infiltrated by criminals or their associates,

particularly the Italian Mafia, and consequently has put in place market entry and on-going fitness and properness measures to mitigate this risk, albeit well-publicised cases of misuse of gaming firms have occurred. The assessment team notes that bad actors continue to infiltrate the gaming sector in Malta, which reaffirms the requirement for good-quality on-going AML/CFT supervision in Malta.

416. Qualifying shareholders, the chief executive officer, directors, key official, MLRO and other key management personnel of applicants for land-based casinos and online gaming providers are required to complete a Personal Declaration Form and provide an original certificate of good conduct issued by the police in order to certify that the applicant has no criminal convictions. As part of its due diligence procedure the MGA will undertake open source enquiries and check UN sanctions, local credit reports, court freezing orders, Interpol's most wanted list, as well as other public databases to ascertain if there is any negative information on the applicant. The MGA also applies EDD measures on a risk-sensitive basis. EDD measures must be applied: (1) where the applicant is a PEP; and (2) for higher risk jurisdictions (FATF high risk jurisdictions plus jurisdictions assessed by the MGA as higher risk). These EDD measures may include the commissioning of an enhanced criminal probity screening report from a third-party provider.

417. The table below details the number of remote gaming applications that have been processed by the MGA. The figures indicate that the MGA's market entry requirements have become more rigorous as the percentage of refused and withdrawn application significantly increased from 2016 onwards.

Table 30: Number of remote gaming applications received by the MGA

Licence Applications	2014	2015	2016	2017	2018 (End of September)
Received	126	88	108	200	104
Approved	126	88	91	165	86
Withdrawn	0	0	13	32	9
Refused	0	0	4	3	9
% Withdrawn and Refused	0%	0%	16%	18%	17%

418. Every individual who is or was in any capacity included in a licence application submitted to MGA is contained in an on-going monitoring list, which at the time of writing includes 1,850 persons and 1,450 entities being supervised. All rejected persons are included as well. This list is shared with an external service provider who undertakes adverse media and sanctions screening (including the EU and UN lists) on a continuous manner and reports to MGA on a weekly basis.

419. MGA looks into cases of possible illegal gaming, both remote and land-based, and undertakes ad-hoc checks in order to detect illegal gaming, including field operations (normally conducted jointly with the Police). When illegal gaming activity is found, MGA files police reports for the latter to initiate prosecution. Currently, there are 37 on-going prosecutions for illegal gaming going on within the Maltese courts in respect of which MGA is providing assistance to the prosecution. Since 2017, there have been 3 convictions.

420. Further to the above, since 2015 MGA has filed 18 reports with the Police, requesting the prosecution of a number of natural and legal persons which operated gaming activities in and from Malta illegally.

Legal and Accountancy Services

421. When prospective law graduates apply for their advocate warrant exam, they have to submit a police conduct certificate. The warrant is approved by two judges. However, there is no specific law regulating lawyers other than ethical standards issued by and subject to monitoring by the Commission for the Administration of Justice. The same process applies to foreigners wishing to practice law in Malta (however, the police certificates are not verified). While the authorities have the legal authority to disqualify an advocate upon conviction of a crime, there are no proactive on-going fitness and properness checks for lawyers. Therefore, it is assessed that the market entry measures in Malta for sole practitioners, partners or employed professionals in law firms are not adequate. This is a significant ML/FT risk for Malta, which is recognised by Malta in its NRA, as the legal profession often handles many international customers and faces challenges with identification of non-face-to-face clients. On the other hand, notaries are public officials and are regulated and subject to on-going supervision by the Notarial Council.

422. Accountants are regulated based on the Accountancy Profession Act. Accountants are also warrant holders having to submit the police good conduct certificate, as well as two references. The same process applies to foreigners wishing to practice accountancy in Malta (however, the police certificates are not verified). The Accountancy Board (appointed by the Minister of Finance) has a quality assurance unit that can investigate (for instance in case of complaints) and discipline (fines, suspension, removal).

Real Estate Agents, DPMS

423. Real estate agents and DPMS are not licensed, hence there are no provisions preventing criminals and their associates from being involved in these sectors. However, this sector is subject to on-going AML/CFT supervision by the FIAU. Moreover, Malta operates a notary system for buying property. Therefore, due diligence on purchasers and sellers is also conducted by Notaries.

Virtual Assets

424. Malta has introduced the Virtual Financial Assets Act 2018 (the VFA Act), which sets out to regulate the field of initial coin offerings (ICOs) and virtual financial assets and to make provision for matters ancillary or incidental thereto or connected therewith. The VFA Act captures those persons that are launching crypto-currencies, as well as other service providers connected to that asset class (including brokerage, portfolio managers, custodian and nominee service providers, e-Wallet providers, investment advisors and crypto-currency exchanges). The VFA Act also requires an issuer of virtual financial assets to appoint a VFA agent to assist, monitor and provide guidance throughout the licensing period. The VFA agent must be resident in Malta and licensed by the MFSA. Requests for authorisations and approvals under the VFA Act were only accepted by the MFSA with effect from 1 November 2018. Therefore, the assessment team was not in a position to assess the effectiveness of this new regime.

Supervisors' understanding and identification of ML/FT risks

425. The senior members of FIAU demonstrated a broad understanding of the generic ML/FT risks in Malta. However, the level of knowledge of ML/FT risks in Malta varied across the sectorial supervisors. In particular, the assessment team considered that not all prudential supervisors interviewed at the MFSA were equally cognisant of the ML/FT risks in their sectors. While the FIAU and sectorial supervisors have taken positive steps to improve their knowledge, there remain weaknesses in their appreciation of specific ML/FT risks for subject persons in the securities, insurance, MVTS, law, accounting and real estate sectors.

426. Despite the jurisdiction actively promoting the use of virtual assets and related services in Malta, the authorities are only now in the midst of formally assessing Malta's ML/FT risks associated with virtual assets. However, the Maltese authorities advised that existing risk analyses from other (international) bodies, such as FATF, European Commission and EBA were duly considered. A virtual assets risk assessment has been drafted, but has not been finalised and shared with relevant stakeholders.

427. In 2012 the FIAU introduced an Annual Compliance Report (ACR), which all subject persons are required to complete annually and, which informs its understanding of ML/FT risks. However, the assessment team considers that there are significant limitations with the ACR, as the questions are rudimentary, in that they do not solicit for example quantitative information on the client base or transactions; do not elaborate further on the appropriateness of the policies and procedures in place; and do not vary in accordance with the sector or type of entity (including relevant information on the types of services and products offered) being requested to provide information. Therefore, the way the questions are framed in the ACR does not enable the Maltese authorities to broadly understand and identify ML/FT risks at subject persons.

428. However, the Maltese authorities strengthened their understanding of ML/FT risks in the banking, TCSP and remote gaming sectors in 2017 by: (1) undertaking an extensive data collection exercise on all credit institutions,–TCSPs and remote gaming operators; and (2) introducing a prudential supervision questionnaire which the MFSA's prudential and conduct supervisory units were required to complete (also developed for gaming companies in 2018). These data collection exercises sourced more granular data to assess the inherent risks, including information on the type of products/services offered by the subject person, distribution channels and customer interfaces, details on the volume and value of transactions; details on various types and numbers of customers, deposit balances and countries dealt with (indicating number of customers and beneficial owners, deposit balances and funds under management per high risk / significant jurisdictions). The exercise also collected detailed information on internal AML/CFT controls. Prudential questionnaires were aimed at putting in place a formal procedure to ensure that the AML/CFT supervisors have structured, regular and timely access to information from the MFSA and MGA prudential and conduct supervisors. This information was integrated in the risk assessment of subject persons, together with other sources of information such as information sourced from the analysis section of the FIAU.

429. Nonetheless, it remains unclear how this incorporates wider ML/FT group risks. Furthermore, the ML/FT risk assessments of other types of FIs (securities, insurance and MVTS) and DNFBPs (lawyers, notaries, accountants and real estate agents) are currently based on data mainly collected through the ACR, which the assessment team considers is insufficient for the nature, scale and complexity of business in Malta. Moreover, as reflected in Table 31, some FIs have not submitted ACRs. The authorities have advised that they take supervisory actions against these FIs, but this does not change the fact that they have not sufficient understanding on the risks of these entities.

430. The FIAU's assessment of residual ML/FT risk is currently a manual process. However, the FIAU is in the process of developing a Compliance System which will automate a number of processes, such as the assessment of ACRs and the allocation of risk scores. The objective is to enable the FIAU's Compliance Section, the MFSA and the MGA to have a 'near real time' risk snapshot of the profile of all the entities subject to AML/CFT obligations and an up to date risk overview by sector and across all sectors. It is currently intended that the Compliance System will be fully operational in June 2019.

431. Given that 18 banks (out of 25) have been rated as medium or low risk, it is debatable if the residual ML/FT risk ratings are appropriate for the nature, scale and complexity of Malta's banking sector (refer to Table 31 for the risk ratings applied to subject persons).

Risk-based supervision of compliance with AML/CFT requirements

432. Inspections of FIs and TCSPs which are licensed by the MFSA, are conducted jointly by the FIAU and the MFSA. Inspections of DNFBPs (i.e. real estate agents, notaries, lawyers, auditors and accountants) are conducted and coordinated solely by the FIAU, with the exception of gaming operators which are supervised for AML/CFT purposes by both the MGA and the FIAU. The Compliance Section of the FIAU currently has 13 members of staff devoted to AML/CFT supervision, but this is set to rise to 58 by 2020[71]. The MFSA's Enforcement and AML/CFT unit consists of 13 members of staff, but this is set to rise to 46 by 2020. The MGA's newly formed AML Unit consists of 8 members of staff. MoUs are in place between the FIAU and MFSA/MGA to regulate the cooperation between them on a number of aspects including AML/CFT supervision. The increase in staffing is a positive step as the assessment team considers that the general lack of resources devoted to AML/CFT supervision has had a significant cumulative effect on the effectiveness of the authorities' day-to-day AML/CFT supervision.

433. The FIAU, in conjunction with the MFSA and MGA, has risk-rated all subject persons which completed ACRs or participated in the extensive data collection exercises carried out in 2017 and has assigned risk-ratings to each of these and undertakes both on-site and off-site inspections. However, these risk ratings might be affected by the significant limitations of the ACR as discussed above.

434. FIs and DNFBPs have been risk rated as either: very high; high; medium high; medium and low. The table below summarises the risk ratings for all subject persons in Malta.

Table 31: Risk ratings of the subject persons

Industry Sector	Total Population (start of 2018)	Population Not Risk Rated (%)	Very High Residual Risk Population	High Residual Risk Population	Medium High Residual Risk Population	Medium Residual Risk Population	Low Residual Risk Population
Banking	25	0	3	1	3	9	9
Securities [72]	202	9%	3	27	99	52	4
Insurance	137	49%[73]	6	4	27	29	1
Other FIs	48	13%	3	13	24	2	0
Trustees	167	16%	19	53	56	8	4
CSPs	172	17%	11	44	67	19	1
Lawyers	246	11%	0	36	0	136	47
Accountants	381	4%	0	27	0	196	142
Real Estate	111	15%	0	23	0	43	28
Notaries	279	4%	0	47	0	150	70
Gaming	208	7%	4	30	82	61	16

[71] The new restructuring plan was approved by the Government of Malta in March 2019.

[72] Include 160 Investment Services Providers, 16 Retirement Scheme Administrators and 26 Fund Administrators.

[73] A proportion of these are tied insurance intermediaries and the authorities made a decision not to separately risk assess these entities given their dependence on the insurance company.

435. At the time of the evaluation the supervisory authorities were in the midst of overhauling their policies, procedures and operations on risk-based supervision. The assessment team was informed that, with effect from 2018, higher risk entities would be subject to onsite inspections, medium risk entities would be subject to offsite inspections[74], and low risk entities would be subject to supervisory meetings. However, the authorities were not in a position to provide the assessment team with a documented procedure, setting out how these risk-ratings drive the frequency, scope and nature of onsite and offsite inspections. Accordingly, it is assessed that at the time of the evaluation there was not a coherent and comprehensive graduated risk-based supervisory model. Malta argued that it operates a risk-based model of supervision as four comprehensive inspections were conducted in 2018 on very high-risk subject persons. However, these inspections were in reaction to intelligence received, rather than as a result of a proactive risk-based driven supervisory model. Moreover, in the absence of a clearly defined risk-based supervisory model, it is also unclear how ML and FT risks drove proactive supervisory inspections during the preceding five years.

Onsite Inspections

436. AML/CFT inspections appear to be largely focused on checking that: (i) policies, procedures and controls are in place and applied; (ii) business and customer risk assessments are applied and (iii) CDD measures are applied, in particular that source of wealth and source of funds is established for PEPs and high-risk customers. The private sector participants also confirmed that the inspection teams, which usually consist of three officers, will conduct interviews with the MLRO as well as other key staff and conduct an in-depth review of a representative sample of CDD files. However, there appears to be little assessment by the authorities of the effectiveness of the control and governance frameworks, business models at subject persons to prevent and mitigate ML and FT, systems and processes in places to detect ML/FT related suspicious transactions and implementation of UN TFS. This may explain why significant AML issues described in detail below have gone undetected.

437. There is a MoU between the SMB and the FIAU, MFSA and the MGA, which has entered into force on 31 May 2018, to check TFS-related aspects as part of their supervisory engagements. However, implementation of UN TFS has received relatively less supervisory attention, as also demonstrated under IO 11.

438. The tables below show the number of inspections undertaken between 2013 and up to July 2018. It is unclear from the statistics provided what depth of review was applied and how ML and FT risk drove these inspections prior to 2018.

Table 32: Number of onsite inspections

Onsite Inspections	2013	2014	2015	2016	2017	2018 (up to end of July)
Banks	5	2	3	3	5	2
Non-Bank FIs	2	1	0	4	6	0
Securities	17	25	10	8	10	0
Life Insurance	3	2	5	8	1	0
Trustees	13	19	9	8	12	0
CSPs	3	2	9	18	25	0
Real Estate	2	2	6	13	0	0

[74] This refers to specific off-site supervisory examinations triggered in view of the medium risk identified, and does not include ACRs/REQs and ad-hoc off-site reviews triggered by compliance notes generated by the FIAU Analysis Section and sent to the FIAU Compliance Section which are applicable to all subject persons irrespective of the level of risk they pose.

Agents						
Dealers in Precious Metals	0	0	0	0	0	0
Lawyers	1	1	6	12	5	0
Notaries	3	3	5	15	7	0
Accountants	2	2	5	18	6	0
Online Gaming	Not in scope	Not in scope	Not in scope	Not in scope	Not in scope	21
Total Onsite Inspections	**51**	**59**	**58**	**107**	**77**	**23**

Table 33: Number of offsite inspections

Offsite Inspections	**2013**	**2014**	**2015**	**2016**	**2017**
Banks	2	3	3	12	17
Non-Bank FIs	0	0	0	3	2
Securities	0	0	2	4	3
Life Insurance	0	0	0	0	0
Trustees	3	0	2	1	4
CSPs	0	19	0	3	0
Total offsite inspections	**5**	**22**	**7**	**23**	**26**

439. During the last two years, the FIAU and MFSA have devoted resources to deal with a small number of inspections which were subsequently well publicised. At the end of 2017 the FIAU were granted an additional power in the PMLA to appoint external experts, and in this respect, appointed external experts to assist with carrying out comprehensive and extensive on-site inspections on two banks (refer to box 3.1 and 3.2 for further details) and a group of connected company service providers and accountancy firms in Malta, that were considered to pose a significant risk of ML/FT to the jurisdiction due to a number of factors. The assessment team considers that the FIAU's use of this new power is a positive step in the right direction.

Box 3.1: Example of FIAU/MFSA Intervention at a Bank

Prudential assessments by the MFSA and an AML/CFT on-site review carried out by FIAU/MFSA, were conducted in 2016. Subsequent to these supervisory interventions in November 2017, and following discussions with an Inquiring Magistrate so as to ascertain whether planned supervisory actions could jeopardize an on-going Magisterial inquiry, and before the indictment of the beneficial owner of the bank, the FIAU jointly with the MFSA took a decision to carry out a comprehensive AML/CFT supervisory examination. The MFSA and FIAU sought an independent third party with experience of forensics to assist with this review. On 12 February 2018 the MFSA and FIAU together with the independent third party, without prior notice, entered the premises of the Bank and copied all data of the banking system; all accounts; all transactions; all SWIFT transfer data; customer documentation and all audio and e-mail communications.

The indictment in a third country of the BO of the bank provided concrete and actionable information on his suitability. The MFSA immediately prevented the BO from exercising any influence on the Bank. The MFSA appointed a competent person under the Banking Act to take control and the running of the Bank to prevent any dissipation of assets and any withdrawal of funds. Notwithstanding that the Bank is a less significant institution, the withdrawal of its licence falls within the powers of the ECB. On 29 June 2018 the MFSA submitted its recommendation to the ECB for consideration of the withdrawal of the licence of the Bank and on 16 October 2018 the ECB reached a preliminary decision to revoke the licence of the Bank.

Box 3.2: Example of FIAU/MFSA Intervention at a Bank

In 2017 an on-site examination was carried out on the bank by the FIAU Compliance Section and MFSA following information from the FIAU Financial Analysis Section indicating that the bank was receiving funds of suspicious origin. The examination indicated serious and systemic shortcomings in the bank's adherence to AML/CFT obligations, including the establishment a comprehensive client profile, the carrying out of adequate on-going monitoring and the failure to submit STRs.

Subsequent to the initial on-site examination, and with additional adverse information received from the FIAU Analysis Section, the FIAU Compliance Section decided to carry out a further and more extensive unannounced on-site examination. The second visit was carried out between February and July 2018. To this effect the FIAU and MFSA engaged third party experts and initiated a full scope examination which included the extraction of all relevant data that was stored on the banks' systems and servers. The compliance examination confirmed the findings obtained during the initial compliance examination, which indicated serious and systemic shortcomings in the bank's AML/CFT policies and procedures.

Concurrently to the compliance examination process, and in view of the serious concerns that had been identified, on 5 October 2018 the FIAU issued a Directive to the bank to terminate the business relationship with its main client which was deemed to expose the jurisdiction to significant ML/FT risks. The MFSA also imposed a number of restrictions on the bank's licence. The MFSA also appointed a Competent Person to ensure good governance and proper conduct and the implementation of various remedial measures. Subsequently the MFSA directed the Competent Person to initiate a controlled process for the return of customer deposits. On the 13 October 2018 the FIAU issued a compliance report notifying the Bank with the findings of the compliance examination. The supervisory/enforcement process was still underway at the time of the on-site visit.

440. The assessment team concluded that the supervisory authorities do not have sufficient resources to undertake full risk-based supervision of supervised entities. Given the level of risk factors identified above, the supervisors should address the frequency and depth of onsite inspections.

Remedial actions and effective, proportionate, and dissuasive sanctions

441. The FIAU has a broad range of remedial actions available to encourage compliance. However, the assessment team considers the FIAU's primary focus in the past has been to issue pecuniary fines for breaches of AML/CFT requirements, and only in a limited number of cases did the FIAU assess whether there are systemic deficiencies with a subject person's AML/CFT governance and internal control framework, and apply the necessary remediation measures (e.g. agreed action plans or relevant recommendations).

Compliance Monitoring Committee

442. Findings of AML/CFT supervisory examinations undertaken by the FIAU or MFSA and MGA, which are indicative of AML/CFT shortcomings are referred to the FIAU's Compliance Monitoring Committee ("CMC"). The CMC is an internal FIAU Committee, composed of FIAU officials from the compliance (the 3 most senior officers) and legal sections (the manager of the legal section or his/her representative) as well as the Director and Deputy Director of the FIAU. This internal committee is responsible for the review of potential breaches of AML/CFT obligations and the imposition of administrative penalties where breaches subsist or requesting remedial action. The officers carrying out the supervisory examination from the FIAU or MFSA and MGA are invited to present their findings and the subject person's submissions in front of the CMC.

443. There are two types of administrative sanctions that the Committee may decide to impose: a reprimand and/or a monetary sanction. Concurrently and independently of an administrative sanction, subject persons may be required to rectify their shortcomings and if deemed necessary, the Committee may request the subject person to provide an action plan. In low risk circumstances, the Committee may decide to issue a warning. A warning is not considered to be an administrative sanction, but rather is issued to alert the subject person that the Committee is expecting improvement in the area where deficiencies have been found, and is thus being given the opportunity to improve itself accordingly. The Committee may decide that the FIAU Compliance Team should follow up on the warning and/or action plan to ensure that the measures required are adequately addressed by the subject person concerned.

444. The "Policies and Procedures of the Compliance Monitoring Committee – Offences and Penalties" provides guidance to the CMC on the imposition of AML/CFT sanctions. However, these are broad in nature, and whilst they detail factors to take into account when determining the appropriateness of administrative sanctions, they do not provide guidance as to what constitutes a "serious, repeated or systemic contravention." Acknowledging that the procedures require enhancement, the FIAU was at the time of the on-site visit in the process of amending the procedures to provide more guidance to CMC members when imposing administrative penalties.

445. Administrative penalties (i.e. fines) determined by the Committee are subsequently presented to the Board of Governors of the FIAU. The members of the Board will be notified of the circumstances of the case and the considerations taken by the Committee. The Board of Governors will ensure that in reaching its conclusions, the Committee has acted in terms of its policies and procedures and that the decision is effective, proportionate and dissuasive.

Sanctions

446. Fines exceeding EUR 10,000 imposed for breaches of AML/CFT legislative provisions are published on the FIAU's website where they remain posted for a period of five years from the date of publication. The table below summarises the notices published on the FIAU's website at the time of the evaluation. It is noted that all of the sanctions published relate to isolated breaches rather than to serious, systemic or repeated contraventions. Moreover, no sanctions have been applied to directors and senior managers of subject persons. Given that the NRA highlights that the residual ML/FT risks of company service providers, lawyers and trustees are considered high, it is surprising that significant AML/CFT deficiencies had not been identified in these sectors which required sanctioning during the preceding five years.

Table 34: Notices Published Sanctions on the FIAU website

Sector	Date of Imposition of Penalty	Penalty imposed on the Firm (EUR)	Penalty imposed on Directors or equivalent	Summary of reasons leading to imposition of penalties
Investment Sector	14 June 2018	38,750	None	Findings from offsite inspection which focused on four (4) business relationships
Investment Sector	28 December 2017	15,000	None	In 8 cases failure to take reasonable measures to establish source of funds
Banking Sector	3 November 2017	38,750	None	Failure to establish source of wealth, scrutinise a transaction and submit a STR to the FIAU in respect of a client.
Banking Sector	6 December 2016	20,000	None	Failure to establish source of funds for a client.
Other FIs	27 September	5,500	None	Failure to reply to requests for

	2016			information from the FIAU.
Banking Sector	28 September 2016	4,000	None	Failure to establish source of wealth and source of funds and make a STR in respect of a client.
Banking Sector	7 January 2016	40,000	None	Failure to scrutinise adequately on an on-going basis the transactions undertaken throughout a business relationship; failure to take sufficient measures to establish the source of funds of a PEP client and failure to conduct enhanced on-going monitoring of a business relationship with a PEP.
Investment Sector	9 November 2015	2,500	None	Failure, on one occasion, to take all reasonable measures to establish the source of funds and assets that were registered in terms of the Investment Registration Scheme 2014.
Investment Sector	9 November 2015	2,500	None	Failure, on one occasion, to take all reasonable measures to establish the source of funds and assets that were registered in terms of the Investment Registration Scheme 2014.

447. At the time of the evaluation the highest pecuniary fine in force for AML/CFT failings published by the FIAU was EUR 40,000. No sanctions had been applied on a subject person's senior management. Therefore, the sanctions are not considered effective, proportionate and dissuasive. Notwithstanding this, the FIAU's appetite to apply higher penalties has increased; the table below summarises the sanctions imposed or being determined by the CMC at the time of the onsite visit. However, the vast majority of sanctions imposed by the FIAU are not yet in force, as they are subject to judicial appeal. Therefore, it is too early to conclude on the overall effectiveness, proportionality and dissuasiveness of the penalties applied. This recent approach nevertheless demonstrates an increased commitment on behalf of the supervisors to impose more dissuasive fines for AML/CFT breaches.

Table 35: Sanctions being determined or imposed in 2018, but not in force

Sector	Amount	Status
Banking	EUR 327,500	Under Appeal
Banking	EUR 199,500	Under Appeal
Banking	EUR 11,200	Determined by CMC – not yet issued
Banking	EUR 8,000	Determined by CMC – not yet issued
Trust	EUR 30,000	Under Appeal
Investment	EUR 370,250	Under Appeal
Investment	EUR 38,750	Issued, not appealed[75]
Company Services	EUR 9,000	Issued, not appealed[76]
Company Services	EUR 1,480	Issued, not appealed[77]

Remedial Actions

[75] After the on-site visit the fine was paid and the information was published on the FIAU website.
[76] After the on-site visit the fine was paid, but not published since it is below the EUR 10,000 threshold.
[77] After the on-site visit the fine was paid, but not published since it is below the EUR 10,000 threshold.

448. The FIAU requires subject persons to provide an action plan to remedy shortcomings, but was unable to provide statistics on how many inspections resulted in agreed remedial action plans although a small number of case studies were provided. The assessment team understands that the FIAU's compliance system which is under development will enable the FIAU to maintain statistics on findings and demonstrate how those findings were remediated.

449. During the interviews with the private sector, it became apparent that written feedback from the FIAU was issued so long after the date of the inspection it was no longer considered relevant; in some cases subject persons had not received any written feedback after an on-site inspection. The FIAU subsequently confirmed that there was a backlog of approximately 140 inspections for the period between 2015 and 2017. The FIAU had by the time of the on-site visit issued all compliance reports for these 140 inspections. The delay in issuing timely feedback to subject persons calls into question the effectiveness of these inspections.

Sanctioning by Sectorial Supervisors

450. The imposition of administrative penalties by the FIAU does not prejudice the ability of the sectorial supervisors from taking additional actions, such as suspending or revoking licenses as a result of AML/CFT deficiencies. Notwithstanding that online casinos only became subject persons at the beginning of 2018, the table below indicates that the MGA has taken action as a result of AML/CFT deficiencies.

Table 36: MGA enforcement actions relating to AML/CFT

Enforcement actions	2015	Summary of reasons leading to imposition of sanctions	2016	Summary of reasons leading to imposition of sanctions	2017	Summary of reasons leading to imposition of sanctions	2018	Summary of reasons leading to imposition of sanctions
Notices of Suspension	0		1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	0	
Notices of Cancellation	1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	4	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that these operators were using the gaming services for money laundering purposes	9	The ML risk posed by these gaming operators was deemed to be unacceptable
Fines	0		0		5	Performed a	1	Performed a

						share transfer without the required prior approval of the MGA. This meant that new shareholders were introduced or changed without the Authority performing fit and proper checks on the new shareholders prior to said change taking place.		share transfer without the required prior approval of the MGA. This meant that new shareholders were introduced or changed without the Authority performing fit and proper checks on the new shareholders prior to said change taking place.
Suspensions	6	These suspensions were triggered, by an investigation conducted by the Italian competent authorities, where the operators were investigated for money laundering organised crime and association with MAFIA organised groups	1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	2	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operators were using the gaming services for money laundering purposes	1	This suspension was triggered, by an investigation conducted by the Italian competent authorities, where the operator was investigated for money laundering organised crime and association with MAFIA
Cancellations	1	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the operator was using the gaming services for money laundering purposes	2	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that the gaming operators were using the gaming services for money laundering purposes.	3	From information and intelligence collected by the Authority, the latter had reasonable grounds to conclude, that these gaming operators were using the gaming services for money laundering purposes.	4	The ML risk posed by these gaming operators was deemed to be unacceptable

451. Until the supervisory actions taken against two Maltese credit institutions in 2018, the MFSA had not suspended or cancelled a licence of an FI as a result of identified AML/CFT deficiencies. This reinforces the view of the assessment team that, while it is clear that the

MFSA's resolve to deal with ML and FT concerns has increased, there has been a disconnect between AML/CFT and prudential supervision at the MFSA during the period under review.

Impact of supervisory actions on compliance

452. While the FIAU considers that the subject persons' compliance with the AML/CFT requirements has improved (and in this respect provided a small number of typologies), it was unable to provide detailed statistics on the nature of breaches identified and what action were taken to remediate the underlying cause of these breaches. Taking into account that the FIAU has not in the past routinely imposed remediation plans, it is difficult to conclude to what extent the FIAU is having an effect on the compliance of FIs and DNFBPs.

453. The recurring theme which developed during the interviews with the private sector was the significant impact non-Maltese correspondent banks hold over the financial services sector in Malta. The majority of Maltese-licensed credit institutions rely on correspondent banks to process payments in currencies other than the Euro. The assessment team was advised on several occasions that correspondent banks were increasingly making rigorous enquiries of their respondents, including conducting on-site inspection visits to the premises of the Maltese credit institutions. The majority of credit institutions stated that there was a fear of losing correspondent banking relationships. Therefore, several banks were forced to meet certain requirements set by correspondent banks, such as refraining from processing any payments relating to the gaming sector, crypto-currencies sector, IIP clients or even accepting such clients. As a result of discussions with the private sector, the assessment team considers that any increase in compliance is more likely as a result of Maltese credit institutions' fear of losing their correspondent banking relationships (which has a cumulative effect on those FIs and DNFBPs which bank their clients in Malta), rather than as a direct result of AML/CFT supervisory actions taken in Malta. However, this is likely to change in view of the supervisory authorities' increased appetite to apply higher sanctions. In particular, once the sanctions listed in Table 35 and the rationale for imposing these sanctions has been made public, this should have a more dissuasive effect on subject persons in Malta. This is why it is critical that the FIAU's approach to imposing sanctions should be streamlined to ensure timely outcomes and that the publication of sanctions is not delayed through judicial appeal.

Promoting a clear understanding of AML/CFT obligations and ML/FT risks

454. The FIAU does organise and participate in a number of seminars, and was considered by the private sector representatives interviewed as open and co-operative. Moreover, the staff in the Legal Unit and International Relations within the FIAU has increased which has led to an increase in the production of guidance notes in 2018.

Training and Outreach

455. Regular training sessions, seminars and conferences have been conducted by the FIAU throughout the past years. Staff members of the FIAU have also delivered training/presentations to subject persons within the various sectors at events that were organised by representative bodies and private institutions.

456. During 2017, and in conjunction with the revision of the FIAU Implementing Procedures Part I, the FIAU organised two training events (in February and April 2017, respectively). These events were open to all subject persons and were attended by almost 900 individuals. In 2018 the FIAU, in conjunction with the MFSA with external experts, held a one-week training event which was intended to provide guidance to subject persons on the carrying out of AML/CFT business risk assessments. The training events targeted credit institutions, trustees, CSPs,

investment companies, notaries and real estate agents, and were attended by around 270 individuals.

General and sector-specific guidance

457. The main guidance document issued by the FIAU (and which provides general guidance on the application of all the AML/CFT obligations envisaged under the PMLFTR) is the Implementing Procedures Part I. These Implementing Procedures lay down legally-binding procedures and provide guidance, and is applicable to all subject persons (i.e. both the financial and the non-financial sectors). The Implementing Procedures Part I were issued on 20 May 2011 and were most recently updated on 27 January 2017. Although the PMLFTR was introduced on 1 January 2018, at the time of the onsite visit the revised version of Part 1 of the Implementing Procedures was issued for consultation by the FIAU, but was not yet in force. As from 2014 the FIAU has published a number of sector-specific and ad-hoc guidance notes to assist subject persons carrying out AML/CFT preventative measures. The increase in staff in the Legal Unit and International Relations within the FIAU appears to be paying dividends as there was a sharp increase in the number of guidance notes published in 2018. While this is positive, further work is required as there exists currently no sector-specific guidance for the investment, insurance and TCSP and virtual asset sectors.

Conclusion

458. **Malta has achieved a low level of effectiveness for IO.3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

IO.5

- 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 could be used for ML/FT purposes has been finalised and shared with relevant stakeholders. Moreover, the assessment team found that there was a lack of detailed knowledge amongst some of the authorities and the private sector of the main types of predicate crime that legal persons and legal arrangements are exposed to, in particular that the vehicle itself may be used to facilitate financial crime.

- 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.

- Information is available publicly on the creation and types of legal persons and arrangements in Malta. Basic information on Maltese legal persons is publically available.

- 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. Moreover, as reflected in IO.3, significant concerns have been highlighted concerning the adequacy of supervision of subject persons. At the time of the evaluation, no sanctions relating to significant AML/CFT deficiencies had been applied to the gatekeepers of Maltese legal persons and legal arrangements, being TCSPs and/or lawyer or accountants, in the preceding five years.

Recommended Actions

- The authorities should finalise their assessment of the vulnerabilities and the extent to which all types of Maltese legal persons and legal arrangements could be misused for ML/FT. This assessment should include: (i) the domestic and international ML/FT threats, including the underlying predicate crimes, that Maltese legal persons and legal arrangements are exposed to; and (ii) the vulnerabilities of the Maltese multi-pronged approach to obtaining accurate and timely beneficial ownership information. Upon completion the authorities should ensure that the conclusions of this assessment are communicated to all relevant stakeholders, and where

appropriate, the private sector; and appropriate measures should be put in place to mitigate any identified vulnerabilities.

- Malta should ensure that the Registry of Companies has adequate resources and legal powers to ensure that it holds accurate and up-to-date basic and beneficial ownership information and that it applies effective, proportionate and dissuasive sanctions; and consider whether a more robust approach to striking-off delinquent companies is required.
- Effective, proportionate and dissuasive sanctions should be applied by the FIAU to gatekeepers which fail to maintain up-to-date beneficial ownership information.
- Technical issues identified in the TC annex should be addressed to strengthen measures to prevent the misuse of legal persons and legal arrangements.

459. The relevant Immediate Outcome considered and assessed in this chapter is IO.5. The Recommendations relevant for the assessment of effectiveness under this section are R.24 and 25.

Immediate Outcome 5 (Legal Persons and Arrangements)

460. Malta has a mixed legal system in that it has its roots in the Civil Law, but has absorbed many features of Common Law. The Maltese legal framework provides for the establishment of the following legal persons: public liability companies; private limited liability companies; Societa Europea, European Economic Interest Groupings; Partnerships en nom collectif (unlimited liability) and Partnerships en Commandites (limited liability); as well as private foundations, purpose foundations and associations. With regard to legal arrangements, the Maltese legal framework provides for the establishment of trusts.

461. The Maltese authorities take a multi-pronged approach to obtaining beneficial information on Maltese legal persons legal arrangements in a timely basis as follows: (i) based on data collated by the Registry of Companies, approximately 98%[78] of legal persons seek the services of a corporate service provider and/or a lawyer or accountant who are subject to AML/CFT obligations at the incorporation stage and/or on on-going basis; (ii) all companies set up in Malta have a share capital requirement and the authorities estimate that in practice 80% of these companies' share capital is deposited into a Maltese bank account, and is therefore subject to AML/CFT obligations; and (iii) with effect from 1 January 2018 all new Maltese legal persons were required to obtain beneficial ownership information and disclose such information to the pertinent registries. Companies and partnerships formed and registered prior to 1 January 2018 were required to submit the beneficial ownership information on either the anniversary of its registration or when there is a change in the beneficial ownership of the company, whichever is the earlier. Therefore, by the third quarter of 2019, Malta should have retroactively populated the beneficial ownership registers information for all legal persons.

462. In addition, with effect from 1 January 2018, trustees who were appointed for trusts which generate tax consequences in Malta were required to report the beneficial ownership information of such trusts, whereas for the existing trusts (generating tax consequences) prior to 1 January 2018, such beneficial ownership information was reported by 1 July 2018. The effectiveness of these provisions is discussed below.

463. The below table outlines the number of companies, foundations and associations registered in Malta as of spring 2018:

[78] Of the 4420 companies registered between January and October 2018, only 40 companies were registered without the assistance of a subject person.

Table 37: Number of companies, foundations and associations

Year	2014	2015	2016	2017	2018
Public Limited Liability Company	422	477	523	555	555
Private Limited Liability Company	38,800	42,213	45,348	48,772	48,129
Societa Europea	6	7	7	7	7
European Economic Interest Grouping	30	34	40	40	41
Partnerships en Commandite	95	127	141	159	159
Partnerships en nom collectif	979	1,014	1,062	1,098	1,125
Private foundations	76	116	143	168	171
Purpose Foundations	168	194	228	264	268
Associations	68	80	93	110	113

464. For trusts, there is no registration obligation other than for those that generate tax consequences in Malta. However, the MFSA regularly collects data for supervisory purposes, and as at 31 August 2018, confirmed that there were 3529 trusts under the administration of licensed trustees in Malta[79].

Public availability of information on the creation and types of legal persons and arrangements

465. As noted in more detail at R.24, information on the various types, forms and basic features of Maltese legal persons and arrangements is publicly available on the website provided by the Ministry for Justice, Culture and Local Government. The Public Registry, Malta (https://identitymalta.com/legalpersons/) and the Registry of Companies (https://www.roc.mt/ROC/) both have created websites through which relevant forms required to incorporate a legal entity can be downloaded. The websites provide information and guidelines about the incorporation procedures to be followed for all types of legal persons along with general information about the nature and structure of the various types of legal persons.

Identification, assessment and understanding of ML/TF risks and vulnerabilities of legal entities

466. 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. The authorities assessed the residual ML/FT risk for company service providers and trustees as high. Furthermore, the authorities (in conjunction with an international consultancy firm) have carried out a further analysis of how all types of Maltese legal persons and legal arrangements could be used for ML/FT purposes. A risk assessment document has been drafted, but not finalised and shared with relevant stakeholders. Therefore, the Maltese authorities did not consider they were in a position to summarise and provide a copy of this document to the assessment team to retain and analyse. Furthermore, with the exception of the FIAU, the assessment team found that there was a lack of detailed knowledge amongst some of the authorities and the majority of private sector interviewed, of the main types of predicate crime that legal persons and legal arrangements are exposed to, in particular that the vehicle itself may be used to facilitate financial crime.

Mitigating measures to prevent the misuse of legal persons and arrangements

467. Malta has taken three key measures to prevent the misuse of legal persons and legal arrangements. The first measure was the introduction of Malta's two legal persons' registries,

[79] It is unlikely, in the view of Malta, that there is significant number of express trusts that are governed by Maltese law, where the trustee is outside of Malta, due to the certain restrictions (see Rec.25, criterion 25.1).

which provide a source of basic information on all Maltese legal persons. The second measure was the introduction of regulation covering the trust and corporate service sector. Both trust service providers and CSPs are subject to prudential and conduct of business regulation by the MFSA and AML/CFT supervision by the FIAU in conjunction with the MFSA. The third measure was the introduction of beneficial ownership registers on 1 January 2018 for all types of legal persons and trusts.

468. The Maltese authorities take a multi-pronged approach to obtaining beneficial information in a timely manner on legal persons incorporated under Maltese law and legal arrangements, but the assessment team has identified the following shortcomings with each of these methods, which could call into question the accuracy of beneficial ownership information held on legal persons in Malta:

a) Trustees have been regulated and supervised by the MFSA since 2004 and CSPs since 2013, albeit subject to AML/CFT supervision prior to this date, as they were deemed to be subject persons under the PMLFTR. However, there is no legislative provision requiring a subject person to incorporate a company or register a partnership and maintain its registered office. Therefore, legal persons may be created without the scrutiny of an entity subject to Maltese AML/CFT supervision. In mitigation, the authorities estimate that approximately 98% of legal persons seek the services of a Maltese supervised corporate service provider and/or a lawyer or accountant at the incorporation stage and/or on on-going basis. Nonetheless, lawyers providing company services are exempt from registration with the MFSA, in view of the fact that they are already subject persons. However, as reflected in IO.3, it is assessed that lawyers are not subject to adequate market entry measures. Moreover, under IO.3 the assessment team has highlighted significant concerns regarding the adequacy of AML/CFT supervision and application of remedial actions and/or sanctions on subject persons, in particular, company service providers, lawyers, accountants and trustees.

b) All companies set up in Malta have a share capital requirement. However, there is no requirement for this to be deposited in a Maltese bank subject to AML/CFT supervision. The authorities estimate that in practice 80% of these companies' share capital is deposited into a Maltese bank account. However, this is likely to reduce further as the corporate service providers interviewed advised that it was becoming increasingly difficult to bank their clients in Malta due to the enhanced scrutiny of CDD checks by Maltese banks. Therefore, beneficial ownership information would not be available to the Maltese authorities via this approach for approximately 20% of companies.

c) Centralised registers of beneficial ownership have been created for both legal persons and trusts. These are maintained respectively by the Registrar of Companies, Registrar of Legal Persons (Associations and Foundations), and the MFSA. However, the registers for legal persons are currently being retroactively populated. Therefore, the assessment team could not fully assess the effectiveness of this new mechanism. Nonetheless, the assessment team identified the following shortcomings with the register of beneficial ownership for companies and other commercial partnerships: (i) directors/partners and the company secretary are responsible for providing basic and beneficial ownership information to the Registrar of Companies and other competent authorities. However, to date there is no requirement for the director and/or the company secretary to be resident in Malta, and thus subject to Maltese AML/CFT supervision. Nevertheless, irrespective of whether the directors/company secretary are resident in Malta or not, they are still subject to the obligations set out in the Companies Act (Register of Beneficial Owners) Regulations to submit accurate and up to date beneficial ownership information; and (ii) 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 on register of beneficial ownership. In particular, the Registry of Companies is not empowered in legislation to undertake on-site visits to verify the accuracy of beneficial ownership

information held on companies and commercial partnerships. However, at the time of the evaluation the Registry of Companies was investigating as to how to enhance its existing verification checks, which are detailed below.

469. The authorities advise that the Registry of Companies carries out a thorough vetting of a company's memorandum and articles prior to incorporation, as well as checks on the natural persons involved in the company, including: (i) requesting a copy of an identification document; (ii) bank/character reference in the case of non-EU residents; and (iii) checks whether the relevant individuals are sanctioned as per the lists issued by the United Nations Security Council, EU and the US Office of Foreign Assets Control. In the case of body corporates in the company/commercial partnership structure, the Registrar requests a good standing certificate. As part of its verification process of the registered office of the company (which is required by law to be in Malta), the Registry of Companies also requires a copy of a lease agreement or a contract of sale of specific premises (unless the address is known to be that of the CSP, warranted lawyer or accountant), evidencing that the company will therefore be utilising the address indicated therein and is authorised to do so. Moreover, the Registrar of Companies is empowered in legislation to refuse registration of documents until beneficial ownership information is given.

470. In cases where the proposed company structure involves a trust, the Registry of Companies requests a declaration that due diligence has been carried out on the ultimate beneficial owner(s). In those residual cases where a company is not incorporated through the services of a subject person, the Registry of Companies does not proceed with the incorporation and registration of the company, unless a true copy of an identification document, in case of natural persons, or a good standing certificate (issued from the relevant jurisdiction's company registry) in case of body corporates, is provided to the Registry, in relation to all proposed directors, company secretary and shareholders. Such documents are required to be certified by a warranted lawyer or accountant. In addition, in such cases the Registry of Companies also requires a bank/character reference on the shareholders, a police conduct certificate, a utility bill to verify the address as well as a declaration confirming that they have not been or are: (i) interdicted or incapacitated; (ii) undischarged bankrupt; (iii) convicted of any of the crimes affecting public trust or of theft or of fraud or of knowingly receiving property obtained by theft or fraud; and (iv) not subject to a disqualification order under Art. 320 of the Companies Act.

471. The Registry of Companies has provided some examples of the types of verification of information which began following the introduction of the register of beneficial ownership (Box 5.1.).

Box 5.1.: Verification of information on beneficial owners by the Registry of Companies

Case Study 1: A company submitted a Form BO1. The analyst vetting the document noted that the shareholder, a body corporate holding 1200 shares, was registered in the UK. The analyst checked with the UK's Person with Significant Control Register and found out that the natural person disclosed did not match with the UK's Register. The analyst requested clarification and the company confirmed that the information on the UK register was correct and therefore submitted another Form BO1 with correct information.

Case Study 2: A company submitted a Form BO1. The analyst vetting the document noted that the date of birth did not match with the passport. The analyst sent back the form and requested an amendment. Once the amendment has been submitted, the beneficial owners were registered.

Case Study 3: A company […. Yachting Limited] submitted a Form BO2. The shareholder of the company was another Maltese Company [… (Malta) Limited], whose shares were held by another Maltese company [E (Malta) Limited] whose shares were in turn ultimately owned by a company registered in a foreign

jurisdiction [.... (Group) Limited]. The analyst performed an internal search and found a discrepancy between the beneficial ownership information of E (Malta) Limited and the beneficial ownership information of … Yachting Limited. The analyst sent the form back and refused to register it until the mistake was rectified.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

Basic information held at the registries

472. Every type of Maltese legal person has to be registered with the Company Registrar or the Registrar for Legal Persons for it to obtain legal personality. Registration involves the provision of basic information as prescribed under R.24 of the TC Annex. Basic information on Maltese companies and partnerships is publicly available (accessible online). In relation to the basic information in respect of foundations and associations, this is also available publicly for physical inspection. Legal persons are required to notify the respective Registrar of changes to basic information within 14 days from the date of the amendments together with the relevant returns and documentation.

473. The assessment team was advised that the Registry of Companies and the Registrar of Legal Persons check the completeness of the basic information/documentation provided in respect of legal persons. Moreover, where the object clause of a proposed new company or foundation includes an activity relating to financial services which would require a licence or other authorisation from the MFSA, the registration of the company or foundation is not effected prior to confirmation that the MFSA has in principle approved the issue of the licence. Any changes to registered company information, including shareholder information, only takes effect once they have been registered with the relevant Registry.

Beneficial ownership information held at the registries

474. The MFSA, the Registry of Companies and the Registry of Legal Persons (Foundations and Associations) have established beneficial ownership registers respectively for trusts and legal persons, as required under EU and Maltese law. As of January 2018, beneficial ownership information was requested and included in the relevant register for any newly-formed legal person. At the time of the mutual evaluation[80], the registries were not fully populated with beneficial ownership information. It is expected that Malta would have retroactively populated the beneficial ownership registers information for all legal persons by the third quarter of 2019. At the time of the evaluation, the authorities were in the midst of adding beneficial information to the registries. Therefore, it is too early to conclude on the overall effectiveness of actions taken and the impact of such to the overall transparency of the beneficial ownership information in Malta, especially taking into account some other shortcomings with this new mechanism, as discussed above.

475. The beneficial ownership registers for both legal persons and legal arrangements are freely accessible by all authorities through an online system, including for the tax authorities and customs. Subject persons may also access the register in order to carry out due diligence. In the case of the Registry of Legal Persons, an internal electronic database is currently being used until an online electronic register is fully functional.

[80] At the time of the onsite visit the Registry of Companies had received beneficial ownership notifications from 5,200 companies, which represent 83% of the total BO information that had to be submitted up to 31 October 2018, in accordance with the transitional provisions. However, it should be noted that there are approximately 48,000 Maltese companies.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal arrangements

476. Trustees authorised in terms of the Trusts and Trustees Act are required to identify and verify beneficial owners of both Maltese and non-Maltese express trusts.

477. For trusts which generate tax consequences in Malta, there was no registration obligation prior to 1 January 2018. Therefore, in order to obtain beneficial ownership information, enquiries would be made to all banks, or all TSPs or CSPs on whether they have any dealings with a particular trust or legal person and requiring the FI or DNFBP to provide relevant information, or else by making an enquiry with the MFSA, which in turn has extensive powers to request information from TSPs and CSPs, as explained in the TC annex, and which information would then be shared with the competent authority.

478. With respect to the trusts beneficial ownership register, with effect from 1 January 2018, trustees who were appointed as such for trusts which generate tax consequences were required to report the beneficial ownership information of such trusts. For the existing trusts (generating tax consequences) prior to 1 January 2018, such beneficial ownership information was reported by 1 July 2018[81] and was available and accessible to competent authorities and subject persons. By October 2018 the trusts beneficial ownership register was made available online, whereby free and unfettered access was granted to competent authorities, and search facilities granted to subject persons for the purposes of carrying out due diligence in terms of the PMLFTR. Upon receipt of beneficial ownership information of trusts, the MFSA also carries out sample checks of identification details against electoral registers and other due diligence tools. It should be noted that, since the MFSA is also the competent authority responsible for the supervision of trustees, the MFSA therefore does not merely collate the beneficial ownership information of trusts in the relevant register.

479. The MFSA and the FIAU have the right to request and access BO information from trustees in relation to all trusts, irrespective of any tax consequence or otherwise.[82]

Timely access by the FIAU and Police to beneficial ownership information

480. Malta's Police force and the FIAU can obtain both basic and beneficial ownership information through statutory powers.

481. The assessment team was informed that during recent years, neither the FIAU nor the Police have experienced any difficulty in obtaining beneficial ownership information as required. The FIAU and other authorities also confirmed that, when they require the beneficial ownership information of a legal person, they resort to requests to various sources, namely the Registry of Companies itself, banks and other FIs, as well as any other relevant subject persons. They confirmed that they have never found any discrepancies between the said sources. Moreover, the FIAU advised that as a matter of standard practice they will always request beneficial ownership information as part of any request made to a subject person, regardless of the underlying reason for the request. This includes situations where the FIAU may already have beneficial ownership information on a specific legal person on file, with the aim of corroborating this information before using it for analytical purposes sending it to a foreign FIAU or sharing it with a competent authority in Malta. The private sector interviewees

[81] At the time of the onsite visit the Trust Beneficial Ownership Register had received beneficial ownership notifications from 271 trusts, which covers all reportable trusts in terms of the relevant regulations (i.e. trusts which generate tax consequences).

[82] By the third quarter of 2019 (in view of the deadline for implementation of the Fifth Anti-Money Laundering Directive) Malta will retrospectively bring all trusts into scope of the reporting requirements for the Trusts BO Register, irrespective of whether such trusts generate tax consequences or otherwise.

confirmed that they often received requests for beneficial ownership information from the authorities.

482. The following is a table of requests by the FIAU to subject persons for beneficial ownership information that was sent only as a result of a foreign request for information, broken down by year. The table does not include cases where the FIAU sent such requests to subject persons in a domestic context. However, the authorities confirmed that the same average time of 3-4 days to obtain beneficial ownership information would still apply.

Table 38: Requests by FIAU to subject persons for beneficial ownership information

Year	Foreign requests for information from foreign FIUs	Requests sent to subject persons	Foreign requests for Information	Average time taken to obtain information
2014	42	361	42	4 days
2015	41	668	41	3 days
2016	79	1361	79	4 days
2017	125	1763	125	3 days
2018	67	893	67	3 days

483. The newly-centralised registries of beneficial ownership of legal persons and legal arrangements will greatly assist authorities in obtaining beneficial ownership information in a timely basis. However, as reflected above, there are some shortcomings in the regime which could call into question the accuracy of the information.

Effectiveness, proportionality and dissuasiveness of sanctions

Legal Persons

484. The Registrar of Companies is empowered to issue pecuniary fines for the failure to submit both basic and beneficial ownership information within the prescribed filing period. The tables below detail the number of fines applied and the percentage of those which have been settled.

Table 39: Pecuniary Fines for Basic Information

Year	Number of Fines	Percentage of Fines Settled
2014	1421	78%
2015	1517	73%
2016	1636	74%
2017	1912	72&
2018	2122	59%

Table 40: Pecuniary Fines for Beneficial Ownership Information

Year	Number of fines	Percentage of fines settled
2018	388	52%

485. Whilst pecuniary fines have been issued for failing to submit both basic and BO information, as indicated above, these are not always paid. The Registrar of Companies confirmed that the judicial proceedings in terms of Art. 401 of the Companies Act to recover such penalties are on-going. Such proceedings include the issuing of garnishee orders on the personal bank accounts of directors. The Registrar of Companies informed that the striking-off procedure would be invoked as a matter of last resort, and to date the Registrar of Companies has struck 4150 non-compliant companies off the register in relation to failure to submit basic

information. However, given that fines remain unpaid since 2014, the Registrar of Companies should reassess if a more robust approach to striking off companies is warranted.

486. Criminal sanctions are provided for under all three sets of regulations governing the beneficial ownership registers (a fine not more than EUR 5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment) in respect of the provision of misleading or false information. Failure to obtain, retain and provide beneficial ownership information to the registries is punishable by penalties ranging from EUR 500-1,000, together with daily penalties ranging from EUR 5-10 for every day during which the default continues under the Register of Beneficial Ownership Regulations (Companies, Foundations and Associations). Taking into account the nature and scale of business undertaken in Malta the pecuniary fines for legal persons are not considered effective, proportionate and dissuasive.

Legal Arrangements

487. The Trusts and Trustees Act provides that any person who contravenes or fails to comply with any of the provisions of this Act, saving any higher punishment which may be provided under any other law, shall be liable upon conviction to a fine not exceeding EUR 466,000 or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment. Furthermore, pursuant to Reg. 9 of the Trusts and Trustees Act (Register of BOs) Regulations, where a trustee authorised or registered in terms of the Act, contravenes or fails to comply with any of the provisions of these regulations, the MFSA may impose an administrative penalty which may not exceed EUR 150,000 for each infringement. No sanctions have been applied so far in accordance with the above-mentioned provisions.

Sanctioning of Gatekeepers

488. As referenced in IO.3, the assessment team is concerned that there has been a distinct lack of sanctioning by the FIAU for AML/CFT failings against the gatekeepers (trust and corporate service providers, lawyers or accountant) of Maltese legal persons and legal arrangements.

Conclusion

489. **Malta has achieved a moderate level of effectiveness for IO.5.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key findings
IO.2

- 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 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.

- The FIAU has a broad legal basis for international cooperation and proactively and constructively interacts with its foreign counterparts by exchanging information on ML associated predicate offences 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. The international cooperation conducted with foreign countries is consistent with Malta's overall geographical risk exposure.

- 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 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. 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).

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

- 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 in collecting the requested information from FIs in cases were a lot of financial data was required by the requesting state.

- 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.

Recommended Actions

IO.2

- The use of formal MLA tools for seeking timely assistance from abroad to pursue ML, associated predicate offences and FT should be improved, in order to make the use of MLA more consistent with the role of Malta as an increasingly growing international financial centre.

- Forms and channels of "diagonal cooperation" that take place between the FIAU and foreign LEAs should be used only when necessary to ensure timeliness in providing information to relevant domestic authorities, maintaining the usual FIU-to-FIU cooperation channels as the main channel to collect or exchange financial intelligence.

490. The relevant Immediate Outcome considered and assessed in this chapter is IO.2. The Recommendations relevant for the assessment of effectiveness under this section are R.36-40.

Immediate Outcome 2 (International cooperation)

Providing constructive and timely MLA and extradition

491. International cooperation is particularly important in the Maltese context, given the geographic position as a destination for foreign proceeds that exposes the country to a high risk of transnational criminal activities. On the basis of various legal arrangements and international instruments (including UN, CoE and EU Conventions, treaties and other bilateral agreements on mutual legal assistance, see further R.36 in the TC Annex), Maltese authorities are able to provide a wide range of assistance in case of requests for international cooperation in criminal matters and extradition.

492. The national authority responsible for coordinating both incoming and outgoing mutual legal assistance requests is the AGO. Incoming requests are received either directly by the AGO or through the MFTP, and in the vast majority of cases are referred to and executed by the Police. Once executed, requests are referred back to the AGO which will then communicate the information to the requesting authority. The AGO has assigned one principle staff officer full-time to deal with MLA requests, who is backed-up by four additional support officers depending on the workload, which the AGO considers as sufficient in terms of resources. Malta has one liaison officer within Europol.

493. Upon receipt of a MLA request, a file is opened and logged into an electronic case-management system which is linked to the Eurojust database. A general review of the legality of the request is conducted, also to verify that all legal requirements are satisfied. The authorities confirmed that in practice the only reason to refuse to reply to an MLA request is when it is going against fundamental principles of laws of Malta. After receiving the MLA request, the AGO refers the case to the competent authority, but keeping a note in the file with regard to the information of the request, including the alleged offence and the requested measure. Automatic notifications generated by the system ensure that requests are executed in a timely manner.

494. In the last year for which full statistics are available (2017), Malta received 138 legal assistance requests. Of these requests, 11,5% concerned ML, while 44,2% concerned fraud and 14,4% tax crimes. On the basis of the information provided by the Maltese authorities regarding the requests executed between 2013 and 2018, the average time of execution of a MLA request related with ML was 51 days. The overall duration very much depends on the nature and importance of the matter, and the authorities are able to prioritise urgent matters and execute them, if necessary, in a matter of hours. Some MLA requests received in 2017 (and very few requests from 2015 and 2016) were still pending at the time of the onsite visit. In some instances delay was caused by difficulties experienced by the Maltese authorities in collecting the requested information from FIs in cases were a lot of financial data was required by the requesting state. Occasionally, these requests (when completed) were followed by additional requests for supplementary information which then did not yet lead to the eventual execution of the original request. The table below gives an overview of incoming MLA requests (excluding extradition) for ML and related predicate offences (note that no incoming requests for FT were received) during the period 2013-2018.

Table 41: Incoming MLA-requests (excluding extradition) for ML and related predicate offences

Year	Total number of incoming requests for all offences	Number of incoming requests related to ML	Number of executed requests related to ML	Average time of execution (days) for requests related to ML[83]
2013	98	17	16	66
2014	90	19	19	56
2015	121	20	17	65
2016	139	22	21	45
2017	138	16	11	42
2018[84]	21	5	5	32

495. The Maltese authorities presented a number of cases where the assistance provided to the requesting countries was considered instrumental in securing a conviction or a confiscation order in a foreign jurisdiction. Some examples are referred below:

Box 2.1: Investment fraud and money laundering

In 2013 the Malta Police received a request from the authorities of a foreign country concerning an alleged investment fraud (Ponzi type) involving a number of Maltese registered companies set up with the assistance of a Maltese CSP. Following the request the Malta Police initiated its investigations and collected relevant information from local credit institutions, company registry and tax authorities which indicated a number of connections between the suspects involved. Upon the request, a coordination meeting with the foreign authorities was held at Eurojust, aimed at providing a wider explanation and understanding of the investigation in progress, and how the investigation linked other States. The data collated by the Maltese authorities also from the other involved jurisdictions were shared with the authorities of the requesting country so that they could be in a better position to submit a supplementary request in a specific manner. During the coordination meeting it had been also agreed that additional actions will be taking place simultaneously in each State. Indeed, in a supplementary request the authorities of the requesting country referred European Arrest Warrants against all suspects and to every State. The Malta Police subsequently raided simultaneously the places frequented by the subjects, and then proceeded with the respective searches and arrests. Following the raid, searches and arrest, the Court of Magistrates of Malta accorded a Magisterial Inquiry wherein several experts (including Information & Technology, medical, arts and vehicle experts and scene of crime officers) were appointed to assist. As per request, the suspects found in Malta were arrested, detained and questioned. A Maltese company service provider and other individuals who provided services/assistance to the suspects were also questioned. Following this, two suspects were arraigned in Court on the bases of the European Arrest Warrant whereby both accepted to be extradited and face the investigation and possible charges against them. During the investigation carried out by the Malta Police, other assets (not originally referred to by the requesting authorities) were identified and subsequently an additional order from the Criminal Court was issued and the assets were frozen. Moreover, certain assets which were not deemed connected were released after consultation with the requesting authorities through the AGO. In the course of the same year the Court of Magistrates of Malta continued the execution of the letters of request; several witnesses testified and all immovable and moveable assets were frozen, secured and preserved. In due course, another coordination meeting was held at Eurojust whereby a briefing was provided on the actions taken and the way forward by the requesting authorities. Upon request, all valuable moveable assets which were seized and frozen were transferred to the requesting country through the AGO.

496. Mutual legal assistance in relation to seizure and freezing of assets provided by the Maltese Authorities is referred below.

Box 2.2: Fraud, misappropriation and ML

[83] Numbers for 2018 only refer to requests received until 31 March 2018.
[84] Numbers for 2018 only refer to requests received until 31 March 2018.

The case concerned about 130 victims of fraud which concluded a foreign exchange trading service agreement ('FOREX') with a number of companies. These contracts were concluded in a foreign country via internet. The victims transferred the money they intended to invest to the concerned companies, one of which had bank accounts with a Maltese bank. In 2016 the concerned companies traded on an unprecedented scale within a few minutes, whereby most of their clients lost a substantial amount of their investment, including parts of the capital which the concerned companies had offered capital protection over. In accordance with the signed contracts with the relative victims the capital protection settings obliged the concerned companies to stop trading at a loss of 50% of the capital invested. However, rule in the contract was not observed. The aggrieved parties incurred damages round about EUR 630,274. Malta received an MLA request from the foreign country requesting assistance to seize the remaining funds of the concerned companies which were held with Maltese banks. Upon receipt of this request the AGO filed an application before the Criminal Court asking for the issue of an attachment order against the concerned companies in view of the aforementioned facts. The Criminal Court within hours acceded to such a request and an Attachment Order was issued, which was forthwith notified to the relative bank licensed in Malta. The said bank informed the AGO that substantial amounts in the names of the concerned companies have been seized. The relative information was passed on to the foreign authorities, who from their end have continued with their investigations.

Box 2.3:Fraud

The accused, who was a lawyer by profession, was suspected of having, as sole owner of a law office in a foreign country, instigated several accused persons employed with him as lawyers to deceive capital investors about the chances of success for the assertion of compensation claims in so-called conciliatory proceedings during the period of June 2011 and February 2015. The remuneration charged for the execution of the conciliatory proceedings was respectively lower than that provided for by the legal provisions for lawyer's fees in the country. Confiding in the recommendations made by the other accused persons (at the instigation of the accused), several thousand aggrieved investors respectively mandated the law office to initiate and execute conciliatory proceedings, although, in reality, there were no prospects that the opposing party would even participate in such proceedings. In fact such conciliatory proceedings failed, as expected, given that the opposing parties never participated in such proceedings. Notwithstanding the above the accused still charged the aggrieved persons fees for legal services in connection with these conciliatory proceedings. In such fashion the accused obtained a total of EUR 2,506,133.49. It was believed that the accused transferred such funds to a Maltese Bank. Hence, the foreign judicial authorities issued an EIO requesting the seizure of EUR 2,988,175.12 held in the name of the suspect with a Maltese bank. Upon the receipt of such an order the AGO filed an application before the Criminal Court requesting the said Court to issue an attachment order against the accused. Such an order was immediately issued and served on the bank concerned. The bank managed to freeze the funds available in the said account (even if less from what was originally thought that such account held i.e. EUR 2,988,175.12). The foreign authorities were immediately informed about the results.

Box 2.4: Tax Evasion, fraud and money laundering

Investigations conducted by investigators in a foreign country revealed that a suspect for tax evasion, fraud and ML had a bank account with a Maltese Bank. The suspect did not disclose and declare with the foreign authorities all foreign-held assets for tax purposes. However, the foreign authorities became aware of the Maltese bank account following a search which was conducted at the suspect's residence wherein they found a visa credit card issued by the Maltese Bank. In view of their findings the foreign authorities issued a freezing order in terms of EU framework decision 2003/577/JHA. Upon receipt of the

said freezing order the AGO certified in terms of Maltese law that the said certificate was issued by a competent judicial authority in the foreign country and the said freezing order was served on the local bank. That bank froze the assets in the said bank account, and the AGO informed the foreign authorities accordingly. In order to retain the freezing order in force the AGO files every six months an application with the Criminal Court to request an extension. To date all such applications were granted.

497. The authorities stated that the possibility for concerned persons to appeal domestically against the decisions to implement incoming MLA requests would in practice not hamper effective international cooperation. In cases where the person concerned needs to be formally notified (e.g. in the case of attachment or freezing orders), the AGO liaises with the foreign authorities to find the most suitable date for issuing such an order, to avoid that the formal notification would jeopardise the foreign investigations.

Extradition

498. Malta is able to execute extradition requests, including those related to ML and FT, along the deadlines provided by the Extradition Act. This Act stipulates that once a person is arrested in pursuance of a warrant for extradition purposes, such person shall be brought before the Court of Magistrates (as a Court of Committal) as soon as practicable and in any case not later than forty-eight hours from his arrest. The AGO is the Maltese Central Designated Authority for the receipt and execution of the extradition requests, even for those received through diplomatic channels. The extradition proceedings before the Court of Committal is to be completed within two months from the arraignment date (with the possibility to extend the deadline to further periods of two months). The table below gives an overview of incoming extradition requests for ML and related predicate offences (note that no incoming requests for FT were received) during the period 2013-2018. In practice, the two-month deadline for executing the requests was generally met. However, one request for extradition received in 2016 took considerably longer (660 days) which was explained by the authorities with a number of procedural issues (including an appellate stage before the Court of Appeal) and vast amounts of documentation.

Table 42: Incoming extradition requests for ML and related predicate offences

Year	Total number of incoming requests for all offences	Number of incoming requests related to ML	Number of executed requests related to ML	Average time of execution (days) for requests related to ML
2013	11	2	2	26
2014	12	2	2	17
2015	33	7	7	30
2016	11	1	1	660
2017	18	0	0	N/A
2018[85]	5	0	0	N/A

499. Persons arrested on the basis of a European Arrest Warrant (EAW) are to be brought as soon as possible before the Court of Magistrates (as a Court of Committal), and in any case not later than forty-eight hours from the arrest. In such cases, the decision to surrender shall be taken by the Court within one month starting on the day when the person in respect of whom the warrant was issued was arrested. If an appeal is filed, the related decision shall be taken not later than one month starting on the day when the appeal is filed (either by the AG or by the person in respect of whom the warrant was issued).

500. Moreover, in the event that the Police (through Interpol channels) trace a person against whom there is a red alert in Malta, the foreign police are immediately notified with such

[85] Numbers for 2018 only refer to requests received until 31 March 2018.

information. The Maltese authorities will immediately request the full documentation in relation to the said extradition request. Once the request is received, the AGO verifies the documentation and assesses whether it is in conformity with the Extradition Act. If this is the case, the AGO requests the Minister of Justice to issue the "Authority to Proceed" (Art. 13 of the Extradition Act). The Minister may issue such an order to proceed, unless it appears that an order for the return of the person concerned could not lawfully be made in accordance with the provisions of the Extradition Act. Throughout all the extradition proceedings, the AGO is generally present and maintains contacts with the requesting authority so as to keep it abreast with developments and request any additional information or clarifications which may become necessary throughout the proceedings.

501. Malta is able to extradite its own nationals and does not oppose their extradition. In fact, the legislation dealing with extradition does not make a distinction between Maltese nationals and non-Maltese nationals when dealing with extradition requests. Malta has also implemented simplified extradition proceedings with regard to EU member states under the EAW Regime (Extradition (Designated Foreign Countries) Order). Given that they are based on the principle of mutual recognition, the Court of Committal does not have to determine whether the requested person has a *prima facie* case to answer. Moreover, all extradition proceedings can be further simplified if the requested person consents to his extradition.

502. Malta has only refused extradition requests during the period under consideration due to a lack of procedural prerequisites (but not on the merits of the case). For example, in one case the request did not come from a competent designated foreign judicial authority. In another case, the offence which formed the basis for the extradition request had already been time-barred. The requirement of double-criminality does only exist for coercive measures, but has in practice not posed any obstacles to incoming extradition requests.

Seeking timely legal assistance to pursue domestic ML, associated predicate and FT cases with transnational elements

503. Outgoing requests are also handled by the AGO. Requests may be initiated by the Police, during a magisterial inquiry or during prosecution/trial. The vast majority are initiated by the Police in the course of an investigation.

504. Despite of the frequency and relevance of connections to other jurisdictions of many cases under analysis, Maltese authorities do not regularly seek MLA in relation to ML, associated predicate offences and FT cases. This is also due to the fact that, in addition to the international cooperation through MLA, for which the AGO serves as the central authority, channels of cooperation through direct communication are used by the Police and the FIAU with respective foreign partners. In fact, direct cooperation is often used by the Police and the FIAU and information-sharing is often conducted in parallel via law enforcement and FIU-to-FIU platforms. As these forms of international cooperation do not translate into formal requests of assistance, the number of MLA sent by the AGO are limited (especially when compared with the amount of foreign requests for MLA received in recent years). In 2017, only 15 MLA requests were sent by the AGO, of which 1 related to ML and 7 to fraud (the total outgoing MLA requests were 17 in 2015 and 20 in 2016). In total, Malta made only 10 outgoing MLA requests with regard to ML in the past six years. The table below gives an overview of outgoing MLA requests for ML and related predicate offences (note that no outgoing requests for FT were made) during the period 2013-2018.

Table 43: Outgoing MLA-requests (excluding extradition) for ML and related predicate offences

Year	Total number of	Number of outgoing	Number of	Average time of

	outgoing requests for all offences	requests related to ML	executed requests related to ML	execution (days) for requests related to ML[86]
2013	9	1	1	30
2014	26	4	4	140
2015	17	0	0	N/A
2016	20	1	0	N/A
2017	15	1	1	180
2018[87]	5	3	1	90

505. According to the explanations provided by the Maltese authorities, the limited number of outgoing MLA requests (especially those dealing with ML) would reflect the fact that most ML cases are of a domestic nature and hence there would be no need to seek MLA from foreign authorities. For those cases with an international component, the investigators would also in practice rather engage in informal police-to-police cooperation, which would then not be duly reflected in the numbers. Even considering these explanations, the limited number of outgoing requests does not appear commensurate with the risks faced by Malta as a centre which serves as a crossroad of financial flows affecting different jurisdictions. It also stands somewhat at odds with explanations given by the authorities (made in the context of IO.7) that the low number of ML prosecutions and convictions in Malta would be a consequence of many ML-related cases having international components. Moreover, the assessment team notes that – in light of the statistics - informal cooperation does not appear to later translate into formal cooperation.

506. The establishment of the ARB has facilitated outgoing MLA. Previously, Malta was unable to trace assets located in third states, a gap which the ARB has now filled since it took up its functions on 20 August 2018. The authorities stated that, in at least one case, foreign assets traced by the ARB had already resulted in an outgoing MLA request since the ARB became operational.

Extradition

507. As regards outgoing requests for extradition, Malta makes approximately 10 requests per year. The table below gives an overview of outgoing extradition requests for ML and related predicate offences (note that no outgoing requests for FT were made) during the period 2013-2018. Given the fact that extradition can be only requested when the person is wanted for prosecution (not for investigation) the number of extradition requests naturally reflects the low number of convictions (see IO.7).

Table 44: Outgoing extradition requests for ML and related predicate offences

Year	Total number of outgoing requests for all offences	Number of outgoing requests related to ML	Number of executed requests related to ML	Average time of execution (days) for requests related to ML
2013	9	1	1	547
2014	15	0	0	N/A
2015	18	3	3	273
2016	9	0	0	N/A
2017	14	0	0	N/A
2018	1	0	0	N/A

Seeking and providing other forms of international cooperation for AML/CFT purposes

FIAU

[86] Note that the average time in this table, as well as in the three following tables, only relates to the actually executed requests, and does not take into account the pending ones.
[87] Numbers for 2018 only refer to requests received until 31 March 2018.

508. The FIAU has a broad legal basis for international cooperation and proactively and constructively interacts with its foreign counterparts by exchanging information on ML, associated predicate offences and FT. Information is exchanged by the FIAU either on receipt of a request for information from a foreign FIU, or spontaneously whenever the FIAU believes that the information in its possession can be of interest to one or more of its foreign counterparts.

509. The FIAU, as a member of the Egmont Group of FIUs, exchanges information with other members via the Egmont Secure Web, while also making use of the FIU.Net system to exchange information with FIUs from EU jurisdictions. Under Maltese law, the FIAU is authorised to exchange information with foreign counterparts without the necessity of having MoUs or formal agreements in place. In circumstances where the signature of an MoU is a pre-requisite for the exchange of information in other jurisdictions, the FIAU pursues the conclusion of such MoUs with their respective counterparts.[88]

Table 45: FIU-to-FIU International Cooperation (through FIU.Net and ESW)

Year	2013	2014	2015	2016	2017	2018	(2013 – 26 July 2018
FIAU Incoming requests							
Foreign requests received by the FIAU via FIUNet	34	51	62	66	100	86	**399**
Foreign requests received by the FIAU via ESW	62	49	63	66	85	46	**371**
TOTAL (foreign requests received)	**96**	**100**	**125**	**132**	**185**	**132**	**770**
Outgoing requests							
Requests sent by the FIAU via FIUNet	21	47	43	27	40	69	**247**
Requests sent by the FIAU via ESW	131	149	136	86	230	199	**931**
TOTAL(outgoing requests)	**152**	**196**	**179**	**113**	**270**	**268**	**1178**
Spontaneous disseminations							
Spontaneous dissemination of information by the FIAU via FIUNet	-	5	16	24	79	143	**267**
Spontaneous dissemination of information by the FIAU via ESW	9	47	61	115	198	157	**587**
TOTAL(spontaneous disseminations)	**9**	**52**	**77**	**139**	**277**	**300**	**854**

510. During the period 2013-2018, the number of requests made by the FIAU was steadily growing, reflecting the increasing international relevance of cases subject to analysis by the FIAU, and overall comprised around 1200 requests. The majority of these requests made by the FIAU are addressed to FIUs of other European countries. In 2017, the FIAU's top counterparts were the United Kingdom, Italy, Germany, Switzerland and the United Arab Emirates (by order of the highest number of outgoing requests). The countries from which the FIAU mainly seeks information are consistent with Malta's overall geographical risk exposure.

[88] The FIAU has signed a total of 16 MoUs with the FIUs of the following countries: Belgium, Canada, Cyprus, Georgia, the Holy See, Israel, Japan, Latvia, Monaco, Panama, Romania, San Marino, Slovenia, South Africa, the Republic of North Macedonia and Tunisia. At the time of the on-site visit, negotiations of three further MoUs with foreign counterparts were ongoing.

511. The FIAU expressed its general satisfaction with the cooperation with its major counterparts. According to statistics provided it appeared that there were no requests of the FIAU to foreign counterparts rejected. It was just in a negligible number of cases that the request was not responded by foreign FIUs. The average time for receiving the response varied from 20 to 47 days, depending on the counterpart. The majority of the replies received were considered by the FIAU to be of good quality and to further support the analysis of the case. The FIAU noted that it sometimes encounters difficulties in obtaining banking and account information, especially on beneficial ownership from some counterparts due to some constraints in their legislation.

512. For the period from 2013 to 2018 the number of spontaneous sharing of information made by the FIAU to foreign counterparts was increasing dynamically and overall comprised around 850 disseminations. The vast majority of spontaneous disseminations concern non-residents. The authorities explained the high number of STRs on non-residents with Malta's role as a financial and gambling centre which provides financial and gambling service platforms internationally. The consent for the foreign FIU to use the information to pursue the investigation is given by the FIAU together with the spontaneous dissemination. The large percentage of spontaneous disseminations was sent to foreign FIUs more than 30 days after the information was received (only in around 30% was intelligence received by the FIAU disseminated to other FIUs within 30 days of the receipt).

513. The FIAU provides an extensive international cooperation to its foreign counterparts also based on the received requests. The number of the received requests and the geographical representation of the foreign counterparts is growing on an annual basis (i.e. in 2018 the FIAU received requests from some 46 countries). Around 84% of the requests received originated from European countries. The main originators of requests were Italy, Germany, France, the United Kingdom and Belgium. The vast majority of requests for information received concern information from the FIAU's own database (which includes STR data), bank account data, basic and BO information of Maltese legal persons and arrangements.

514. In parallel with the increase in the number of requests for information received by the FIAU, the time the FIAU took to reply to these requests also improved. Most of the requests are replied to within 1 week to 1 month from date of receipt. As a general rule, the FIAU strives to provide a first reply to foreign requests for information within 30 days from receipt of the request, unless the request specifies a lesser timeframe (in which case the information is provided within that indicated timeframe).

515. According to the feedback provided by Malta's foreign counterparts, the assistance provided by the FIAU was considered effective in terms of timeliness and quality by most of its counterparts. In addition, the FIAU carried out a self-assessment in 2017 to gauge the quality, usefulness and completeness of assistance it provides to its counterparts, in the course of which it requested the FIUs of those jurisdictions with which it mostly cooperated to provide feedback to a questionnaire. 22 FIUs were requested to provide feedback to which 15 FIUs provided a reply. In general feedback received by most of them was positive, in terms of the quality (the information provided is useful, complete, clear and fulfilling the request) and timeliness of the assistance provided. Although this was a one-off exercise, the FIAU is considering the introduction of a procedure whereby feedback on quality, usefulness and completeness of information it provides will be requested from counterpart FIUs along with every exchange of information. The assessment team considers it to be a good approach to further control the timeliness and quality control of the provided cooperation

516. According to information provided by the FIAU, occasionally they communicate directly with relevant foreign law enforcement agencies, when they deem it necessary, in order to

ensure a timely manner of sharing information with relevant counterparts (see the case below). During the on-site visit the representatives of the FIAU pointed out that in these cases the same information is shared also with the FIU of the concerned foreign country. However, the assessment team has concerns that the use of direct channels of communication between the FIAU and the foreign law enforcement authorities may lead to bypassing the use of the normal channels of communication among FIUs and the same function to which the FIU-to-FIU cooperation should be devoted.

Box 2.5: The FIAU assisted foreign LEA in a case which led to the attachment of USD 797,000.

In October 2018 the FIAU received intelligence from a foreign LEA in relation to a foreign registered asset management company and its UBO who is a national of country A and a resident of country B. The intelligence explained that the foreign registered asset management company held funds with a domestic investment services firm which were the proceeds of transactions which violated securities laws of a country B.

The FIAU was also informed of two pending transactions, totalling USD 797,000, one in favour of an account held in country C and the other in favour of an account in country B. The FIAU was also informed that the UBO of the asset management company was incarcerated and the transfer instructions were received from a person who worked in the Operations department of the asset management company. The FIAU suspended both transactions after close communication with the foreign LEA so as to ensure that sufficient timing is allowed for the foreign LEA to submit a formal request to the Malta Police in order to have the funds held in Malta attached.

Following the suspension of the transactions by the FIAU, a report was submitted to the Malta Police who proceeded with securing an attachment order on the funds in question.

517. During the period 2013-2018, the number of spontaneous disclosures received from foreign counterparts was steadily growing, comprising around 483 disseminations. Overall analysis of this information triggered 9 reports submitted by the FIAU to the Police for the period 2014-2018. While no statistics was provided, the Maltese authorities advised that foreign counterparts' disclosures also supported analysis of some cases initiated by the FIAU that subsequently were disseminated to the Police.

Police

518. The Police are active in cooperating and exchanging information with foreign counterparts for intelligence and investigative purposes related to ML, associated predicate offences or FT. This is done through either direct bilateral contacts, or the use of international communication networks such as Interpol, Europol and SIENA. The general powers provided by Maltese law (Art. 92 CC and S.L. 164.02) authorise the Police to cooperate with foreign counterparts and provide requested information for the purposes of identifying and tracing the proceeds and instrumentalities of crime. The table below shows the number of requests received through Interpol and Europol (by type of request).

Table 46: Requests received through INTERPOL channels

Year	INTERPOL - Type of Request(s)				
	Banking documents	**Company information**	**Property & Assets**	**Criminal Records**	**Others**

	information including UBO	involvements including UBO	information including UBOs	information	
2013	4	25	1	34	141
2014	7	41	3	33	176
2015	9	29	2	39	151
2016	21	39	4	49	128
2017	28	47	1	37	159
2018 *(until the end of March)*	12	19	2	12	83
TOTAL	**81**	**200**	**13**	**204**	**838**

Table 47: Requests received through EUROPOL channels

Year	EUROPOL (Siena) - Type of Request(s)					
	Banking documents information including UBO	Company information involvements including UBO	Property & Assets information including UBO	Criminal Records information	Others	
					Governmental Entities (excluding MFSA)	Internal Request (excluding Criminal Records)
2013	nav	nav	nav	nav	nav	nav
2014	62	5	0	670	83	1747
2015	27	5	0	715	46	2230
2016	86	12	0	923	49	3465
2017	109	13	0	1068	27	3825
2018 *(until the end of March)*	30	5	0	348	2	1145
TOTAL	**314**	**40**	**0**	**3724**	**207**	**12412**

519. The Police are able to form JITs with foreign counterparts to conduct cooperative investigations. In particular, the AG may authorise the setting-up of teams to carry out investigations into criminal offences in one or more EU Member States within the ambit of the "Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union". This possibility is complemented by the Police Act which allows the Commissioner of Police to authorise the competent authorities of another EU Member State to conduct in Malta - jointly with or under the supervision or direction of the Police - patrols and other operations by officers or other officials of that State.

Supervisory authorities

520. As an AML/CFT supervisor, the FIAU is also empowered to cooperate and exchange information with foreign regulatory and supervisory authorities. Although no statistics were provided, it became evident for the assessment team form the discussions with authorities and provided examples that the FIAU Compliance Section has in the past sporadically exchanged information and sought the cooperation of foreign counterpart supervisors. There were also some instances when the FIAU, upon MFSA request (in the context of local authorisation and fit and properness checks prior to licensing entities in Malta) exchanged information with foreign jurisdictions, when a link was identified.

521. The FIAU Compliance Section is also a member of and participates in the Anti-Money Laundering Committee (AMLC) of the European Supervisory Authority. It has also recently signed an agreement with the ECB to regulate the practical modalities for exchange of information in so far as the AML/CFT supervision of credit and FIs are concerned, which is in

line with the requirements of the Amendments to the Fourth Anti-Money Laundering Directive (i.e. the 5th AMLD).

522. Other Maltese authorities involved in the AML/CFT system also seek and provide assistance at international level. In particular, the MFSA collaborates with foreign bodies, government departments, international organisations, the European Securities and Markets Authority, the EBA, the European Insurance and Occupational Pensions Authority, the European Systemic Risk Board, the ECB, the Single Resolution Board 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). While such cooperation potentially also includes ML, associated predicate offences and FT, in practice this has not yet occurred, except for instances when communication was conducted via the FIAU as a supervisory body responsible for AML/CFT matters.

523. The MGA is empowered to share supervisory information with foreign counterparts. To that effect, the MGA has a number of MoUs in place with counterpart regulators in the EU and beyond, which provide for the sharing of information. With regard to ML/FT investigations in third states, a request to the MGA for assistance goes through the FIAU and the Police.

Office of the Commissioner for Revenue

524. The Office of the Commissioner for Revenue is an administrative type of body focused primarily on the tax revenue activities. It cooperates with its counterparts on income tax and VAT matters on the basis of the double taxation agreements, and parties to the Convention on Mutual Administrative Assistance in Tax Matters. Cooperation on tax evasion and related ML/FT matters is conducted through respective LEA channels.

Customs Department

525. The Customs Department cooperates with its foreign counterparts via various international platforms, such as the EU Commission's Cash Control Experts Group, the Programmes Information and Collaboration Space (PICS), the Common Customs Risk Management System (CRMS), the Anti-Fraud Information System (AFIS), and the World Customs Organisation's (WCO) Regional Intelligence Liaison Offices (RILO) for Western Europe. However, the exchange of information with foreign counterparts on AML/CFT matters is mainly conducted through the FIAU and LEA channels.

International exchange of basic and beneficial ownership information of legal persons and arrangements

526. Malta frequently exchanges basic and BO information with its counterparts using various sources of data-collection and channels of communication. While the basic information on companies, foundations and associations registered in Malta is available online and publicly accessible (including for the foreign competent authorities), BO information is made available through the international enquiry. In order to obtain and exchange adequate and current basic and BO information with their respective counterparts the Maltese authorities use a combination of sources of information to collect the data. The primary source of such data are the Registry of Companies and the subject persons mainly corporate service providers, or lawyers, accountants and banks, due to their role in the company formation, and provision of further services (see also IO.5). BO information has recently started being held in the Registry for Companies. For the companies incorporated after 1 January 2018, such information is already collected and stored in the registry. Since the registry is still not fully populated, no conclusion can be drawn with regard to the effectiveness of its use.

527. When an MLA request for the identification of basic and BO information of legal persons and arrangements is received, the AGO forwards such request to the Police for execution, which in turn requests such information from the Registrar of Companies or from the subject persons in Malta. In certain instances the FIAU channels are used to identify and verify data before being provided to foreign counterparts.

528. The FIAU is the main source of basic and BO information of the Maltese legal entities and arrangements for foreign counterparts. As mentioned above, these requests comprise the vast majority of incoming enquiries. Requested information would include data on the directors, partners, shareholders, secretary, auditor, legal and judicial representatives of the company, as well as access to other statutory documents of the companies, and information on BO. The FIAU did so far not have any requests concerning a Maltese-registered company where it was unable to identify and supply BO information. 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.

Conclusions

529. **Malta has achieved a substantial level of effectiveness for IO.2.**

TECHNICAL COMPLIANCE ANNEX

1. This annex provides detailed analysis of the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations in their numerological order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report (MER).

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

2. The requirements on assessment of risk and application of the risk-based approach (RBA) were added to the *FATF Recommendations* with the last revision and so were not assessed in the previous mutual evaluation of Malta.

3. *Criterion 1.1* – Malta performed the first National Risk Assessment (NRA) of the money laundering and terrorism financing (ML/FT) risks in 2013-2014. The World Bank NRA methodology was used to conduct the assessment, which involved the participation of various competent authorities, policy making bodies, as well as private sector representatives.

4. Malta completed its first NRA in 2015. The results of the NRA were not published, but draft reports were prepared, including analysis of the ML/FT risks and vulnerabilities and an action plan.

5. The NRA was updated and reviewed in 2017, involving commissioned third-party consultants. The same competent authorities, policy making bodies and private sector participants were consulted. This resulted in the production of a final, consolidated NRA report, dated 2018, as well as in, a national anti-money laundering and counter-terrorist financing (AML/CFT) strategy based on the findings, and a detailed action plan (designed to implement the strategy over a three year period).

6. The national AML/CFT strategy has been published on the website of the Ministry of Finance. The NRA Report is used by competent authorities to inform their AML/CFT activities and policies.

7. In June 2017 the MGA also finalised a separate report analysing the risks of the gaming sector (both land-based and remote gaming sectors), including ML/FT threats and vulnerabilities, following an extensive information and data gathering exercise carried out in 2016, which involved operators, representative bodies, competent authorities and credit institutions. The policies and procedures, risk registers and audit reports of a sample of operators were reviewed. The MGA is at present considering whether to publish the report or extracts therefrom.

8. *Criterion 1.2* – A statutory body, the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC) was established by law on 13 April 2018. The NCC's functions are listed under Art. 12A Prevention of Money Laundering Act (PMLA) to include devising national strategy and policies and co-ordinating action to combat ML, the FT and the financing of the proliferation of weapons of mass destruction (PF) including the co-ordination of NRAs.

9. *Criterion 1.3* – Under Art. 12A of PMLA that the NCC is empowered to co-ordinate any action to be taken to develop, implement and review strategy and policies, including the coordination of NRAs.

10. Malta carried out its first ML/FT NRA in 2013/2014 and updated it in 2017/2018. (see c.1.1 above)

11. *Criterion 1.4* – The National AML/CFT strategy was published in April 2018. The NCC, which comprises all competent authorities that have a role in the prevention of ML/FT, has started to meet

to discuss the findings of the NRA and take the necessary actions to implement the AML/CFT strategy through the devised action plan.

12. The full NRA is not publicly available, but the results of the NRA were published in a separate document and were posted on the Ministry of Finance's (MoF) website in August 2018. The results of the NRA were communicated to the public and private sectors in a series of seminars in October 2018, organised by the NCC along with the Financial Intelligence Analysis Unit (FIAU), the Malta Financial Services Authority (MFSA) and the Malta Gaming Authority (MGA).

13. *Criterion 1.5* – The findings of the NRA are addressed through the implementation of the National AML/CFT strategy and in particular through the detailed action plan that has been devised. Further details of actions taken to date are considered under IO.1.

14. *Criterion 1.6* – Reg. 3, 4 and 5 of the Prevention of Money Laundering and Funding of Terrorism Regulations (PMLFTR) allows the FIAU to limit the applicability of AML/CFT obligations in specified circumstances, provided that: there is little risk of ML or FT (Reg 3); the activity occurs on an occasional or very limited basis and there is little risk of ML or FT (Reg 4); or the risk of ML and FT inherent in a particular activity is clear and understood (Reg 5; applying to the obligation to conduct a risk assessment). However, the FIAU has not yet exercised its powers in this regard. There is one exemption from the definition of designated non-financial businesses and professions (DNFBP), namely trustees acting in terms of Art. 43A of the Trusts and Trustees Act. Exemptions from the AML/CFT regime (see c.28.4) are limited to circumstances of lower risk and - while not specifically considered in the NRA - are not inconsistent with the authorities' understanding of risk.

15. *Criterion 1.7* – Under Reg. 11(1) PMLFTR, financial institutions (FIs) and DNFBPs are required to apply enhanced due diligence (EDD) measures to manage and mitigate higher risks in specified scenarios, including:

i. activities or services that are determined by the FIAU to pose a high risk of ML/FT;

ii. high risk occasional transactions or business relationships that are identified by the subject person following the carrying out of risk assessment;

iii. dealings with natural or legal persons established in non-reputable jurisdictions as defined under Reg. 2 PMLFTR;

iv. politically exposed persons (PEPs), correspondent relationships and when carrying out transactions that are complex and unusually large transactions.

16. Currently, there are no examples of activities or services that are determined by the FIAU to pose a high risk of ML/FT that have been communicated to FIs and DNFBPs.

17. *Criterion 1.8* – Reg. 10(1) PMLFTR permits the application of simplified due diligence measures in the following two instances: (i) in relation to activities or services that are determined by the FIAU to represent a low risk of ML/FT, having taken in consideration the findings of the NRA; and (ii) in situations in which - following the carrying out of the risk assessment - the subject persons determine that a particular occasional transaction or business relationship poses a low risk of ML/FT.

18. *Criterion 1.9* – According to Art. 26 PMLA, the FIAU (which may be assisted by the MFSA, MGA or other supervisory authorities) is responsible for supervising subject persons for compliance with the AML/CFT obligations and provisions envisaged under the PMLA, the PMLFTR and the FIAU

Implementing Procedures, which include the implementation of the obligations described under c.1.10-12.

19. *Criterion 1.10* – Reg. 5(1) PMLFTR requires subject persons to take appropriate steps to identify and assess the risks of ML and FT arising out of their activities or business, and in doing so they must take into account a number of risk factors, including among others those relating to customers, countries or geographical areas, products, services, transactions and delivery channels, and shall also take into consideration any national or supranational risk assessments on ML/FT. The results of the NRA were communicated to the public and private sectors in a series of seminars in October 2018. However, no details of the NRA have been provided to FIs or DNFBPs.

(a) Document their *risk assessments* – Reg. 5(3) PMLFTR obliges subject persons to ensure that the risk assessments are properly documented and that they are made available to the FIAU and other supervisory authorities when requested.

(b) *Consider all the relevant risk factors before determining what is the level of overall risk and the appropriate level and type of mitigation to be applied* – Reg. 5(1) PMLFTR broadly meets this criterion.

(c) *Keep assessments up to date* – Reg. 5(4) requires subject persons to ensure that risk assessments are regularly reviewed and kept up-to-date.

(d) *Have appropriate mechanisms to provide risk assessment information to competent authorities and SRBs* – Reg. 5(3) PMLFTR obliges subject persons to ensure that risk assessments are properly documented and that they are made available to the FIAU or other supervisory authorities when requested.

20. *Criterion 1.11* – FIs and DNFBPs are required to:

(a) *Have policies, controls and procedures* – Reg. 5(5)(a) PMLFTR requires subject persons to have in place and implement measures, policies, controls and procedures, proportionate to the nature and size of their business, to address the risks identified as a result of the risk assessments that they are required to carry out in terms of Reg. 5(1).

Reg. 5(6) PMLFTR explicitly requires that, to the extent applicable, such measures, policies, controls and procedures and changes thereto are adopted and implemented following senior management approval. The Maltese authorities stated that "to the extent applicable" only excludes sole-practitioners, which will be made clear in forthcoming guidance.

(b) *Monitor implementation of controls* – Reg. 5(5)(f) PMLFTR requires subject persons to monitor and, where appropriate, enhance the measures, policies, controls and procedures adopted to better achieve their intended purpose.

(c) *Take enhanced measures* – Reg. 11(1)(b) PMLFTR requires subject persons to apply EDD measures where, on the basis of the risk assessment carried out in accordance with Reg. 5(1), the subject person determines that an occasional transaction, a business relationship or any transaction represents a high risk of ML/FT.

21. *Criterion 1.12* – Reg. 10(3) PMLFTR moreover prohibits the application of simplified due diligence measures when the subject person (i.e. FIs and DNFBPs) has knowledge or suspicion of proceeds of criminal activity, ML/FT.

Weighting and Conclusion

22. Malta meets criteria 1.1-1.5; 1.7-1.12 and mostly meets criterion 1.6. **R. 1 is rated Largely Compliant (LC).**

Recommendation 2 - National Cooperation and Coordination

23. In 2012 MER, Malta was rated C with former R.31. In 2018, R.2 was amended to include information sharing between competent authorities, and to emphasise that cooperation and cooperation should include coordination with the relevant authorities to ensure the compatibility of AML/CFT requirements with Data Protection and Privacy rules and other similar provisions (e.g. data security/localisation).

24. *Criterion 2.1* – Malta carried out its first NRA in 2013. The NRA was updated in 2017-2018. A NRA Report (including an action plan) was prepared. In 2018 a national AML/CFT strategy and a detailed action plan to implement such strategy over a period of three years was devised. Thus, Malta has national policies that are informed by the risks identified.

25. *Criterion 2.2* – Malta has designated the NCC to be the authority responsible for national AML/CFT policies. The NCC was established on 13 April 2018. The responsibilities and functions of this Committee are set in law and include: "draw up a national strategy and policies to combat ML/FT and PF and co-ordinate any action to be taken to develop, implement and review the national strategy and policies, including the co-ordination of national risk assessments and the actions to be taken to address any threats, vulnerabilities and risks identified." The NCC is in the process of recruiting the necessary staff to constitute its Secretariat.

26. *Criterion 2.3* – The NCC is intended to serve as a national platform for all relevant competent authorities to cooperate and co-ordinate their policies and actions.

27. An assistant commissioner of police acts as police liaison officer to the FIAU, attending meetings of the FIAU Financial Analysis Committee (FAC), which discusses the analytical cases being pursued by the FIAU and determines which cases should be submitted to the Malta Police for further investigations.

28. Supervisors (FIAU, MFSA and MGA) have memoranda of understanding (MoUs) to regulate their cooperation. In 2017, cooperation between the MFSA and the FIAU was improved with the adoption of a joint supervisory mechanism which covers the various aspects of supervision, starting with risk assessment and including a detailed methodology for the conduct of supervisory actions. A similar approach is in the process of being adopted with the MGA.

29. The Sanctions Monitoring Board (SMB) co-ordinates all measures necessary to implement international financial sanctions to counter FT and PF. A number of relevant authorities, such as the Malta Police, the MFSA, the AG, Customs, the Central Bank of Malta (CBM), and the FIAU are represented on the SMB.

30. *Criterion 2.4* – The functions and responsibilities of the NCC and the SMB (described above) also include PF.

31. *Criterion 2.5* – There is cooperation and coordination between relevant authorities and the Information and Data Protection Commission (IDPC), the supervisory authority competent for data protection and privacy matters. This is both formal (for instance, consultation between authorities when introducing requirements that impact both AML/CFT and data protection) and informal (for instance, meetings between agencies to discuss general or specific matters of interpretation). As a

result, data sharing requirements in the AML/CFT regime have been reviewed and updated to ensure compatibility.

Weighting and Conclusion

32. All criteria are met. **R. 2 is rated Compliant (C).**

Recommendation 3 - Money laundering offence

33. Malta was rated C in the 4th round mutual evaluation report of 2012 with both R.1 and R.2.

34. *Criterion 3.1* – Maltese law criminalises ML on the basis of the Vienna and the Palermo conventions under Art. 3 of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta – "PMLA"). ML is sufficiently defined on the basis of these two conventions in Art. 2 (1) PMLA. ML subsisting from drug-related offences is criminalised under Art. 22(1C)(a) of the Dangerous Drugs Ordinance (Chapter 101 of the Laws of Malta – DDO) and Art. 120A(1D)(a) of the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta – MKPO).

35. *Criterion 3.2* – Maltese law provides for an "all crimes" approach. Any criminal offence is thus a predicate offence (Art. 2(1) PMLA).

36. *Criterion 3.3* – This criterion is not applicable as Malta does not apply a threshold approach.

37. *Criterion 3.4* – The definition of "property" under Art. 2(1) PMLA is broad enough to cover any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. The provision defines "property" as assets of every kind, nature and description, whether moveable/immovable, corporeal/incorporeal or tangible/intangible, legal document or instruments evidencing title to, or interest in such assets.

38. *Criterion 3.5* – Art. 2(2)(a) PMLA specifically provides that a person may be convicted of a ML offence even if said person has not been found guilty by a court of law of having committed the underlying criminal activity. The existence of such criminal liability 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 and without it being necessary to establish precisely which underlying activity. This also applies to the ML offences laid down in other laws than the PMLA, such as the DDO and the MKPO.

39. *Criterion 3.6* – The definition of criminal activity under Art. 2(1) PMLA refers to "*any activity … wherever carried out*" which constitutes a criminal offence. As the law does not provide for any other qualifications, the definition extents to conduct that occurred in another country which was demonstrated by case examples.

40. *Criterion 3.7* – Pursuant to Art. 2(2)(b) PMLA a person can be (separately) charged and convicted for both the ML offence and the predicated offence from which the property or proceeds are derived.

41. *Criterion 3.8* – The Maltese criminal legal system appears to allow for the possibility for the intent and knowledge required to prove the ML offence to be inferred from objective factual circumstances. Although this is not expressly provided in law, jurisprudence has been established to this effect which was demonstrated by general case-examples under the CC.

42. *Criterion 3.9* – Malta provides for proportionate and dissuasive criminal sanctions to natural persons convicted of ML. According to Art. 3, paragraph 1 PMLA, sanctions for ML are a fine not exceeding EUR 2,500,000 and/or imprisonment not exceeding 18 years. These sanctions are

comparable in severity to the sanctions Malta imposes for related economic and financial crimes, as well as to sanctions for ML applied by other countries in the global AML/CFT network.

43. *Criterion 3.10* – Recognising the concept of criminal liability of legal persons, Malta provides for the possibility of sanctioning legal persons with a fine of up to EUR 2,500,000 under Art. 3, paragraph 1 PMLA. This does not preclude the criminal liability of natural persons (Art. 3, paragraph 2 of the PMLA). Art. 328K of the CC, which applies to the ML offences under the PMLA and the DDO, also provides for the possibility of the court ordering the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity; and the temporary or permanent closure of any establishment which may have been used for the commission of the offence. These sanctions are sufficiently proportionate and dissuasive.

44. *Criterion 3.11* – There is a sufficient range of ancillary offences under Maltese law pursuant to Art. 2(1) PMLA (in conjunction with relevant provisions of the CC, to which the PMLA makes reference). These include attempt (Art. 41 CC); instigation, incitement, aiding/assisting or commandment of the commission of a crime (Art. 42 CC); as well as forming part of a conspiracy to commit a crime (Art. 48a CC).

Weighting and Conclusion

45. All criteria, unless they are not applicable, are met. **R.3 is rated C.**

Recommendation 4 - Confiscation and provisional measures

46. Malta was rated PC with the previous R.3 in the 4th round of mutual evaluation report of 2012. Deficiencies identified related to the lack of information on freezing and confiscation orders, as well as effectiveness questions on the attachment regime.

47. *Criterion 4.1* – In general, Malta's confiscation regime is regulated by the PMLA, the DDO, the MPKO and the CC. Maltese law provides for the confiscation of the following:

(a) *Property laundered*

48. The confiscation of the property laundered and of the proceeds of crime is foreseen in the PMLA (Art. 3(5)), the DDO (Art. 22(3A)(d) and 22(3B)), the MPKO (Art. 120A(2A), (2Abis) and (2B)) and the CC (Art. 23).

(b) *Proceeds of (…), or instrumentalities used or intended for use in, ML or predicate offences*

49. Art. 23 CC applies to any crime and foresees that the instruments used or intended to be used in the commission of any crime and anything obtained from such crime are confiscated and forfeited as a consequence of the punishment for the same crime as established by law. The same provision further provides that in the case of things, the manufacture, use, carrying, keeping or sale whereof constitutes an offence, such things may be forfeited upon an order of a court of criminal jurisdiction, even though there has been no conviction.

(c) *Property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism, terrorist acts or terrorist organisations*

50. The forfeiture of the proceeds of FT offences is provided for in Art. 328L CC. Where a person is found guilty of having committed the offences of: FT, the use and possession of money or property for the purposes of terrorist activities, entering or becoming concerned in funding arrangements for the purposes of terrorist activities or of facilitating retention or control of terrorist property, the

court pronouncing guilt may order the forfeiture of any money or other property used in or allocated to be used in FT.

(d) *Property of corresponding value*

51. The confiscation of property of corresponding value is foreseen under Art. 3(5a) PMLA (with regard to ML), Art. 22 DDO (with regard to drug-related crime) as well as under Art. 23B(1) CC (as a general provision for all offences). The authorities illustrated the application of these provisions in practice with case examples.

52. *Criterion 4.2* – In general, Malta's regime for provisional measures is regulated by the same laws as the confiscation regime, which are notably: the PMLA, the DDO, the MPKO and the CC. Maltese law provides for the following preventive measures:

(a) *identify, trace and evaluate property that is subject to confiscation*

53. Art. 23D CC enables the Court Registrar as competent authority to conduct inquiries to trace and ascertain the whereabouts of any moneys or other property under the control of the person who is charged, accused or convicted. The Court Registrar's inquiries for information are compulsory and must be made within thirty days of receipt of demand. For any cases established after 20 August 2018, the newly-established Asset Recovery Bureau (ARB) will have the responsibility of the tracing, identification and evaluation of proceeds of crime.

(b) *carry out provisional measures, such as freezing or seizing, to prevent any dealing, transfer or disposal of property subject to confiscation*

54. Provisional measures are divided in Malta with regard to the period before and after the arraignment. In the pre-arraignment phase, any monies or moveable property belonging to the suspect may be attached by means of an order, for a renewable period of 45 days (Art. 4(6) PMLA, Art. 435A CC and Art. 24A(6) DDO). The order prohibits the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property. Upon arraignment, the prosecution can additionally request the court to impose a freezing order pending court proceedings on the assets of the accused, were they monies, moveable or immoveable property (Art. 5 PMLA, Art. 22A(1) DDO, Art. 120A(2A) MKPO and Art. 23A CC).

(c) *take steps that will prevent or void actions that prejudice the country's ability to freeze or seize or recover property that is subject to confiscation*

55. Malta has legislation in place according to which breaches and contraventions of attachment and freezing orders constitute criminal offences and any acts made in contravention of such orders are deemed to be null and without effect. The PMLA, CC, DDO and MPKO provide for a range of civil and criminal sanctions in cases of breach of either the attachment or freezing orders. Moreover, the country has legislation in place with regard to the recovery of property which is subject to confiscation.

(d) *take any appropriate investigative measures*

56. The PMLA, DDO, MPKO and CC provide the authorities with a wide range of investigative measures, including investigation orders, monitoring orders and controlled deliveries.

57. *Criterion 4.3* – As regards confiscation there exists a sufficient protection of the rights of *bona fide* third parties (Art. 23 CC). With regard to freezing orders, Art. 5(1) PMLA provides for such rights. A similar provision is found in Art. 22A(1) DDO which is also rendered applicable to the

MKPO by virtue of Art. 120A(2A) of the same ordinance. In the case of an attachment order, any third party can file an application before the criminal court asking for the lifting of that order on particular property during the pre-arraignment stage.

58. *Criterion 4.4* – Malta has mechanisms in place for managing seized, frozen and confiscated property. The management of such property had previously been carried out by an Asset Management Unit (AMU) which was set up within the Court Registry in 2012. Since August 2018 the ARB has been tasked with the proper and efficient tracing, collection, storage, preservation, management and disposal of instrumentalities and proceeds of crime. It has taken over, with regard to any proceedings introduced since its establishment, the role of managing and disposing of frozen or confiscated property.

Weighting and Conclusion

59. All criteria are met. **R.4 is rated C.**

Recommendation 5 - Terrorist financing offence

60. In the 4th round mutual evaluation report of 2012, Malta was rated LC on SR.II. Deficiencies identified related to the need for clearer legal provisions in the definition of FT offences to cover contributions used by a terrorist group for any purpose (including a legitimate activity) and to include the direct and indirect collection of funds for terrorist financing.

61. *Criterion 5.1* – In 2015, Malta undertook extensive amendments to its CC in the chapter containing the crimes of terrorism and related acts. Art. 328B(3) and 328F(1) CC criminalise the financing of certain terrorist activities, which in return are defined in Art. 328A CC. Art. 328A, paragraph 4 CC lays out a detailed list of criminal offences for specific terrorist acts which are set out in the nine Conventions listed in Annex 1 of the Terrorist Financing Convention (TFC), in line with Art. 2(1)(a) TFC. These offences do not require any specific "terrorist purpose" (such as e.g. intimidating a population or compelling action by a government or an international organisation). A "generic" terrorism-offence in Art. 328A is comprised of an intentional element (paragraph 1) with a list of actions (paragraph 2) usually associated with terrorist acts (e.g. murder, bodily injury, taking of liberty, causing dangerous destruction to government facilities, release of dangerous substances etc.). The intent in paragraph 1 is modelled on the language of Art. 2(1)(b) TFC. However, the language of the Maltese provision slightly deviates from the TFC in that it requires that the acts concerned are aimed at "*seriously* intimidating the population" (whereas the TFC only requires intimidation of the population). Moreover, the Maltese definition requires that those acts "may seriously damage a country or an international organisation", which is a potentially more restrictive objective element not required by the TFC.

62. *Criterion 5.2* – Malta criminalises FT by dividing the offence into different parts: whereas the financing of terrorist organisations is criminalised by Art. 328B(3) CC, the financing of individual terrorists or specific terrorist acts is captured by Art. 328F(1) CC. The financing of an individual terrorist/specific terrorist act under Art. 328F(1) CC includes providing or collecting funds or other assets, directly or indirectly, with the intention or the knowledge that they are used, full or in part, for the above purposes. The financing of a terrorist group under Art. 328B(3) CC includes the direct or indirect collection or provision by any means of money or other property (or the financing in other ways), knowing that such financing will contribute towards the terrorist group's activities, whether criminal or otherwise. The term "money or other property" is wide enough to capture

"funds and other assets". Both the financing of terrorist groups or individual terrorists are not linked to a specific terrorist act.

63. *Criterion 5.2bis* – Art. 328C(2)(d) CC criminalises the travels (or attempts to travel) for the purpose of the perpetration, planning, or preparation of, or participation in, terrorist activities, or the providing or receiving of training in terrorist activities. Financing, organising or otherwise facilitating such travels is criminalised under Art. 328C(2)(e) CC. The above provisions do not expressly state that such travels include the perpetrators' travel to "another State other than their States of residence". However, nothing in the provision's wording suggests that such travels are limited to the territory of the States of the perpetrators' residence.

64. *Criterion 5.3* – No distinction is made in the relevant provisions of the CC which criminalise the various FT offences regarding the legitimate or illegitimate source of funds used to finance terrorism.

65. *Criterion 5.4* – The various FT offences under the CC do not require that the funds were used to carry out or attempt a terrorist act or be linked to a specific terrorist act (with the exception of those provisions which relate exclusively to the financing of a specific terrorist act).

66. *Criterion 5.5* – The Maltese criminal legal system allows for the possibility for the intent and knowledge required to prove the FT offence to be inferred from objective factual circumstances. Although this is not expressly provided in law, jurisprudence has been established to this effect which was demonstrated by general case-examples under the CC.

67. *Criterion 5.6* – The financing of terrorist organisations as criminalised by Art. 328B(3) CC is punishable by a imprisonment not exceeding eight years (Art. 328B(3)(b) CC). The financing of individual terrorists or specific terrorist acts is punishable by imprisonment not exceeding four years and/or a fine not exceeding EUR 11,646 (Art. 328F(1) CC). In light of other MERs and the survey made in 2015 by the FATF of the applicable FT sanctions in 172 countries/jurisdictions of the global AML/CFT network[89], these sanctions are considerably below the global average. While bearing in mind that there is no single benchmark and that dissuasiveness may vary according to legal traditions, the sanctions are not fully dissuasive and proportionate, also when compared to similar criminal offences in Malta (including ML with a maximum penalty of eighteen years of imprisonment, and the crime of terrorism which is subject to the punishment of imprisonment from seven years to life).

68. *Criterion 5.7* – Recognising the concept of criminal liability of legal persons, Malta provides under Art. 328J(1) and (2) and 328K CC the possibility of sanctioning legal persons for FT with: fines ranging from EUR 11,646 to 2,329,373; the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity; the temporary or permanent closure of any establishment which may have been used for the commission of the offence; or the compulsory winding up of the body corporate. These sanctions, which do not preclude the criminal liability of natural persons, can be considered to be sufficiently proportionate and dissuasive.

69. *Criterion 5.8* – Malta's CC provides for a number of ancillary offences which include: (a) attempting to commit the FT offence (Art. 41); (b) participation as an accomplice in a FT offence (Art. 42); (c) organising or directing others to commit a FT offence (Art. 42); and (d) forming part of a conspiracy for the purpose of committing one or more FT offence(s) (Art. 48a).

70. *Criterion 5.9* – Under the "all crime" approach, FT offences are predicate offences to ML.

[89] FATF Guidance, *Criminalising Terrorist Financing (Recommendation 5)*, October 2016, para.65.

71. *Criterion 5.10* – No geographical restrictions are made regarding FT offences. Maltese law does not impose any requirements on the location of persons or organisations or the terrorist acts.

Weighting and Conclusion

72. Malta's generic FT offence is slightly more restrictive in its objective element than the one provided by the FT Convention. Criminal sanctions for natural persons for the FT offence are not fully proportionate and dissuasive. **R.5 is rated LC.**

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

73. In its 4th MER Malta was rated PC with the former SRIII. The summary of the factors underlying this rating were: 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; and the effectiveness-concerns under R.3 might affect the effective application of c.III.11.

74. Since the previous MER, Malta amended the National Interest (Enabling Powers) Act (NIA), the main legislative instrument through which UN and EU sanctions are implemented under Maltese law. It is also on the basis of that act, that the SMB is constituted. Operating Procedures of the SMB have also been issued. The procedures are an internal policy document which has been agreed to by the governmental members of the SMB.

75. *Criterion 6.1* – In relation to designations pursuant to UNSCR 1267/1989 and 1988:

(a) The authority responsible for proposing persons or entities to the 1267/1989 Committee and the 1988 Committee is the SMB, pursuant to Art. 7(5)(a)(ii) NIA. No requests have so far been made to these Committees.

(b) No mechanism exists defining the process for detection and identification of targets for designation based on the designation criteria set out in the UNSCRs.

Pursuant to Art.1 of the SMB's Operating Procedures the SMB is responsible for initiating the process for the designation of individuals and entities. The SMB will initiate the process for designating individuals or entities whether at UN level, EU level or national level upon its own initiative (following a request received by another country or following a report received by relevant stakeholders, or from the FIAU, MSS or Malta Police in accordance with an MoU that the SMB has concluded with these entities). Art.15 and Art.16(1)and(2) NIA stipulate cooperation between the SMB and the competent authorities and authorisation of the SMB to request any information it deems necessary, relevant and useful for the purpose of pursuing its function under the NIA, that has to be provided without delay and whereby confidentiality provisions do not apply.

(c) Pursuant to Art. 6 of the SMB's Operating Procedures, the SMB may propose a designation to the UN if it has a sufficiently strong factual basis to conclude that there are reasonable grounds to believe that the designation criteria under a relevant UN Resolution are met. Art. 7 of the SMB's Operating Procedures confirms that proposals for designation are not dependent on any criminal suspicion or on-going criminal proceedings.

(d) Art. 8 of the SMB's Operating Procedures provides that the SMB, when proposing designations, must follow the procedures established by the relevant UN Sanctions Committee and use relevant UN standard forms for proposing a designation to a UN Sanctions Committee.

(e) Art. 9 of the SMB's Operating Procedures requires that the SMB, when proposing a designation to the UN, include a wide range of information on the targeted individual or entity as part of the proposal to allow for accurate and positive identification, as well as a detailed statement of the case in support of the proposed listing. Art. 10 of the SMB's Operating Procedures further requires that the SMB, as part of the proposal to designate, must indicate whether Malta may be made known to be the designating state.

76. *Criterion 6.2* – In relation to designations pursuant to UNSCR 1373

(a) At the European level, the EU Council is responsible for deciding on the designation of persons or entities (Regulation 2580/2001 and Common Position 2001/931/CFSP). Within the context of Regulation 2580/2001 and Common Position 2001/931/CFSP, EU listing decisions shall be drawn up on the basis of precise information from a competent authority, meaning a judicial authority or equivalent of an EU Member State or third state. This does not include persons, groups and entities having their roots, main activities and objectives with the EU (EU internals). Domestic legislation is thus required to deal with EU internals.

In the Maltese national context, Art. 3(4)(a)(i) NIA stipulates whenever the Prime Minister considers that the national or international interests of Malta so require, he may order upon the recommendation of the SMB and of the Attorney General (AG) by regulations under the NIA the designation of *any* person or entity. Art. (7)(5)(a)(ii) reiterates that the SMB has the mandate to propose to the Prime Minister designations under Art. 3(4)(a) of the Act. Art. 1 and 2 of the SMB's Operating Procedures further provides that the SMB may consider proposing a designation to the Prime Minister either upon its own initiative, upon initiative of another competent authority in Malta, or upon a request by another country, accompanied by sufficient and reasonable information making a case for designation. No persons have been designated at the national level and no orders have been issued by the Prime Minister for EU internals.

(b) The mechanism for identifying targets for designation based on the designation criteria set out in UNSCR 1373 is the same for designations pursuant to UNSCR 1267/1989 and 1988. See c.6.1(b).

(c) At the European level the verification of the reasonable basis for any requests for designations received is handled by the 'Common Position 2001/931/CFSP on the application of specific measures to combat terrorism' Group (COMET Working Party) at the EU Council, which examines and evaluates the information to determine whether it meets the criteria set forth in UNSCR 1373. No clear time limit has been set for the WP's review.

At the national level, Art. 2 of the SMB's Operating Procedures requires that if the request for designation is received from another country the SMB shall immediately convene a meeting to promptly determine whether the request is supported by sufficient facts to conclude, based on reasonable grounds, that the relevant designation criteria are met. Malta has not yet received any formal request from another country for designation.

(d) At the EU level, the COMET Working Party examines and evaluates the information to assess whether the information meets the criteria set out in Common Position 2001/931/CFSP. It will then make recommendations which will be adopted by the Council on the basis of precise information or material in the relevant file which indicates that a decision has been taken by a competent authority,

without it being conditional on the existence of criminal proceedings (Art. 1(4) Common Position 2001/931/CFSP).

At the national level, Art. 6 of the SMB's Operating Procedures provide that the SMB may propose a designation to the Prime Minister if it has a sufficiently strong factual basis to conclude that there are reasonable grounds to believe that the designation criteria under UNSCR 1373 are met. Art. 6 of the SMB's Operating Procedures, which applies to national listings through Art. 13 of the SMB's Operating Procedures, confirms that designations pursuant to UNSCR 1373 are not dependent on any criminal suspicion or on-going criminal proceedings.

(e) At the EU level, there is no specific mechanism for asking non-EU member countries to give effect to EU restrictive measures.

At the national level, the SMB shall, when proposing listings to another country, provide as much information as possible on the person or entity requested to be designated, and a statement of the case (Art. 15 of the SMB's Operating Procedures). The proposed listing should include, as a minimum name, surname, title, date of birth, nationality of the person or entity to be designated, and sufficient facts to provide a reasonable basis for the requested country to conclude that the designation criteria under UNSCR 1373 are met. No such proposals have been made so far.

77. *Criterion 6.3* – (a) At the EU level, Art. 8 of Regulation 881/2002 (UNSCR 1267/1989) and Art. 9 of Regulation 753/2001 (UNSCR 1988/2011) as well as Art. 8 of Regulation 2580/2001 and Art. 4 of Common Position 2001/931/CFSP (UNSCR 1373/2001 state, *inter alia*, that Member shall inform each other of the measures taken under the Regulations and shall supply each other with any other relevant information at their disposal in connection with this Regulations. The Common Position mentions that Member shall, through police and judicial cooperation afford each other the widest possible assistance in preventing and combating terrorist acts.

At the national level, Art. 15 NIA states that the SMB shall, in the exercise of its functions, cooperate with law enforcement authorities, the MSS, the FIAU, and all public and regulatory authorities in Malta to ensure that the regulations under the NIA, EU Regulations and the UNSCRs are observed. Art. (16)(1) NIA further grants the SMB the power to request from any person and any authority or entity any information it deems necessary, relevant and useful for the purpose of pursuing its function under the NIA and Art. (16)(2) requires requested persons and entities to provide the relevant information without delay to the SMB. Art. 18 of the SMB's Operating Procedures also mentions the above.

(b) At EU level, as for the UNSCRs 1267/1989 and 1988 regime, EU Regulation 1286/2009 provides for ex parte proceedings against a person or entity whose designation is considered. The Court of Justice of the EU makes an exception to the general rule that notice must be given before the decision is taken in order not to compromise the effect of the designation.

At the national level, Art. 3 of the SMB's Operating Procedures provide that the SMB in all cases operates *ex parte* and may not inform a targeted person or entity, or any other person or entity, of the fact that a designation is being considered or has been proposed, except in the circumstances and as permitted under the NIA. NIA does not provide for any exception in this regard.

78. *Criterion 6.4* – At EU level, UN lists are given effect through amendments to the relevant EU Regulations. In 2018, transposition times exceeded the FATF definition of "without delay". EU listings pursuant to Regulation 2580/2001 are immediately implemented.

79. At the national level, Art. 5 NIA stipulates that UNSCRs imposing sanctions or applying restrictive measures shall be automatically binding in their entirety in Malta and shall be part of its domestic law. Art. 17 NIA states that, when regulations are made under Art. 3(4)(a) or when an UNSCR or an EU Regulation is published, the UNSCR or EU Regulation imposing freezing measures shall immediately upon publication be tantamount to a freezing order having the force of law in Malta. Hence the time delay imposed by the amendments to the relevant EU Regulations does not exist in Malta.

80. Regarding designations at the national level, pursuant to Art. 3(4)(a) NIA the Prime Minister may order that any natural or legal persons in Malta immediately freeze, without prior notice, all property of a designated person or entity or of any other person or entities as may be indicated in the order. The same mechanisms apply for requests from other countries to designate a person or entity in Malta. Such requests are dealt with promptly by the SMB as outlined under c.6.2 (c).

81. *Criterion 6.5* – Art. (7)(5)(a)(i) NIA designates the SMB as the responsible authority for monitoring the implementation and operation of sanctions imposed by regulations made under the Act, EU Regulations or UNSCRs. To fulfil its mandate, the SMB has entered into a multilateral MoU with the FIAU, MFSA, and MGA to regulate the exchange of information with these three authorities, and to agree on cooperation procedures with respect to the supervision of FIs and DNFBPs. Through the MoU the three above-mentioned authorities agree to check TFS-related aspects as part of their supervisory engagement (including in the context of onsite inspections).

(a) In relation to UNSCRs 1988 and 1267/1989, EU Regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list: Art. 2(1) EU Regulation 881/2002, as amended by EU Regulation 363/2016 and Art. 3 EU Regulation 753/2011. To address the time delay between designations at the UN and EU levels, Malta made the obligations set out in UNSCRs to impose targeted financial sanctions (TFS) on designated individuals and entities directly applicable (see c.6.4). Maltese citizens and any person or entity located in Malta are furthermore prohibited to provide financial services to or make property available to or for the benefit of a designated person or entity. For designations under UNSCR 1373, the Prime Minister (when issuing an order pursuant to Art. 3(4)(a) NIA) may order that any natural or legal person in Malta shall immediately freeze, without prior notice, all property of a designated person or entity, or of any other persons or entities indicated in the order (see c.6(2) (a)). The term "property" is broadly defined in Art. 3(4)(c) NIA[90] and it is line with the FATF definition.

(b) In relation to UNSCRs 1988 and 1267/1989, the freezing obligation as laid down in the EU Regulations extends to all funds or other assets defined in R.6, namely funds owned by designated persons (natural or legal) as well as funds controlled by them or by persons acting on their behalf or on their order. These aspects are covered by the notion of 'control' in Art. 2 EU Regulation 881/2002, as amended by EU Regulation 363/2016, and Art. 3 EU Regulation 753/2011. At the national level Art. 17(2) NIA reiterates the obligations that are set out in the relevant UN and EU instruments.

[90] Property shall mean "assets, including but not limited to financial assets, economic resource, including oil and other natural resources, property of every kind, whether tangible or intangible, moveable or immoveable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, and any interest, dividends, or other income on or value accruing from or generated by such funds or other assets, and any other assets which potentially may be used to obtain funds, goods or services".

For designations under UNSCR 1373, the freezing obligation under Art. 2(1)(a) EU Regulation 2580/2001 is not extensive enough. However, the Prime Minister (when issuing an order pursuant to clause 3(4)(a) NIA) may order that any natural or legal person in Malta shall immediately freeze, without prior notice, (i) all property that is owned or controlled, whether wholly or jointly, directly or indirectly, by a designated person or entity; (ii) property that is derived or generated from property owned or controlled, directly or indirectly, by a designated person or entity; and (iii) property of any person or entity acting on behalf of or at the direction of a designated person or entity. See also c.6(2)(a).

(c) In compliance with the UNSCRs, EU Regulations 881/2002 (Art. 2(2)), 753/2011 (Art. 3) and 2580/2001 (Art. 2(1) and (2)) prohibit EU nationals and all other persons or entities present in the EU from making funds or other economic resources available to designated persons or entities. Art. (17)(2)(e) and 3(4)(a)(iv) NIA reiterate these obligations.

(d) Designations decided at the European level are published in the Official Journal of the EU and website and included in a consolidated financial sanctions database maintained by the European Commission, with an RSS feed. The EU Council provides guidance by means of the EU Best Practices for the effective implementation of restrictive measures.

At the national level, the Ministry of Foreign Affairs and Trade Promotion (MFTP) has developed a homepage on sanctions that provide links to the relevant UN and EU lists. Although designations have not yet been made at national level, this would occur in theory - as stated by the Maltese government – also within about an hour. A detailed guidance document on TFS relating to terrorism, FT and PF has also been published. Furthermore, the MFSA sends a notification of changes to compliance officers at each licensed entity. If needed, the SMB and supervisory authorities can provide additional guidance on a case-by-case basis, either by telephone or in writing, or generally due to recent developments of high importance. The FIAU has issued a guidance note regarding red flags and suspicious activities on FT.

(e) Under the EU framework, natural and legal persons targeted by the European regulations must immediately provide all information to the competent authorities of the Member State in which they reside or are present, as well as to the European Commission, either directly or through these competent authorities: Art. 5(1) EU Regulation 881/2002, Art. 5(1) EU Regulation 753/2011 and Art. 4 Regulation 2580/2001.

At the national level, Art. 17(6)(c) NIA requires that FIs and DNFPBs shall immediately notify the SMB in case targeted property is identified, and of the actions taken in relation to such property including attempted transactions. Art. 21 of the SMB's Operating Procedures provides that in case of any matches, subject persons shall immediately supply any relevant information to the SMB, including information on accounts, amounts frozen or action taken in compliance with the NIA, and to cooperate with the SMB in verification of this information.

(f) The rights of bona fide third parties are protected at European and national levels: Art. 6 Regulation 881/2002, Art. 7 Regulation 753/2011 and Art. 4 Regulation 2580/2001 and Art. 18 and (7)(5)(iv) NIA.

82. *Criterion 6.6* – (a) Given the direct applicability of UN and EU measures, including amendments or variations thereto (hence including when there is a de-listing), the relevant provisions would be directly applicable under Maltese law. Art. 23 of the SMB's Operating Procedures addresses the process to be followed in cases where a listed person or entity seeks to get

de-listed by a competent Sanctions Committee. Individuals or entities are advised to follow the guidelines for de-listing as issued by the relevant UN Sanctions Committee, and either address the Office of the Ombudsman (for 1267) or the Focal Point (for 1988) directly. Maltese nationals or residents and Malta registered entities may also opt to file the petition to the UN via the SMB through the Maltese Permanent Mission to the UN.

(b) In relation to UNSCR 1373, the Council of the EU revises the EU's list at regular intervals (Art. 6 2001/931/CFSP). Modifications to the list under EU Regulation 2580/2001 are immediately effective in all EU Member States.

At the national level, with regard to UNSCR 1373 the Prime Minister (in accordance with Art. (4)(a)(vi) NIA, and through an order issued to that effect) may order the amendment or revocation of any previous order, including an order for the de-listing of any person or entity that no longer meets the designation criteria. Articles 28-32 of the SMB's Operating Procedures lay down the national procedures for de-listing of designated persons and unfreezing of funds.

(c) Designated persons or entities affected may write to the Council to have the designation reviewed or institute proceedings according to Art. 263(4) and 275(2) TFEU before the Court of Justice of the European Union in order to challenge the relevant EU measures (decisions and regulations), whether they are autonomously adopted by the EU or adopted by the EU in line with UNSCR 1373.

At the national level, petitioners may also lodge an application of appeal with the First Hall Civil Court, requesting the cancellation of the order made in accordance with Art. 3(4)(a) NIA.

(d) and (e) The SMB's Operating Procedures provide that a petitioner can submit a request for de-listing to the Focal Point for De-listing in accordance with the 1988 Committee Guidelines (Art. 25), or the Office of the Ombudsperson of the UN seeking to be removed from the UN Sanctions Consolidated List, in accordance with the procedures in annex II of UNSCR resolution 1904(2009), 1989 (2011) and 2083 (2012) to accept de-listing petitions (Art. 26).

(f) and (g) Persons or entities whose assets have been frozen erroneously or inadvertently may provide evidence to the SMB to establish that assets in question were wrongly targeted and make recommendations in accordance to propose de-listing or the unfreezing of property (Art. 7(5)(iv) NIA). The SMB's Operating Procedures are provided at the MFTP homepage which also sets out the relevant process. De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journals of the EU and on a dedicated website.

83. *Criterion 6.7* – At the European level, there are procedures in place to authorise access to frozen funds or other assets which have been determined to be necessary for basic expenses, for the payment of certain types of expenses, or for extraordinary expenses: Art. 2a Regulation 881/2001, Art. 5 Regulation 753/2011, and Art. 5 and 6 Regulation 2580/2001.

84. At the national level Art. (7)(5)(a)(v) NIA and Art. 35 to 37 of the SMB's Operating Procedures regulate the process. All applications for the unfreezing of funds or other assets as mentioned in this criterion shall be received by the SMB, which may decide on the applications in line with relevant procedures laid down in relevant UNSCRs.

Weighting and Conclusion

85. Malta utilises both supranational and national mechanisms to implement TFS. Designations at the UN level apply directly in Malta without the need for EU transposition, and Malta has the ability

to designate a persons or entities at a national level pursuant to UNSCR 1373, although this mechanism has not yet been used in practice. Procedures for de-listing and unfreezing and the designation of EU internals have been enacted in the NIA and the SMB's Operating Procedures. However, there is no mechanism exist defining the process for detection and identification of targets for designation based on the designation criteria set out in the UNSCRs. **R.6 is rated LC.**

Recommendation 7 – Targeted financial sanctions related to proliferation

86. Malta's previous MER was conducted prior to FATF's 2012 adoption of R.7.

87. The legal basis for implementing R.7 includes relevant EU legislation, and at the national level the NIA and the SMB's Operating Procedure. The same national legal provisions are applicable regarding TFS on FT as well as on proliferation financing (PF).

88. *Criterion 7.1* – The UNSCRs relating to the prevention, suppression and disruption of PF and its financing are implemented in the EU by Council Regulations 2017/1509 (DPRK) and 267/2012 (Iran), as amended[91]. In the EU legal framework, Regulations are directly applicable in Member States. Malta implements the UNSCRs on TFS directly "without delay" at a national level, pursuant to Art. (5)(1) and 17(1) NIA.

89. *Criterion 7.2* – At the national level, Art. (7)(5)(a)(i) NIA designates the SMB as responsible authority for monitoring the implementation and operation of sanctions imposed by regulations made under the Act, EU Regulations or UNSCRs.

(a) The relevant EU regulations require all natural and legal persons within the EU to freeze the funds or other assets of designated persons and entities. This obligation is triggered as soon as the regulation is approved and the designations are published in the Official Journal of the EU.

Pursuant to Art. 17(1) and (2) NIA the relevant UNSCRs and EU Regulations freezing orders shall immediately upon publication be tantamount to a freezing order having the force of law in Malta and shall have effect of attaching without delay or prior notice all property of designated persons and entities. The term "property" is broadly defined in Art. 3(4)(c) NIA and is in line with the FATF's definition.

(b) In the relevant EU Regulations, all types of funds or other assets mentioned under c.7.2(b) must be frozen. As described under c.6.5(b), pursuant to Art. 17(2)NIA the freezing obligations extend to all the situations that are set out in the relevant UN and EU instruments.

(c) The EU Regulations prohibit funds and other assets from being made available (Art. 6 Regulation 329/2007 and Art. 23(3) Regulation 267/2012). Art. 17(2)(e)[92] NIA also states the same.

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[91] As regards the DPRK, UNSCRs 1718 (2006), 1874 (2009), 2087 (2013), 2094 (2013), 2270 and 2321 (2016) have been transposed by Council Decision 2016/849/CFSP and Council Regulation 2017/1509, both as amended. As regards Iran, TFS imposed by the UN are mainly established by Council Decision 2012/35 and Regulation 267/2012. With the adoption of UNSCR 2231 (2015), which terminated UNSCR 1737 and its successor resolutions, a number of targeted restrictive measures contained in EU Regulation 267/2012 have been lifted.

[92] A freezing order as is mentioned in sub-article (1) shall have the effect of: prohibiting any Maltese citizen or any person or entity located in Malta from making property, or financial services or other related services available, directly or indirectly, wholly or jointly, to or for the benefit of a designated person or entity; or an entity owned or controlled, directly or indirectly, by a designated person or entity; or to any person or entity acting on behalf of, or at the direction of, a designated person or entity, unless licensed, authorised or notified

(d) The mechanisms described in c.6.5(d) apply for communicating designations to FIs and DNFBPs.

(e) FIs and DNFBPs must immediately provide to the competent authorities all information that will facilitate observance of the EU Regulations, including information about the frozen accounts and amounts (Art. 50 Regulation 2017/1509 and Art. 40 Regulation 267/2012). At the national level, Art. 17(6)(c) NIA requires that FIs and DNFPBs shall immediately notify the SMB in case targeted property is identified, and of the actions taken in relation to such property including attempted transactions. Art. 21 of the SMB's Operating Procedures addresses this (see c.6.5(e)).

(f) The rights of bona fide third parties are protected at European and national levels: Art. 54 Regulation 2017/1509 and Art. 42 Regulation 267/2012 and Art. 18 and (7)(5)(iv) NIA.

90. *Criterion 7.3* – Art. 47 of Regulation 267/2012 and Art. 55 of Regulation 2017/1509 state that member states must take all necessary measures to implement EU regulations, as well as develop a regime to adopt and administer effective, proportionate and dissuasive sanctions. Ths SMB monitors the implementation and operation on TFS, together with the FIAU, the MFSA and the MGA (see c.6.5).

91. National provisions regarding criminal and administrative sanctions are in place. Criminal sanctions for individuals are imprisonment (from a minimum of twelve months to a maximum of twelve years) and/or a fine (of not less than twenty-five thousand euros and not exceeding five million euros). For entities, the sanction is a fine of not less than eighty thousand euros and not exceeding ten million euros for corporations. The law provides for corporate liability when sanctions are breached by an entity following the lack of supervision or control of an officer of the company as listed in Art. 121D CC for the benefit of the body corporate. In addition, MGA and MFSA may apply supervisory sanctions, including license-related measures, for any violation of Maltese law by a licensed entity.

92. *Criterion 7.4* –

(a) The Council of the EU communicates its designation decisions and the grounds for listing to designated persons and entities which have rights of due process. Individual de-listing requests must be processed upon receipt, in compliance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures. The Best Practices mention UNSCR 1730(2006) and the de-listing Focal Point, and the possibility to submit de-listing requests either through the Focal Point or through their State of residence or citizenship. The Council of the EU shall promptly review its decision upon request, and inform the designated person and/or entity. Such a request can be made, irrespective of whether a de-listing request is made at the UN level, for example through the Focal Point mechanism.

At the national level, pursuant to Art. 7(5)(iii) and (iv) NIA and Art. 23 to 27 of the SMB's Operating Procedures individuals or entities are advised to follow the guidelines for de-listing as issued by the relevant UN Sanctions Committee, and address the Focal Point pursuant to UNSCR 1730 directly. Maltese nationals or residents and Malta-registered entities may also opt to file the petition to the UN via the SMB (through the Maltese Permanent Mission to the UN).

(b) Publicly known procedures to unfreeze the funds or other assets of persons or entities with the same or similar name as designated persons or entities are provided for at EU level as well as at national level (see c.6.6(f)).

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in accordance with the relevant United Nations Security Council Resolution or Regulation of the Council of the European Union or order issued under Art. 3(4)(a).

(c) Art. 36 and 37 EU Regulation 2017/1509 and Art. 24, 26 and 27 EU Regulation 267/2012 authorise access to funds where countries have found an applicable exemption.

At the national level, pursuant to Art. 7(5)(a)(iv) NIA in conjunction with Art. 35 to 37 of the SMB's Operating Procedures the SMB shall have the function to authorise access to frozen funds or other assets which the SMB determines to be necessary for basic expenses, for the payment of reasonable costs and fees for legal, medical, professional or other essential services, or for documented extraordinary expenses. The SMB may authorise, under such conditions as it deems appropriate, the release of frozen property or the making available of property, if it has determined that the relevant provisions under relevant UNSCR are met, and prior to the granting of authorisation has either notified or obtained approval by the relevant UN Sanctions Committee, as required under relevant UNSCRs. This means that approval by the competent UN Sanctions Committee must generally be obtained before the SMB may grant such access.

(d) See c.6.6(g).

Criterion 7.5 – (a) The addition of interests or other earnings to frozen accounts is permitted pursuant to Art. 36 EU Regulation 2017/1509 and Art. 29 EU Regulation 267/201).

At the national level, Art. 16 of the SMB's Operating Procedures state that TFS shall not prevent FIs from crediting frozen accounts with interest or other earnings on frozen accounts, provided that any additions shall also be frozen and the SMB be informed without delay.

(b) Payments under a contract entered into prior to designation are possible under the necessary conditions (Art. 25 EU Regulation 2015/1861, which amends EU Regulation 267/2012).

At the national level, Art. 17 of the SMB's Operating Procedures state that TFS shall not prevent a designated person or entity from making payments due under contracts, agreements or obligations that were concluded or arose before the date on which a person or entity was designated, provided that the SMB, in the case of PF cases, has given its consent or (in all other cases) was informed without delay. In case of PF sanctions, the SMB must inform - prior to granting consent - the relevant Sanctions Committee of its intention to authorise such payments and must have determined certain conditions.

Weighting and Conclusion

93. Malta implements TFS related to proliferation in accordance with the UN Resolutions as well as the EU and national regime. Designations at the UN level apply directly in Malta without the need for EU transposition. **R.7 is rated C**.

Recommendation 8 – Non-profit organisations

94. In its 4th MER Malta was rated PC with the former SRVIII. However, that assessment pre-dated the 2016 adoption of changes to R.8 and its Interpretive Note.

95. The Voluntary Organisations Act (VOA) was introduced in 2007. It was further amended in 2018, and the relevant measures entered into force on 6 November 2018 (at the time of the on-site visit). Those measures have introduced new requirements on enrolment (which previously was not compulsory for any type of voluntary organisations (VOs) and on registration of VOs with the Commissioner for VOs (CVO). It also established the position of the CVO including his duties and function, which are exhaustively listed in Art. 7 VOA. The task of the Office of the Commissioner is to strengthen the voluntary sector through various initiatives with the specific aim of promoting the

work of VOs as well as encouraging their role as partners with the government in various initiatives. The ultimate mission of the Office of the Commissioner is to give more visibility to the voluntary sector as well as to guarantee transparency and accountability of the organisations that compose it in the carrying out of their work. In view of this, the Commissioner is also the regulatory authority responsible for this sector with the aim of monitoring and supervising the activities of these organisations as well as supporting them to take a risk-based approach.

96. *Criterion 8.1* – (a) Malta has defined VOs in Art. 2(1) in conjunction with Art. 3, for the purposes of the VOA[93], which is broader than the FATF definition. A substantial number of these VOs fall under the FATF's definition of non-profit organisations (NPOs) as they are set up primarily to receive or disburse funds to carry out their social purpose, and most VOs in Malta are organisations set up to promote hobbies, sports or social and cultural activities. The Office of the Commissioner has conducted a risk assessment of 1,610 enrolled VOs, and identified enrolled ones potentially being at a high risk of ML/FT abuse. However, Malta has not conducted any analysis to identify the subset of non-enrolled VOs, which by virtue of their activities or characteristics are likely to be at risk of FT abuse. Therefore, the risk assessment of the VO sector is not comprehensive.

(b) Malta has not identified the nature of threats posed by terrorist entities to the VOs which are at risk, as well as how terrorist actors abuse those VOs. As described above, the Office of the Commissioner has carried out a risk assessment exercise of all enrolled VOs. Using various characteristics, it identified 360 VOs that potentially have a risk factor of AML/CFT, of which 47 VOs conduct activities in high risk jurisdictions. Non-enrolled VOs have not been considered for the purposes of the review.

(c) Malta has reviewed the adequacy of its measures that relate to the subset of the enrolled VOs in the VO sector that may be abused for FT support, which have led to amendments in the VOA in 2018.

(d) The above-mentioned risk assessment was finalised in October 2018. Malta has not made available any provisions on the periodic reassessment of the sector's potential vulnerabilities to terrorist activities.

Sustained outreach concerning terrorist issues

97. *Criterion 8.2* – (a) Pursuant to Art. 7(1)(h) VOA the CVO shall monitor the promotion of VOs and the behaviour of administrators of VOs to ensure the observance of high standards of accountability and transparency and compliance with law. In addition, Art. 8(2) VOA state that the CVO shall seek to encourage an environment where the credibility and good reputation of the voluntary sector is continually enhanced through high standards of operation of VOs and their administrators, of transparency and public awareness and of proper accountability. The CVO also publishes annual reports that (as stated in Art. 10(1) VOA) 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

[93] Art. 1(2) VOA states that a VO means a foundation, a trust, an association of persons or a temporary organisation which is independent and autonomous and which qualifies under Art. 3 VOA. That provision defines that a VO is independent and autonomous of the government and is created or established for any lawful purpose as non-profit making voluntary, whether it is registered (or able to be registered) as a legal person or not in terms of the Second Schedule to the Civil Code and whether it is enrolled in terms of the VOA or not. In addition, a VO may not be established as a limited liability company or any commercial partnership established under the Companies Act. Trusts established or recognised in terms of the Trusts and Trustees Act shall qualify as VOs only when they are established as charitable trusts.

his office. A "Code of Good Governance, Practice and Ethics for Administrators of VO" has been issued by the CVO in 2011. Compliance with this Code is not mandatory, but it provides guidance on how VOs should revise their governing documents, their statutes, codes of conduct, and any other similar document. Clear legal obligations for administrators of VOs are stated in the amendments of the VOA.

(b) Malta has undertaken outreach to raise awareness amongst VOs about their potential vulnerabilities to FT abuse and risks, and the measures that VOs can take to protect themselves against such abuse. One seminar and seven workshops were held for VOs in September and October 2018 respectively to address these issues. A supporting toolkit to safeguarding VOs from abuse in this respect has also been developed by the CVO. The donor community has so far not been addressed specifically.

(c) During the seminar and the workshops, the CVO has worked with VOs to address FT risks and vulnerabilities. Development and refinement of best practices, together with the VOs, has to been taken up.

(d) No measures at the moment have been taken to encourage VOs to conduct transactions via regulated financial channels, whenever feasible.

Targeted risk-based supervision or monitoring of NPOs

98. *Criterion 8.3* – Pursuant to Art. 7(1)(b) and (h) VOA the CVO shall monitor the activities of VOs in order to ensure observance of the provisions of the VOA and any regulations made thereunder, and also the behaviour of administrators of such organisations to ensure the observance of high standards of accountability and transparency respectively. The CVO may investigate the affairs of *any* VO at any time. (S)he may demand, in writing, any relevant information relating to the operation of a VO or any person involved in the activities of a VO, if (s)he has cause to believe that such information is necessary in order to establish whether an organisation is acting in compliance with the provisions of this Act or any regulations made thereunder (Art. 34 VOA).

99. As part of the on-going monitoring and scrutiny by the CVO, the CVO submits all VO records to the FIAU and Malta Police for checks on the administrators of VOs.

100. Apart from the provisions in VOA, there a no other measures in place yet to supervise or monitor the VOs at risk of FT abuse.

101. *Criterion 8.4* – (a) The CVO regularly monitors the administrative reports, annual returns and annual accounts of VOs. Information is referred to the Tax Compliance Unit whenever investigations of these accounts raise suspicions. However, the measures applied are not based on the level of the VO's risk of FT abuse.

(b) The Commissioner may apply to the Administrative Review Tribunal to order the suspension of the activities of an enrolled VO or the cancellation of the enrolment of a VO if any of the conditions are met (as stipulated in Art. 19(2) VOA), such as: carrying out unlawful activities, including making public collections without the necessary authorisation or misapplying funds, or using funds or benefits received for purposes other than those for which such funds or benefits were granted. In case the two aforementioned conditions are applicable the Commissioner may by written notice order the suspension of activities of any VO.

102. In those cases where the Commissioner is of the opinion that a person or VO is making or has made abusive use of a certificate of enrolment or made use of a forgery thereof, the Commissioner may impose various sanctions as listed in Art. 22 VOA.[94]

103. Part VII (Art. 31 to 33) lists various offences (general breaches of the VOA and two more specific ones) where fines or imprisonment may be issued. Some sanctions have been imposed, but no fines or terms of imprisonment have been issued so far.

Effective information gathering and investigation

104. *Criterion 8.5* – (a) The FIAU and the Malta Police are empowered to request and obtain any information, data or documentation necessary (both from VOs and from the CVO) to be able to carry out their analysis and investigations. In addition, as mentioned in c.8.3 and c.8.4(a), the CVO also works together with the MSS and the Tax Compliance Unit. The CVO is also a member of the NCC. There seems to be no co-operation with the Registers for Legal Persons and for Trusts.

(b) As mentioned under c.8.3 the CVO has investigative powers pursuant to Art. 34 VOA. In addition, the FIAU and the Maltese Police (the Counter-Terrorism Unit) are empowered to investigate and analyse cases and suspicions on ML and FT. The CVO also works together with the MSS.

(c) As mentioned under c.8.3 the CVO has investigative powers pursuant to Art.34 VOA and is empowered to compel the production of any information or documentation. Art. 34 of the VOA is applicable to both enrolled and non-enrolled VOs. This would include financial and administration records which enrolled VOs are bound to keep. Information contained in the VO Register, in accordance with the provisions of the VOA is available to the public and can be accessed in hard copy at the office or through scanned documentation via email. The FIAU and MSS have access to any documentation available to the CVO.

(d) Malta has a general framework in place at the domestic level to share information between the CVO, the FIAU, the Maltese Police and the MSS, when there is a suspicion or reasonable grounds to suspect that a particular VO is involved in FT-related activities, exploited as a conduit for FT or is concealing or obscuring the clandestine diversion of funds to be redirected for the benefit of terrorist or terrorist organisations.

Effective capacity to respond to intentional requests for information about an NPO of concern

105. *Criterion 8.6* – Although the CVO is the authority vested with the regulation and monitoring of VOs in Malta, and is considered as the point of contact to provide information on VOs in Malta, no specific information is given on the procedures to respond to international requests to the CVO in Malta for information regarding particular VOs suspected of FT. However, MLA and FIU channels can be used to international requests.

Weighting and conclusion

106. Amendments of the VOA (that were enacted during the on-site visit) will give the CVO more powers to be proactive when there are suspicions of ML/FT of enrolled VOs, which has meanwhile become mandatory enrolment. The CVO has improved the sharing of information on enrolled VOs

[94] These sanctions include: prohibit such person from using such certificate by giving notice to such person in writing; or issue public statements on the facts to warn the public about any abuse by the person or voluntary organisation; or apply to the Tribunal to take action to seize any funds raised or public collections made by such person or organisation and to return such funds to the donor thereof, or if it is not possible to locate donors within six months from such seizure, pay such funds into the Voluntary Organisations Fund.

with the MSS, the FIAU and the Maltese Police, which includes VOs potentially involved in FT activities. Measures have been taken to promote accountability and integrity to VOs in general. The CVO has carried out a risk assessment exercise of all the enrolled VO and has, using various characteristics, identified around 360 VOs that potentially have a risk factor of AML/CFT. First steps have been undertaken in regard to outreach to the VO sector on FT. Non-enrolled VOs have not been considered for the purposes of the review. However, Malta mostly met criteria 8.2, 8.5 and 8.6, and partly met criteria 8.1, 8.3 and 8.4. Due to some deficiencies as described above **R. 8 is rated Partially Compliant (PC)**.

Recommendation 9 – Financial institution secrecy laws

107. In 2012 MER, Malta was rated C with former R.4.

108. *Criterion 9.1* – (a) *Access to information by competent authorities* – Maltese authorities have provided information relating to access to information by the FIAU, law enforcement and the MFSA.

109. In relation to the FIAU and law enforcement authorities are empowered by Art. 30(1), Art. 30(2) and Art. 30A of the PMLA, along with Art. 6B of the Professional Secrecy Act, to demand information, notwithstanding any provision of the Professional Secrecy Act and subject persons who comply with such demands are not considered to be breaching any obligations of confidentiality or professional secrecy.

110. In relation to the MFSA, although the Professional Secrecy Act contains specific exemptions relating to the provision of information to public authorities, the powers set out in Art. 16 of the MFSA Act stipulate that subject persons must comply with demands for information despite any provisions contained in any other law, and despite any contractual gagging restriction or similar prohibition or other confidentiality obligation arising or alleged to arise under contract law. This is complemented by specific exemptions from the Professional Secrecy Act in various sectorial legislation (e.g. the Trusts and Trustees Act and the Company Service Providers Act).

(b) *Sharing of information between competent authorities domestically and internationally*

Sharing by MFSA:

111. Art. 17(2) of the MFSA Act allows for the disclosure of otherwise confidential information by the MFSA when such disclosure is made in the context of exchange of information with local or overseas enforcement or regulatory authorities.

112. Art. 17(3) of the MFSA Act states that the obligation of professional secrecy shall not prevent the authority from exchanging or transmitting confidential information to the European Securities and Markets Authority (ESMA), the European Banking Authority (EBA) and colleges of supervisors, to the European Insurance and Occupational Pensions Authority (EIOPA), or to the European Systemic Risk Board (ESRB), subject to conditions and restrictions emanating from European Union legislation.

Sharing by FIAU:

113. The PMLA and PMLFTR contain a number of provisions facilitating the sharing of information by the FIAU. Exchange of information with foreign counterpart FIUs is covered by Art. 27A of the PMLA; Art. 27(1) of the PMLA covers the exchange of information with Maltese supervisory authorities or overseas equivalents; Art. 34(3) of the PMLA provides for the sharing of information with law enforcement authorities

Sharing by law enforcement authorities:

114. Law enforcement authorities are able to share and exchange information in terms of Art. 92 of the Police Act and there is no prohibition and/or restriction(s) to the sharing and exchange of information, both with local authorities (including the FIAU, the MFSA, Customs), or their overseas equivalents.

(c) *Sharing of information between financial institutions* – The PMLFTR contains obligations based upon R.13, R.16 and R.17. Subject persons must comply irrespective of financial institution secrecy laws.

Weighting and Conclusion

115. All criteria are met. **R. 9 is rated C.**

Recommendation 10 – Customer due diligence

116. In 2012 MER, Malta was rated LC with former R.5. The assessment identified technical deficiencies related to the availability of exemptions from CDD in some cases of simplified CDD.

117. *Criterion 10.1* – Reg. 7(4) PMLFTR prohibits subject persons (including FIs) from keeping anonymous accounts or accounts in fictitious names.

118. *Criterion 10.2* – Reg. 7(5)(a) PMLFTR requires the subject person to apply CDD in the following circumstances: when establishing a business relationship; when conducting an occasional transaction (i.e. a transaction or several linked transactions amounting to EUR 15,000 or more); whenever they have knowledge or suspicion of proceeds of criminal activity, ML/FT, regardless of any derogation, exemption or threshold.

119. Reg. 7(7) PMLFTR requires subject persons to repeat CDD measures whenever doubts arise about the veracity or adequacy of the previously obtained customer identification information.

120. Reg. 2 PMLFTR, defines "occasional transaction" to include the transfer of funds as defined under Regulation (EU) 2015/847 when the transfer exceeds EUR 1,000 in a single operation or in several operations which appear to be linked.

121. *Criterion 10.3* – Reg. 7(1)(a) PMLFTR states that all customers shall be subject to CDD measures, including identification of the customer and verification of the identity using documents, data or information obtained from a reliable and independent source.

122. The term "customer" as defined in Reg. 2 PMLFTR as "a natural or legal person".

123. Reg. 7(1)(a) and 7(1)(b) PMLFTR refer to a customer as also "a body corporate, a body of persons or any other form of legal entity or arrangement" and "a body corporate, foundations, trusts and similar legal arrangements" respectively. The specific CDD requirements in those regulations, along with accompanying guidance, establish that all natural persons, legal persons and legal arrangements are covered as appropriate.

124. *Criterion 10.4* – Reg. 7(3) PMLFTR states that subject persons must ensure that a person purporting to act on behalf of a customer is duly authorised in writing to act on the customer's behalf, and must identify and verify the identity of that person.

125. *Criterion 10.5* – Reg. 7(1)(b) PMLFTR requires subject persons to identify beneficial owners and take reasonable measures to verify their identity to the extent that the subject person is satisfied with knowing who the beneficial owner is. Under the FIAU Implementing Procedures Part I (3.1.1),

subject persons are required to establish systematic procedures for identifying an applicant for business and ensuring that such identity is verified on the basis of documents, data or information obtained from a reliable and independent source.

126. The term "beneficial owner" is defined under Reg. 2 PMLFTR and is broadly compliant with the FATF definition.

127. *Criterion 10.6* – Reg. 7(1)(c) PMLFTR requires subject persons to assess and, as appropriate, obtain information on the purpose and intended nature of the business relationship, and to establish a business and risk profile of the customer.

128. *Criterion 10.7* – Reg. 7(2)(a) requires subject persons to scrutinise transactions undertaken throughout the course of the business relationship to ensure that the transactions are consistent with the subject person's knowledge of the customer and of the customer's business and risk profile, including, where necessary, the source of funds.

129. Reg. 7(2)(b) requires subject persons to ensure that documents, data or information held by the subject person are kept up-to-date.

130. There is no explicit requirement to undertake reviews of existing records.

131. *Criterion 10.8* – There is no explicit requirement for FIs to understand the nature of the customer's business. However, this requirement is met by a combination of other obligations, namely to assess and, as appropriate, obtain information on the purpose and intended nature of the business relationship, and to establish a business and risk profile of the customer.

132. Reg. 7(1)(b) requires subject persons to take reasonable measures to understand the ownership and control structure of the customer, where the customer is a body corporate, foundation, trust or similar legal arrangement. Further requirements on the establishment of the ownership and control structure of the company are provided under the Implementing Procedures Regulations (Section 3.1.3).

133. *Criterion 10.9* – The requirement to identify and verify legal persons and legal arrangements is set in Reg. 7(1)(a), with further detail in the FIAU Implementing Procedures Part I.

(a) *name, legal form and proof of existence*

134. Sections 3.1.3.2 - 3.1.3.6 of the FIAU Implementing Procedures Part I set out the procedures for identification and verification of public companies, private companies, commercial partnerships, foundations and associations, and trustees respectively, which include gathering information on their name, form and proof of existence and verifying the same.

(b) *powers that regulate and bind; names of senior management*

135. The procedures suggest a number of documents that may be obtained in order to verify the information referred to at a) above.

136. While some of these documents may also contain information concerning the powers that regulate and bind the legal person or arrangement (e.g. Memorandum and Articles of Association; trust deeds) there is no clear obligation to obtain this information.

137. Reg. 7(1)(a) requires subject persons to identify all directors (or equivalent)

(c) *address of the registered office and, if different, a principal place of business*

138. The procedures referred to at (a) above include the requirement to obtain and verify: in relation to public companies, private companies and commercial partnerships - "registered address or principal place of business"; in relation to foundations or associations - "registered address"; in relation to trusts - "the country of establishment" (along with the residential address of the trustee, as beneficial owner).

139. *Criterion 10.10* – Reg. 7(1)(b) requires the identification and taking of reasonable measures to verify the identity of the beneficial owners of customers.

140. Reg. 2 of the PMLFTR defines the beneficial owner as "any natural person or persons who ultimately own or control the customer".

(a) natural person(s) (if any) who ultimately have a controlling ownership interest

141. The definition of beneficial owner specifies that, in the case of a body corporate or a body of persons, this shall be any natural person or persons who ultimately own or control that body corporate or body of persons through direct or indirect ownership of 25% + 1 or more of the shares, or more than 25% of the voting rights or an ownership interest of more than 25%, are considered to be beneficial owners.

(b) *where there are doubts or there is no beneficial owner(s) under a); natural person(s) (if any) exercising control through other means*

142. The definition of beneficial owner specified that, in the case of a body corporate or a body of persons, the beneficial owner shall consist any natural person who controls via an ownership interest (see a) above) or, through control via other means.

143. Further guidance in this regard is provided in s under paragraph (ii) of Section 3.1.2.1 of the Implementing Procedures Part I, with reference to the FATF's "Guidance in Transparency of Beneficial Ownership".

(c) *where no natural person is identified under (a) or (b) above, the identity of those holding the position of senior managing official*

144. Reg. 2 also provides that where subject persons have exhausted all possible means to identify the beneficial owner(s) as set out above, and provided there are no grounds of suspicion, they shall consider the natural person(s) holding the position of senior managing official or officials to be the beneficial owner(s).

145. In such situations subject persons are also required to keep a record of the actions taken to identify the beneficial owner.

146. *Criterion 10.11* – Reg. 2 PMLFTR includes a definition of the beneficial owner in the case of trusts, legal entities such as foundations and legal arrangements similar to trusts.

(a) for trusts: the settlor, the trustee(s), the protector (if any), the beneficiaries or class of beneficiaries, and any other natural person exercising ultimate effective control over the trust

147. Paragraph (b) of the definition of 'beneficial owner' stipulates that the beneficial owner shall consist of the settlor, the trustee or trustees, the protector where applicable, the beneficiaries or the class of beneficiaries as may be applicable, and any other natural person exercising ultimate control over the trust through direct or indirect ownership or other means.

148. (b) *for other types of legal arrangements, the identity of persons in equivalent or similar positions*

149. Paragraph (c) of the definition of beneficial owner stipulates that for legal entities such as foundations and legal arrangements similar to trusts the beneficial owner shall consist of the natural person(s) holding equivalent or similar positions to those stated in the response to c.10.11 (a) above.

150. *Criterion 10.12* – Reg. 7(9) PMLFTR requires subject persons (carrying out long-term insurance business) to carry out CDD measures on the beneficiaries of long-term insurance policies in line with the FATF Standard: a) identify the beneficiaries where these are specifically named natural persons, legal entities or arrangements; b) where the beneficiaries are designated by characteristics, class or other means, subject persons shall obtain sufficient information concerning those beneficiaries to be able to identify them at the time of pay-out; c) verify the identity of the beneficiaries at the time of pay-out.

151. *Criterion 10.13* – When assessing the risks arising out of their activities or business in terms of their obligation under Reg. 5(1) PMLFTR, subject persons must take into account a number of risk factors including customer risk. However, there is no specific requirement to include the beneficiary of a life insurance policy as a relevant risk factor in determining whether enhanced CDD measures are applicable.

152. Maltese authorities state that subject persons are expected to consider the beneficiaries of the policy as part of the customer risk factors, although this is not specified in the legal requirement.

153. Further guidance in this regard is planned.

154. *Criterion 10.14* – Reg. 8(1) PMLFTR requires subject persons to verify the identity of the customer and the beneficial owner before establishing the business relationship or carrying out the occasional transaction.

155. Reg. 8(2) of the PMLFTR allows verification to be delayed, so long as: this is necessary so as not to interrupt the normal conduct of business; the risk of ML/FT is low; and verification is completed as soon as is reasonably practicable after the establishment of the business relationship.

156. Although verification may only be delayed if the risk of ML/FT is low, there is no explicit requirement to effectively manage AML/CFT risks in this regard.

157. *Criterion 10.15* – Maltese authorities stated that the general obligation to have risk management and CDD measures (Reg. 5(5)(a)(ii) and Reg. 7(8) PMLFTR) should be interpreted so as to comply with this criterion.

158. However, neither of these regulations include a specific requirement to adopt risk management procedures "concerning the conditions under which a customer may utilise the business relationship prior to verification".

159. *Criterion 10.16* – Reg. 7(6) PMLFTR requires subject persons to apply CDD measures at appropriate times to existing customers on a risk-sensitive basis, including when a subject person becomes aware that the relevant circumstances surrounding a business relationship have changed. Subject persons are expected to take into consideration a number of factors, and this may include the CDD which has been previously carried out.

160. Reg. 7(7) of the PMLFTR requires subject persons to repeat CDD measures when doubts arise about the veracity or adequacy of previously obtained CDD information.

161. *Criterion 10.17* – Reg. 5(1) PMLFTR requires subject persons to undertake an assessment of ML and FT risk arising out of their activities or business. This must take into account a number of

factors, including customers, countries or geographical areas, products, services, transactions and delivery channels, and also take into consideration any national or supranational risk assessments.

162. Reg. 11(1) states that enhanced CDD measures must be applied in cases where: specific activities or services are determined by the FIAU to represent a higher risk; on the basis of the risk assessment, a subject person determines that there is a higher risk; and dealings are with natural or legal persons established in non-reputable jurisdictions.

163. Reg. 11(2) states that such enhanced CDD measures must be appropriate to manage and mitigate the high risk of ML/FT.

164. Reg. 11(1) also provides for a number of other situations in which the application of EDD measures is mandatory, including: cross-border correspondent banking relationships; dealings with PEPs; carrying out complex and unusually large transactions. In these scenarios, specific enhanced measures are stipulated in the regulations.

165. *Criterion 10.18* – Reg. 10(1)(a) and (b) PMLFTR, states that simplified CDD may be carried out when: the FIAU have determined that there is a low risk of ML/FT, or, the subject person determines that there is a low risk of ML/FT on the basis of the risk assessment carried out under Reg. 5(1).

166. Reg. 10(2) PMLFTR states that subject persons may determine the applicability and extent of due diligence measures in a manner that is commensurate to the risk identified.

167. Reg. 10(3) PMLFTR prohibits the application of simplified due diligence measures when the subject person has knowledge or suspicion of proceeds of criminal activity, ML/FT.

168. *Criterion 10.19* – If a subject person is unable to perform CDD measures, Reg. 8(5) PMLFTR requires that subject person not to proceed and to terminate any business relationship or occasional transaction.

169. Reg. 8(5) PMLFTR further requires subject persons to consider disclosing the information to the FIAU by way of a suspicious transaction report.

170. *Criterion 10.20* – Under Reg. 8(5) PMLFTR, where not proceeding due to the inability to complete CDD measures is impossible or is likely to frustrate the efforts of investigating a suspected ML/FT operation, subject persons may proceed on condition that an STR is immediately lodged. However, the formulation "likely to frustrate the efforts of investigating" appears to apply a lower threshold than the FATF Standard (that "performing the CDD process will tip-off…").

Weighting and Conclusion

171. A number of minor deficiencies exist: no explicit requirement to undertake reviews of existing records; the requirement to obtain information on the powers that regulate and bind a legal person/arrangement is not clear; there is no explicit requirement to effectively manage AML/CFT risks following delay of verification of identity; FIs are permitted not to pursue CDD at a lower threshold than the FATF Standard; consideration of the beneficiaries of a life policy is not an explicit risk factor. **R. 10 is rated LC.**

Recommendation 11 – Record-keeping

172. In 2012 MER, Malta was rated C with former R.10.

173. *Criterion 11.1* – Subject persons are required to maintain all necessary records on transactions, both domestic and international, for at least five years following completion of the transaction. Reg.

13(1)(b) PMLFTR requires subject persons to retain evidence and records necessary to reconstruct all transactions carried out by that FI.

174. Reg. 13(2)(b) stipulates that records must be retained for five years commencing on the date when all dealings taking place in the course of the transaction in question were completed.

175. Reg. 13(2) PMLFTR provides that, in relation to records of linked transactions, the five years retention period commences on the date on which the last operation took place. It also allows the FIAU, relevant supervisory authorities or LEAs to further extend that period to a maximum retention period of ten years.

176. *Criterion 11.2* – Subject persons are required to keep all records obtained through CDD measures, account files and business correspondence, and results of any analysis undertaken, for at least five years following the termination of the business relationship or after the date of the occasional transaction. Reg. 13 PMLFTR requires subject persons to retain all CDD documentation, data and information for a period of five years commencing on the date when the business relationship ends or when the occasional transaction is carried out. Where a business relationship could not be formally ended, the five years period shall start from the date on which the last transaction in that business relationship was carried out.

177. Section 5.2. paragraph (b) of the Implementing Procedures Part I specifies that all account files and business correspondence should be retained. This section also specifies the retention of records of the findings of the examinations of the background and purpose of the relationship/transaction. Under the Implementing Procedures Part I, it is also required to retain any other records that are necessary to demonstrate compliance with the obligations under the PMLFTR. The Implementing Procedures state that this will include internal SARs reports, the MLROs determination of knowledge/suspicion or otherwise, external SARs reports and reasons for not externalising a SAR report, and hence includes the results of the MLRO's analysis.

178. *Criterion 11.3* – Transaction records are required to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. Reg. 13(1)(b) requires subject persons to retain supporting evidence and records necessary to reconstruct all transactions carried out by that person in the course of a business relationship or any occasional transaction.

179. *Criterion 11.4* – Subject persons are required to ensure that all CDD information and transaction records are available swiftly to domestic competent authorities upon appropriate authority. Reg. 13(3) PMLFTR requires subject persons to ensure that upon request, all CDD information and transaction records are made available to the FIAU and, as may be allowed by law, to relevant supervisory authorities and LEAs.

180. Section 5.5. paragraph 3 of the Implementing Procedures Part I requires subject persons to establish effective systems to respond efficiently, adequately, promptly and comprehensively to all enquires by the FIAU or by supervisory or other relevant competent authorities.

Weighting and Conclusion

181. All criteria are met. **R. 11 is rated C.**

Recommendation 12 – Politically exposed persons

182. In 2012 MER, Malta was rated LC with former R.6. The assessment identified no technical deficiencies.

183. The term "politically exposed persons" is defined under Reg. (2) PMLFTR as natural persons who are or have been entrusted with prominent public functions, other than middle ranking or more junior officials. The definition then goes on to list a number of public functions and positions which are captured under this definition. The definition does not refer to or distinguish between national and foreign PEPs. Under Reg. (11)(7) PMLFTR, without prejudice to the application of enhanced CDD measures on a risk sensitive basis, where a PEP is no longer entrusted with a prominent public function, subject persons shall be required to apply EDD measures for at least twelve months after the date on which that person ceased to be entrusted with a prominent public function. This timeframe of twelve months does not meet the mandatory application of enhanced measures in the FATF Standard, which has no time limit. However, the risk-based approach would still require consideration by the subject person of the particular risks associated with the customer (and the appropriate mitigating measures).

184. *Criterion 12.1* – Reg. 11(1) PMLFTR requires that subject persons, in addition to their usual CDD obligations, apply EDD measures when dealing with a customer or a beneficial owner who is a PEP, subject to the twelve-month limit above.

185. Such enhanced measures comprise of:

(a) *Risk management systems* – Reg. 11(5) requires subject persons to have procedures to determine whether a customer or a beneficial owner is a PEP.

(b) *Senior management approval* – Reg. 11(5) requires senior management approval for undertaking occasional transactions or establishing or continuing business relationships with PEPs.

(c) *Source of wealth and funds* – Reg. 11(5)(b) requires a subject person to take adequate measures to establish the source of wealth and source of funds

(d) *Enhanced on-going monitoring* – Reg. 11(5)(c) PMLFTR requires subject persons to conduct enhanced on-going monitoring of business relationships with PEPs.

186. *Criterion 12.2* – The definition of PEP does not distinguish between domestic and foreign PEPs. The enhanced measures set out under c.12.1 apply to all PEPs irrespective of whether they are domestic or foreign.

187. The definition also includes persons entrusted with a prominent function within an "institution of the European Union or any other international body".

188. *Criterion 12.3* – Reg. 11(8) PMLFTR applies all EDD measures to family members or persons known to be close associates of PEPs, subject to the twelve-month limit above however the risk-based approach would still require consideration by the subject person of the particular risks associated with the customer (and the appropriate mitigating measures).

189. "Family members" are defined by Reg. 11(8) as including: (i) the spouse, or a person considered to be equivalent to a spouse; (ii) the children and their spouses, or persons considered to be equivalent to a spouse; and (iii) the parents.

190. "Persons known to be close associates" of a PEP are defined by Reg. 11(8) as meaning: (i) a natural person known to have joint beneficial ownership of a body corporate or any other form of

legal arrangement, or any other close business relations, with that PEP; (ii) a natural person who has sole beneficial ownership of a body corporate or any other form of legal arrangement that is known to have been established for the benefit of that PEP.

191. *Criterion 12.4* – Reg. 11(6) PMLFTR requires that subject persons take reasonable measures to determine whether the beneficiaries of a life insurance policy and, where applicable, the beneficial owner of the beneficiary are PEPs. It requires that these measures be taken no later than the time of pay-out or assignment, in whole or in part, of the policy.

192. If the subject person establishes that a PEP is involved, then it is required to inform senior management before proceeding with the pay-out and to conduct enhanced scrutiny of the entire business relationship. These obligations apply to all policies the beneficiary of which is a PEP, not only those presenting a higher risk.

193. Where, following such enhanced scrutiny (or for any other reason) the subject person knows or suspects or has reasonable grounds to suspect ML or FT, the general obligation to submit a STR to the FIAU applies. However, there are no specific requirements to consider making a STR where higher risks are identified in relation to life insurance policies with the involvement of a PEP as a beneficiary or the beneficial owner of the beneficiary.

194. All these measures are subject to the twelve-month limit, followed by risk-based application of enhanced measures, as described above.

Weighting and Conclusion

195. There are no specific requirements to consider making a STR where higher risks are identified in relation to life insurance policies with the involvement of a PEP as a beneficiary or the beneficial owner of the beneficiary. **R. 12 is rated LC.**

Recommendation 13 – Correspondent banking

196. In 2012 MER, Malta was rated C with former R.7.

197. *Criterion 13.1* – Reg. 11(3) PMLFTR requires subject persons to apply EDD measures when they establish correspondent relationships with institutions from a country other than the member states of the EU.

198. The mandatory application of these measures only to non-EU correspondents is not in compliance with the FATF Standards which requires that the enhanced measures be applied to all cross-border correspondent banking relationships.

199. The term "correspondent relationship" is defined under Reg. 2 PMLFTR and includes:

(i) the provision of banking services by one bank as the correspondent to another bank as the respondent, including providing a current or other liability account and related services, such as cash management, international funds transfers, cheque clearing, payable-through accounts and foreign exchange services;

(ii) the relationship between and among institutions carrying out relevant financial business (i.e. other FIs) and activities equivalent thereto, including where similar services to those under paragraph (a) are provided by a correspondent institution to a respondent institution, and including relationships established for securities transactions or funds transfers.

200. The EDD measures required comprise of:

(i) Reg. 11(3)(a) requirement for the relevant subject persons to ensure that they gather sufficient information about the respondent institution to understand fully the nature of the respondent's business and to determine from publicly available information the reputation of the institution and the quality of supervision on that institution;

(ii) Reg. 11(3)(b) requirement for subject persons to assess the adequacy and effectiveness of the respondent institution's measures, policies, controls and procedures for the prevention of ML and FT;

(iii) Reg. 11(3)(c) requirement for subject persons to obtain the approval of senior management prior to the establishment of new correspondent relationships;

(iv) Reg. 11(3)(d) requirement for subject persons to ensure that they document the respective responsibilities of each institution for the prevention of ML/FT.

201. While correspondent banks are required to determine the quality of supervision of a respondent bank, they are not required to determine if the respondent has been subject to a ML/FT investigation or regulatory action.

202. In addition, correspondent banks are required to document rather than clearly understand the respective responsibilities, which is not in line with the standard which implies the need to conduct an analysis and not just to collect documents.

203. *Criterion 13.2* – Reg. 11(3)(e) PMLFTR requires subject persons to be satisfied that the respondent institution has verified the identity of and performed on-going due diligence on the customers having direct access to the accounts of the respondent institution and to ensure that the respondent institution will be provide the relevant CDD data, when the subject person requests it. The mandatory application of these measures only applies to non-EU correspondents.

204. Criterion 13.3 – Reg. 11(4) prohibits FIs from entering into or continuing a correspondent relationship with a shell institution. It also requires subject persons to implement appropriate measures to ensure that they are not entering into or continuing a correspondent relationship with a respondent institution which is known to permit its accounts to be used by a shell institution.

205. The term "shell institution" is defined under Reg. 2 PMLFTR and covers not only banks but all other FIs.

206. The mandatory application of these measures only applies to non-EU correspondents.

Weighting and Conclusion

207. Mandatory measures regarding correspondent banking relationships apply only to respondent institutions outside the EU; correspondent banks are not required to determine if the respondent has been subject to a ML/FT investigation or regulatory action; correspondent banks are required to document rather than clearly understand the respective responsibilities. **R. 13 is rated PC.**

Recommendation 14 – Money or value transfer services

208. In 2012 MER, Malta was not evaluated against former SR.VI, having received a C rating in the previous assessment.

209. *Criterion 14.1* –The Financial Institutions Act (FIA) provides that the business of a FI may only be undertaken in or from Malta by a company which is licensed in terms of that Act. The First

Schedule of the FIA lists the activities of FIs, one of which is "payment services", which is defined in the Second Schedule.

210. The definition does not appear to cover other stores of value, or "new payment methods" as required by the FATF Standards.

211. *Criterion 14.2* – The MFSA's Enforcement Unit monitors and investigates cases where persons carry out unauthorised activities, including persons carrying out MVTS without a licence. Instances are brought to the attention of the Enforcement Unit by other MFSA Units, members of the public, and other local/international authorities. Art. 22(1) and (5) FIA state that any person who contravenes any provisions of the Act shall be guilty of a criminal offence and if found guilty of such an infringement would be liable to a fine of EUR 465,874.68 or to a term of imprisonment not exceeding four years, or both such fine and imprisonment. This would include any person providing unlicensed MVTS in breach of Art. 3(1).

212. In addition, under Art. 23(1) FIA, where the MFSA is satisfied that a person's conduct is in breach of the Act, or any rules or regulations issued thereunder, it may, by notice in writing and without recourse to a court hearing, impose an administrative penalty not exceed EUR150,000 for each infringement or failure to comply.

213. *Criterion 14.3* – "Payment services" (as described at c.4.1) are subject to AML/CFT obligations under the PMLA and the PMLFTR and this activity is monitored for AML/CFT compliance in terms of Art. 26 PMLA. However, the definition of payment services does not appear to cover other stores of value, or "new payment methods" as required by the FTAF Standards.

214. *Criterion 14.4* – Art. 8A (1) FIA stipulates that no FI (including those providing payment services) may enter into an agency arrangement with a third party unless it has communicated the following information to the competent authority (MFSA): (i) the name and address of the agent; (ii) a description of the internal control mechanisms that will be used by agents in order to comply with the AML/CFT obligations under the PMLA and the PMLFTR; and (iii) the identity of the directors and persons responsible for the management of the agent to be used in the provision of Services, and evidence that they are suitable persons.

215. Furthermore, in terms of Art. 8A(3)-(5) FIA, the MFSA may subject the person who will be appointed as agent to any of the obligations imposed on the company licensed under the FIA. It also can refuse to list the agent (if not satisfied that the information provided to it is correct). In case the MFSA suspects that the agent is involved in ML/FT the registration can be refused or withdrawn.

216. Art. 8A (1) also stipulates that a person who is appointed as an agent of a FI shall only act as agent: (i) in respect of those activities for which the FI to which he will act as agent is licensed under the FIA; (ii) to not more than one person licensed under the FIA; and (iii) subsequent to the verification by MFSA of the information provided by the FI.

217. According to Art. 8D of the FIA MFSA shall maintain a public register of all FIs and their branches and agents.

218. However, the definition of payment services does not appear to cover other stores of value, or "new payment methods" as required by the FATF Standards.

219. *Criterion 14.5* – The obligation on the MVTS provider to conduct a risk assessment of the risks of ML/FT that arise out of its business includes consideration of the provision of business or services through agents.

220. The obligation on MVTS providers to put in place and implement internal controls includes internal controls and compliance management procedures to ensure that its agents are complying with the MVTS AML/CFT policies, procedures and measures.

221. FIs are required to inform the MFSA about the internal mechanisms that it will adopt to ensure that agents are complying with AML/CFT obligations (see c.14.4 above). However, Art. 8A (1) (as described above) only refers to "internal control mechanisms that will be used by agents" but not to any monitoring arrangements used by the FI.

Weighting and Conclusion

222. The definition of "payment services", does not appear to cover all stores of value, or "new payment methods" as required by the FATF Standards. **R. 14 is rated LC.**

Recommendation 15 – New technologies[95]

223. In 2012 MER, Malta was not evaluated against former R.8, having received a C rating in the previous assessment.

224. *Criterion 15.1* – There are no references in any material relating to the NRA shared with the assessment team to any work done by the authorities for the purpose of identifying and assessing ML/FT risks that may arise in relation to the development of new products and practices, or delivery mechanisms, nor the use of new technologies.

225. Maltese authorities stated that the NCC (established by law in April 2018) is expected to consider this specific risk and determine, where applicable, any necessary subsequent policy changes. At the time of the on-site, the NCC was in the process of conducting a risk assessment on virtual financial assets.

226. Subject persons are required to identify and assess the risks of ML/FT that arise out of its activities or business. There is a general obligation to review and up-date risk assessments (which may be triggered by the development of new products or activities). In addition, section 3.5.4. of the Implementing Procedures Part I (New or developing technologies and products and transactions that might favour Anonymity), requires subject persons to pay special attention to any threat of ML/FT that may arise from new or developing technologies or from products or transactions that might favour anonymity, and take measures, if needed, to prevent their use in ML/FT.

227. *Criterion 15.2* – There is no specific requirement to undertake the risk assessment described at c.15.1 above prior to the launch or use of such products, practices and technologies.

Weighting and Conclusion

228. No risk assessment for the purpose of identifying and assessing ML/FT risks that may arise in relation to the development of new products and practices, delivery mechanisms or the use of new technologies has been carried out at the country level. The requirement to assess the risk of new products, services and new or developing technologies does not specify that such assessments be undertaken prior to the use of such products, practices and technologies. **R. 15 is rated PC.**

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[95] The FATF revised R.15 in October 2018 and its interpretive note in June 2019 to require countries to apply preventive and other measures to virtual asset service providers and virtual asset activity. This evaluation does not assess Malta's compliance with revised R.15 because, at the time of the on-site visit, the FATF had not yet revised its assessment Methodology accordingly. Malta will be assessed for technical compliance with revised R.15 in due course, in the context of its mutual evaluation follow-up process.

Recommendation 16 – Wire transfers

229. In 2012 MER, Malta was rated C with former FATF SR.VII due to direct applicability of the relevant requirements at the EU level as set out in the Regulation (EC) No 1781/2006.

230. Subject persons carrying out financial business involving the transfer of funds are required to comply with the provisions of Regulation (EU) 2015/847 on information accompanying transfers of funds, which is directly applicable under Maltese law.

231. For consistency reasons, the analysis below uses the terminology of the FATF Recommendations interchangeably with that of the Regulation (EU) 2015/847.

232. *Criterion 16.1* – Art. 4 of Regulation (EU) 2015/847 implements the FATF requirement regarding all cross-border wire transfers of EUR 1,000 or more to be always accompanied by required and accurate originator information, as well as by required beneficiary information.

233. *Criterion 16.2* – The FATF requirements regarding batch files are implemented through Art. 6 of Regulation (EU) 2015/847 with relevant references to Art. 4 for required and accurate originator information, as well as for required beneficiary information, including the originator's payment account no. or unique transaction identifier, that is fully traceable.

234. *Criterion 16.3* –Art. 6 of Regulation (EU) 2015/847 implements the FATF requirement regarding cross-border wire transfers below EUR 1,000 to be always accompanied by required originator and required beneficiary information.

235. *Criterion 16.4* –According to Art. 6 of Regulation (EU) 2015/847, FIs need not verify the information on the originator unless, *inter alia*, they have reasonable grounds for suspecting ML/FT.

236. *Criterion 16.5* and *16.6* – Wire transfers with all participants in the payment chain established within the EU are considered domestic transfers for the purposes of R.16, which is consistent with the FATF Standards.

237. Art. 5 of Regulation (EU) 2015/847 defines that such transfers shall be accompanied by at least the payment account number of both the originator and the beneficiary, or by the unique transaction identifier. At that, there is a three working day period established for the ordering FI to make available required originator information whenever requested to do so by the beneficiary or intermediary FI.

238. Art. 14 of the Regulation requires FIs to respond fully and without delay to enquiries from appropriate AML/CFT authorities.

239. *Criterion 16.7* – Art. 16 of Regulation (EU) 2015/847 establishes a five-year period for ordering and beneficiary FIs to retain the records of originator and beneficiary information. Upon expiry of this retention period, personal data is to be deleted, unless provided for otherwise by national law. The Regulation defines that Member States may allow or require further retention only after they have carried out a thorough assessment of the necessity and proportionality of such further retention, and where they consider it to be justified as necessary for the ML/FT purposes. That further retention period shall not exceed five years.

240. *Criterion 16.8* – Art. 4 of Regulation (EU) 2015/847 prohibits the ordering FI to execute any transfer of funds before ensuring full compliance with its obligations concerning the information accompanying transfers of funds.

241. *Criterion 16.9* – Art. 10 of Regulation (EU) 2015/847 requires intermediary FIs to ensure that all the information received on the originator and the beneficiary, that accompanies a transfer of funds, is retained with the transfer.

242. *Criterion 16.10* – Regulation (EU) 2015/847 does not provide for the exemption specified in this criterion regarding technical limitations preventing appropriate implementation of the requirements on domestic wire transfers.

243. *Criterion 16.11* – Art. 11 of Regulation (EU) 2015/847 stipulates the obligation of the intermediary FI to implement effective procedures including, where appropriate, ex-post or real time monitoring, in order to detect whether required originator or required beneficiary information in a transfer of funds is missing.

244. *Criterion 16.12* – Art. 12 of Regulation (EU) 2015/847 stipulates the obligation of the intermediary FI to establish effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required originator and required beneficiary information and for taking the appropriate follow up action.

245. *Criterion 16.13* – Art. 7 of Regulation (EU) 2015/847 stipulates the obligation of the beneficiary FI to implement effective procedures including, where appropriate, ex-post or real-time monitoring, in order to detect whether required originator or required beneficiary information in a transfer of funds is missing.

246. *Criterion 16.14* – Art. 7 of Regulation (EU) 2015/ 847 defines that, in the case of transfers of funds exceeding EUR 1,000, the beneficiary FI shall verify the accuracy of the identification information on the beneficiaries before crediting their payment account or making the funds available to them. Provisions of Art. 16 of the Regulation on retention of the records of beneficiary information apply, as described under the analysis for c.16.7.

247. *Criterion 16.15* – Art. 8 of Regulation (EU) 2015/847 stipulates the obligation of the beneficiary FI to implement effective risk-based procedures for determining whether to execute, reject or suspend a transfer of funds lacking the required originator and beneficiary information and for taking the appropriate follow-up action.

248. *Criterion 16.16* – The Regulation (EU) 2015/847 is binding for all MVTS providers and, according to Art. 2, applies to the transfers of funds, in any currency, which are sent or received by an ordering, intermediary or beneficiary FI established in the EU.

249. See R.14 above for analysis in relation to the inclusion of MVTS within the Maltese AML/CT regime, including agents, branches and subsidiaries.

250. *Criterion 16.17* – Regulation (EU) 2015/847 does not specifically address situations where both the ordering and beneficiary institutions are controlled by the same MVTS provider.

251. Art. 9 and 13 of the Regulation require beneficiary and intermediary FIs to take into account missing or incomplete information on the originator or the beneficiary as a factor when assessing whether a transfer of funds, or any related transaction, is suspicious and whether it is to be reported to the FIAU. Art.4 of the Regulation, in turn, prohibits ordering FIs to execute any transfer of funds before ensuring full compliance with the obligations on accompanying information. Overall, this appears to fall short of the FATF requirement for an MVTS provider to take into account all information from both the ordering and beneficiary sides (as opposed to missing or incomplete information on the originator or the beneficiary).

252. Maltese authorities suggest that the general STR reporting obligation requires an MLRO to consider all available information deemed relevant, and that this would, in the case of a subject person that controls both ordering and beneficiary sides, include all information from both the ordering and the beneficiary side.

253. Regulation (EU) 2015/847 does not require to file a STR in the country affected by the suspicious wire transfer and to make relevant transaction information available to the FIAU.

254. *Criterion 16.18* – FIs conducting wire transfers are subject to the requirements of the EU Regulations and domestic measures that give effect to UNSCRs 1267, 1373, and successor Resolutions. Reference is made to the analysis for R.6 for further details.

Weighting and Conclusion

255. Most criteria are met, apart from c16.16 and c16.17, which are mostly met. **R. 16 is rated LC.**

Recommendation 17 – Reliance on third parties

256. In 2012 MER, Malta was not evaluated against former R.9, having been assessed as Ct in the previous evaluation.

257. *Criterion 17.1* – Reg. 12(1) PMLFTR permits subject persons to rely on other subject persons or third parties to fulfil certain CDD obligations (the identification and verification of the customer, the identification and verification of the beneficial owner, and understanding the nature of the business relationship), while clearly stipulating that the subject person remains ultimately responsible for compliance with such obligations.

258. The term "Third party" is defined under Reg. 12(2) PMLFTR as "any person or institution, including member organisations or representative bodies of such persons or institutions, situated in an EU member state other than Malta or other third country (excluding non-reputable jurisdictions) that: (a) applies CDD and record keeping requirements consistent with those in the PMLFTR; (b) is supervised for AML/CFT purposes in a manner consistent with the requirements of the 4th AMLD. However, requirement for application of CDD and record keeping, "consistent with PMLFTR", does not amount to compliance with the requirements set out in R.10 (see analysis of R10).

259. While this definition does not appear consistent with the definition of "third party" in the FATF Standards (IN to R.17), which is limited to a "financial institution or DNFBP", the conditions for placing reliance ensure that the Standards is met, by limiting its use to third parties who apply CDD and record keeping requirements and are supervised for AML/CFT purposes.

260. Reg. 12(3) PMLFTR requires that subject persons placing reliance shall obtain CDD information from the subject persons or third party being relied on. Section 3.6.1 of the Implementing Procedures Part I provides more specificity in relation to the reliance process, including the requirement to obtain such information "immediately".

261. Reg. 12(4) PMLFTR requires subject persons placing reliance to take adequate steps to ensure that, upon request, the other subject person or third party being relied upon shall immediately forward relevant copies of the identification and verification data. Section 3.6.1 of the FIAU Implementing Procedures Part I requires subject persons to have a written agreement in place for this purpose and recommends subject persons to "consider making occasional tests of the system".

262. *Criterion 17.2* – Reg. 12(2) PMLFTR prohibits reliance on third parties from non-reputable jurisdictions, defined as a jurisdiction that has deficiencies in its national AML/CFT regime and

having inappropriate and ineffective measures to prevent ML/FT, or is listed by the EU as a high-risk jurisdiction pursuant to Art. 9 of the 4th AMLD. While this prohibits reliance on third parties from non-reputable jurisdictions, it is not equivalent to the obligation to have regard to information on the level of country risk.

263. *Criterion 17.3* – Reg. 12(5) PMLFTR allows subject persons to rely on other entities within the same group to perform the specified CDD measures (i.e. those required under Reg. 7(1)(a) to (c)), as long as the group applies CDD measures, record-keeping measures and AML/CFT policies and procedures equivalent to those in the PMLFTR.

Further conditions are that:

- The effective implementation of the CDD, record-keeping and AML/CFT policies and procedures at group level must be subject to supervision by a relevant authority.
- A subject person may not rely on a third party from a non-reputable jurisdiction, unless the third party is a branch or majority-owned subsidiary of persons or entities established in a EU Member State which is subject to national provisions implementing the 4th AMLD, and which fully complies with group-wide policies and procedures that are equivalent to those required in terms of Reg. 6 PMLFTR. However, this does not amount to compliance with the requirements set out in R.10, R.12 and R.18, due to the deficiencies in compliance with those Recommendations (see the analysis of R.10, R.12 and R.18).

264. Reg. 6(3) and (4) PMLFTR provide that parent entities having branches or majority owned subsidiaries in third countries with AML/CFT requirements that are less stringent than those envisaged under the PMLFTR shall ensure that those branches or subsidiaries apply the more rigorous AML/CFT procedures envisaged under the PMLFTR; or additional measures to mitigate any ML/FT risks, and shall inform the FIAU.

Weighting and Conclusion

265. Requirement for application of CDD and record keeping, "consistent with PMLFTR", does not amount to compliance with the requirements set out in R.10 (see analysis of R10); Requirements for reliance on third party that is part of a same group do not amount to compliance with the requirements set out in R.10, R.12 and R.18 (see analysis of R10, R12 and R18). While PMLFTR prohibits reliance on third parties from non-reputable jurisdictions, it is not equivalent to the obligation to have regard to information on the level of country risk. **R. 17 is rated LC.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

266. In 2012 MER, Malta was not evaluated against former R.15, having been assessed as C in the previous evaluation. Malta was rated C with former R.22.

267. *Criterion 18.1* – Reg. 5(5) PMLFTR, requires subject persons to implement, policies, controls and procedures, proportionate to the nature and size of its business, which address the risks identified as a result of their risk assessment.

(a) *Compliance management arrangements* – Reg. 5(5)(a)(ii) requires subject persons to have compliance management measures. Reg. 5(5)(c) requires the appointment (where appropriate with regard to the nature and size of the business), of an officer at management level whose duties shall include the monitoring of the day-to-day implementation of the subject persons' AML/CFT measures, policies, controls and procedures.

(b) *Employee screening* – Reg. 5(5)(a)(ii) requires subject persons to have in place and implement employee screening policies and procedures.

(c) *On-going training* – Reg. 5(5)(b): subject persons are required to take appropriate and proportionate measures from to time to make employees aware of:

- the subject persons' AML/CFT measures, policies and procedures; and
- the provisions of the AML/CFT and other legal requirements.

Reg. 5(5)(e) PMLFTR: subject persons are to provide employees from time to time with training in the recognition and handling of operations and transactions which may be related to proceeds of criminal activity, ML/FT.

d) *Independent audit function* – Reg. 5(5)(d) PMLFTR, requires subject persons to implement an independent audit function, where this is appropriate with regard to the nature and size of the business.

The requirements to appoint a compliance officer and implement an independent audit function are dependent on an undefined nature and size of the business.

268. *Criterion 18.2* – A "group" is defined as a parent undertaking and all its subsidiary undertakings.

269. Reg. 6(1) PMLFTR states that subject persons that are part of a group are required to implement group-wide policies and procedures that include the AML/CFT measures referred to under c.18.1, as well as policies and procedures on data protection and the sharing of information.

270. This broad provision may be interpreted to include the provision at group level compliance, audit or AML/CFT functions of any information that is necessary for AML/CFT purposes, hence including customer, accounts and transaction information. However, this is not specified in the legislation.

271. *Criterion 18.3* – Where subject persons have branches/subsidiaries in third countries where AML/CFT measures are less stringent than those under the PMLFTR, Reg. 6(3) required that those branches/subsidiaries implement the provisions of the PMLFTR as long as the third country's legislation permits. Where the third country legislation does not permit it, that subject person should ensure that the branches/subsidiaries apply additional measures to effectively handle the risk of ML/FT and must immediately inform the FIAU.

272. There are no similar provisions for branches and subsidiaries within the EEA. Instead, the parent undertaking must ensure that the subsidiary or branches follow the law of the other EEA state (Reg. 6(2)).

Weighting and Conclusion

273. Requirements to appointment of a compliance officer and implement an independent audit function are dependent on an undefined nature and size of the business; the full scope of information to be exchanged under group-wide AML/CFT programmes is not clearly articulated; and FI's are not required to ensure that their branches and subsidiaries in the EEA have in place similar AML/CFT measures to Malta based on the assumption that all EEA members have implement the 4th AMLD adequately. In the context of Malta, these are considered to be minor deficiencies. **R. 18 is rated LC.**

Recommendation 19 – Higher-risk countries

274. In 2012 MER, Malta was rated LC with former R.21. The assessment identified technical deficiencies related to the lack of practical assistance on application of the concept of non-reputable jurisdiction and hence the risk that appropriate counter-measures would not be applied.

275. *Criterion 19.1* – Reg. 11(1)(c) states that subject persons shall apply EDD measures when dealing with natural or legal persons established in a "non-reputable jurisdiction", which is defined as a jurisdiction that has deficiencies in its national AML/CFT regime or that has inappropriate and ineffective measures for the prevention of ML/FT, taking into account any accreditation, declaration, public statement or report issued by an international organisation which lays down internationally accepted standards for the prevention of ML and for combating FT or which monitors adherence thereto, or is a jurisdiction identified by the European Commission in accordance with Art. 9 of Directive (EU) 2015/849.

276. While this formulation does not necessarily encompass the countries for which certain actions are called for by the FATF, the supporting guidance in the Implementing Procedures (Appendix III) clarify that enhanced measures must be applied to jurisdictions subject to a FATF call for counter-measures.

277. *Criterion 19.2* – The FIAU may apply countermeasures proportionate to the risks whenever it is informed by subject persons that they are going to undertake occasional transactions for, or establishing business relationships or acting in the course of a business relationship with a natural or legal person established in a non-reputable jurisdiction in respect of which there has been an international call for counter-measures.

278. The FIAU can require a business relationship to cease or a transaction not to be undertaken, or apply any other counter-measure as may be adequate under the respective circumstances.

279. This process is effectively mandatory in relation to jurisdictions subject to an FATF call for counter-measures (see 19.1 above). In addition, Art. 30C of the PMLA empowers the FIAU to apply specific counter-measures in relation to higher-risk countries on its own volition (i.e. independently of any call by the FATF).

280. *Criterion 19.3* – FATF and MONEYVAL Statements are uploaded on the FIAU's and MFSA websites and the FIAU sends out a newsletter to all its subscribers (which include the MLROs of all financial institutions) to advise them about the new statements as well as to remind them about the Guidance Note that the FIAU had issued on High-Risk and Non-Cooperative Jurisdictions. In addition, MFSA circulates information on the statements to its supervised entities.

Weighting and Conclusion

281. All criteria are met. **R. 19 is rated C**.

Recommendation 20 – Reporting of suspicious transaction

282. Malta was rated PC in the MER of 2012 as regards the STRs requirements. The assessment team highlighted deficiencies in the criminalisation of FT limiting the reporting obligations and requiring further clarifications in the definition of FT. Furthermore, the scope of reporting requirements related to ML only, not to proceeds of criminal activity.

283. *Criterion 20.1* – According to Reg. 15(3) PMLFTR, whenever subject persons (as defined in Reg. 2 PMLFTR) know, suspect or have reasonable grounds to suspect that funds, regardless of the amount involved, are the proceeds of criminal activity or are related to FT, or that a person (natural or legal) may have been, is or may be connected with ML or FT they are required to disclose that information to the FIAU. Criminal activity is defined by the 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 art. 3(1)(a) of the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances; or (b) one of the offences listed in the Second Schedule to the PMLA i.e. any criminal offence". The disclosure has to be made as soon as it is reasonably practicable, but not later than five working days from when the knowledge or suspicion first arose. This mechanism to file STRs casts doubts on fulfilment of the obligation to do so "promptly" in line with the FATF Recommendations. Subject persons are prohibited to carry out the transaction until the FIAU has been informed (Art. 15 (4)), unless it is not possible to refrain from carrying out the transaction (Art. 15 (5)), in which case the subject person must inform the FIAU "immediately after the transaction is effected".

284. *Criterion 20.2* – Reg. 15 PMLFTR states clearly that STRs are to be sent in cases of funds suspected to be proceeds of criminal activity "regardless of the amount involved". The authorities indicated that the disclosure obligation also covers attempted transactions, although this is not clearly stated by the law.

Weighting and Conclusion

285. The PMLFTR is partly in line with the substantive requirements under Criterion 20.1, as the mechanism to file STRs casts doubts on the fulfilment of the obligation to do so "promptly" in line with the FATF Recommendations. Criterion 20.2 is partly met, as the legislation does not clearly and expressly include also the attempted transactions among those to be reported by the subject persons. Taking into account the above, **R.20 is rated PC**.

Recommendation 21 – Tipping-off and confidentiality

286. In the 2012 MER, Malta was rated C with former R.14.

287. *Criterion 21.1* – Reg. 15 (10) PMLFTR states that disclosures made by a subject person, their employees or directors that have been done in *bona fide* are not to be treated as a breach of duties of professional secrecy or any other restriction imposed by statute or otherwise and shall not involve that subject person, its employees or directors in any liability of any kind. This extends also to those circumstances when the subject person, its employees or directors are not precisely aware of the underlying criminal activity and regardless of whether illegal activity actually occurred. Reg. 15(11) PMLFTR further provides protection and confidentiality to the identity of the persons and employees reporting suspicious ML/FT or suspicions that funds are the proceeds of criminal activity, either internally (internal reporting) or to the FIAU.

288. *Criterion 21.2* – Reg. 16(1) PMLFTR states that subject persons, any official or employee of a subject person or any person from whom the FIAU has demanded information, or any other person who has transmitted information to the FIAU are prohibited from disclosing to the person concerned or to a third party (i.e. any other person, natural or legal) the fact that (a) information, including a STR, has been or may be transmitted to the FIAU; and/or (b) that information has been demanded by the FIAU. This prohibition of disclosure shall extend to tipping-off that an analysis or an investigation has been, is or may be carried out. Any subject person, official/employee or any other person who

breaches such prohibition shall be guilty of an offence and liable on conviction to a fine not exceeding EUR 115,000 or to imprisonment for a term not exceeding two years, or to both such fine and imprisonment. Reg. 16(2) provides for exemptions from the prohibition within groups, in line with R.18.

Weighting and Conclusion

289. All criteria are met. **R. 21 is rated C**.

Recommendation 22 – DNFBPs: Customer due diligence

290. In 2012 MER, Malta was not assessed against former R.12, having received a LC rating in the previous assessment.

291. In the analysis presented below, the deficiencies identified in relation to the compliance of FIs with the FATF requirements under respective Recommendations are also relevant, where applicable, for the DNFBPs, unless specified otherwise.

292. *Criterion 22.1* – Maltese CDD requirements are applicable to all subject persons, be they FIs or DNFBPs. A subject person is anyone carrying out "relevant financial business" and/or "relevant activity". The latter term is defined under Reg. 2 PMLFTR to include all DNFBPS as envisaged by the FATF Standards.

(a) *Casinos* – Reg. 9(1) PMLFTR: casino and gaming licensees must carry out CDD measures when carrying out transactions that amount to or exceed EUR 2,000. In the case of an occasional transaction the ERU 2,000 threshold can be reached either in a single operation or in several operations which appear to be linked.

Reg. 9(1) PMLFTR is applicable to transactions of all kinds as it does not specifically refer to transactions in chips or tokens.

Regulation 9(2((b) along with the supporting Implementing Procedures, act to require that casinos to be able to link CDD information for a customer to the transactions that the customer conducts in the casino.

(b) *Real estate agents* – The activity of real estate agents constitutes 'relevant activity', but the activity is not expressly defined in legislation to include the involvement in transactions for a client concerning both the buying and selling of real estate.

CDD obligations are understood to encompass both parties to the sale and purchase of property and this interpretation is evidenced in compliance reports and sanctions imposed on real estate agents for failing to identify both parties to sale agreements.

(c) *Dealers in precious metals and stones* – The definition of 'relevant activity' includes trading in goods (not limited to precious metals and stones) for cash of EUR 10,000 or more, whether the transaction is carried out in a single operation or in several operations which appear to be linked.

(d) *Lawyers, notaries, other independent legal professionals and accountants* – The activities of auditors, external accountants and tax advisors constitutes 'relevant activity' along with lawyers, notaries and other independent legal professionals, when they participate in any financial or real estate transaction, or by assisting in the planning or carrying out of transactions for their clients concerning:

(i) buying and selling of real property or business entities;

(ii) managing of client money, securities or other assets, unless operating with a licence issued under the provisions of the Investment Services Act;

(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 companies, trusts, foundations or similar structures, or when acting as a trust or company service provider.

(e) *Trust and company service providers* – The definition of 'relevant activity' includes trust and company service providers, so are subject to all CDD requirements.

A 'trust and company service provider' is defined by Reg. 2 PMLFTR as being any natural or legal person who:

> (a) provides trustee or other fiduciary services whether authorised or otherwise in terms of the Trusts and Trustees Act, other than persons acting as trustees in terms of Art. 43A of the said Act;
>
> (b) arranges, by way of business, for another person to act as a trustee of an express trust or a similar legal arrangement;
>
> (c) arranges, by way of business, for another person to act as a fiduciary (i.e. nominee) shareholder for another person other than a company listed on a regulated market that is subject to disclosure requirements;
>
> (d) acts as a company service provider- defined in the Company Service Providers Act to consist of the formation of companies or other legal entities; acting as or arranging for another person to act as director or secretary of a company, a partner in a partnership or in a similar position in relation to other legal entities; and provision of a registered office, a business correspondence or administrative address and other related services for a company, a partnership or any other legal entity.
>
> The definition is broadly consistent with the FATF Standards.
>
> There is an exemption from the definition of DNFBP (namely; trustees acting in terms of Art. 43A of the Trusts and Trustees Act). Exemptions from the AML/CFT regime are limited to circumstances of lower risk and, while not specifically considered in the NRA, are not inconsistent with the authorities' understanding of risk.

293. The deficiencies identified under R.10 also apply to DNFBPs.

294. *Criterion 22.2* – Reference is made to the analysis for R.11 on the general coverage of record-keeping requirements within Maltese legislation, which are equally applicable to FIs and DNFBPs, as subject persons.

295. *Criterion 22.3* – Reference is made to the analysis for R.12 on the general coverage of PEP requirements within Maltese legislation, which are equally applicable to DNFBPs.

296. *Criterion 22.4* – Reference is made to the analysis for R.15, which is equally applicable to DNFBPs.

297. *Criterion 22.5* – Reference is made to the analysis for R.17 on the reliance provisions, which are applicable to DNFBPs.

Weighting and Conclusion

298. Based on deficiencies identified in R.10, 12, 15 and 17 which are equally relevant to DNFBPs, **R. 22 is rated LC.**

Recommendation 23 – DNFBPs: Other measures

299. In 2012 MER, Malta was rated PC with former R.16. The assessment identified technical deficiencies related to the incrimination of FT and the scope of reporting requirements.

300. In the analysis presented below, the deficiencies identified in relation to the compliance of FIs with the FATF requirements under respective Recommendations are also relevant, where applicable, for the DNFBPs, unless specified otherwise.

301. *Criterion 23.1* – Maltese reporting requirements are applicable to all subject persons, be they FIs or DNFBPs. A subject person is anyone carrying out "relevant financial business" and/or "relevant activity". The latter term is defined under Reg. 2 PMLFTR to include most DNFBPS as envisaged by the Standard, excluding "private trustees" (see c.22.1 for details).

302. Reference is made to the analysis for R.20 on the general coverage of STR requirements within Maltese legislation.

303. *Criterion 23.2* – Reference is made to the analysis for R.18 on the general coverage of internal control requirements within Maltese legislation.

304. All subject person, including DNFBPs in the circumstances envisaged by this criterion (with the exception of "private trustees"), are obliged to have internal controls as described at R18 above.

305. *Criterion 23.3* – Reference is made to the analysis for R.19 on the general coverage of the requirements regarding high-risk countries within Maltese legislation.

306. All subject person, including DNFBPs in the circumstances envisaged by this criterion (with the exception of "private trustees"), are obliged to comply with high-risk countries requirements as described at R.19 above.

307. *Criterion 23.4* – Reference is made to the analysis for R.21 on the general coverage of the tipping-off and confidentiality requirements within Maltese legislation.

308. All subject person, including DNFBPs in the circumstances envisaged by this criterion (with the exception of "private trustees"), are obliged to comply with tipping-off and confidentiality requirements as described at R21 above.

Weighting and Conclusion

309. Based on deficiencies identified in R.20 and R.18 which are equally relevant to DNFBPs, **R. 23 is rated LC**.

Recommendation 24 – Transparency and beneficial ownership of legal persons

310. In the 3rd Round Malta was rated as C with former R.33.

311. *Criterion 24.1* – (a) Types, forms and features of legal persons: The Maltese legal framework provides for the establishment of public liability companies; private limited liability companies;

Societa Europea, European Economic Interest Groupings; Partnerhips en nom collectif (i.e. unlimited liability) and Partnerships en Commandites (i.e. limited liability); as well as private foundations, purpose foundations and associations. Art. 84 of the Companies Act also provides for cell companies which are a form of Partnerships en Commandites. Associations have the option of either registering with the Registrar for Legal Persons, in which case they obtain legal personality upon registration, or to not register, in which case they are not endowed with legal personality. On the other hand, it is mandatory for all foundations, whether they are new or whether they existed before 2008 (when the relative legislation came into effect), to register at the Public Registry, Malta. Separate legislation defines each type of legal person, as discussed under (b) below.

(b) Process for creation of legal persons and obtaining beneficial ownership: Art. 67-82 of the Companies Act explains the process for creating, capturing basic information and registering a company at the Registrar. Art. 13, 14 and 15 of the Companies Act explains the process for creating, capturing basic information and registering a partnership (limited and unlimited liability) at the Registrar of Companies, which until recently formed part of the MFSA. The Companies Act (Cell Companies Carrying on Business of Insurance) Regulations which govern protected cell companies (PCC) and the Companies Act (Incorporated Cell Companies Carrying on Business of Insurance) Regulations which govern incorporated cell companies ("ICC"), allow a cell company to be formed in carrying out the business of insurance, reinsurance, captive, insurance brokerage and insurance management. However, to date there are no ICCs authorised under the Insurance Business Act. Both PCCs and ICCs have the ability to create cells for the purposes of the segregation of the cellular assets and liabilities. It should be noted that incorporated cells and protected cells have different statuses at law: namely, a protected cell does not have a separate legal personality and each cell transacts through the PCC, whilst in the case of an ICC each incorporated cell has its own separate legal personality which is distinct from that of other incorporated cells and that of the ICC. PCCs may only be used for regulated insurance business and ICCs may only be used for regulated insurance and investment business.

312. The Second Schedule to the Civil Code lays down the requisites for the registration of foundations in Art. 26, 29, 31, 32, 33, 32A and 35 and the requisites for the registration of associations in Art. 27, 48, 49, 51, 53 and 54 with the Registrar of Legal Persons. All the necessary information for registration of legal persons is publicly available. The obtaining and recording of beneficial ownership is discussed under c.24.6.

313. *Criterion 24.2* – It is acknowledged by the authorities in the NRA that Maltese legal persons can be misused for ML/FT purposes, in particular, that such vehicles have been used to obscure beneficial ownership. A separate risk assessment analysing how all types of Maltese legal persons could be used for ML/FT purposes was underway, but not finalised at the time of the on-site visit.

314. *Criterion 24.3 – Companies and Partnerships* - Companies (Art. 76) and partnerships (Art.15) of the Companies Act are required to submit respectively their memorandum and articles of association and their deed of partnership to the Registrar of Companies to obtain their legal status. The particulars of each director, shareholder and company secretary, as well as the registered office and share capital of the company are all entered in the Registry of Companies electronic online system (https://rocsupport.mfsa.com.mt/pages/SearchCompanyInformation.aspx). Basic information (company name, registration number, registered office address and company status) is available free of charge. The authorities have advised that further information is available online, upon subscription but without charge to the general public. Downloading of company documents

carries a small charge. This procedure applies to all commercial partnerships, which includes partnerships en commandite, en nom collectif and limited liability companies.

315. *Foundations and Associations* - As per Subsidiary Legislation 16.07/Legal Notice 439/2010 relative to the Civil Code (Second Schedule) (Fees) Regulations, the basic information and all registration documents at the Public Registry regarding associations and purpose foundations are publicly available and open to physical inspection against a small charge. Basic information is publicly available for private foundations.

316. *Criterion 24.4 – Companies and Partnerships* – Companies and Partnerships are required to maintain constitutive documents in Malta. Therefore, the basic information specified in c24.3 is maintained. Art. 123 of the Companies Act requires companies to keep a register of members where there must be entered the names and addresses of the members, a statement of the shares held by each member, distinguishing each share by its number, and of the amount paid or agreed to be considered as paid on the shares of each member, the date when each person was entered in the register as a member, and the date at which any person ceased to be a member. Where the share capital is divided into different classes of shares, the rights attaching to the shares of each class shall be included in the memorandum of association (under Art. 69 of the Companies Act). Pursuant to Art. 123 of the Companies Act, the register of members must be kept at the registered office of the company or such other place in Malta as may be specified in the memorandum or articles. Art. 13 of the Companies Act requires that a partnership shall not be validly constituted, unless a deed of partnership is entered into and signed and certificate of registration is issued. Art. 14 of the Companies Act requires the deed of partnership to state, *inter alia*: the name and residence of the partners; the partnership name; registered office; the objects of the partnership and the contribution of each of the partners.

317. *Foundations and Associations* – Foundations and Associations are required to maintain constitutive documents in Malta. Therefore, the basic information specified in c24.3 is maintained. Art. 49 of the Second Schedule to the Civil Code requires that the agreement establishing an association shall be in writing. The statute shall state, *inter alia,* the following in order to be eligible for registration: name; registered address; the purpose or objects and the composition of the board of administration and the names of the first administrator. Art. 29 of the Second Schedule to the Civil Code states that a foundation may only be constituted by virtue of a public deed and shall state, *inter alia*, the following in order to be eligible for registration: name; registered address; the purpose or objects and the composition of the board of administration and the names of the first administrator.

318. *Criterion 24.5* – Companies and partnerships - There is an obligation in the Companies Act for companies to notify the Registrar of Companies of changes in their directors, shareholders, company secretary, share capital and in general any changes to the memorandum and articles. Art. 79(2) requires the directors and the company secretary to deliver to the Registrar for registration a printed copy of any resolution effecting changes to the memorandum and articles within fourteen days after the date of the resolution, together with a revised and updated copy of the memorandum, and of the articles, if any, as amended by the said resolution and incorporating all the changes effected to date relating to the directors, company secretary, the representation of the company, change in registered office of the company, or any transfer or transmission of shares or any allotment of shares. The Companies Act provides for penalties in the event of a late notification of the foregoing. Companies are also obliged to submit an annual return which confirms the current basic

information. Art. 19 of the Companies Act requires that any change in a deed of partnership shall be in writing and signed by the partners and an authentic copy submitted to the Registrar.

319. Foundations and Associations – Pursuant to Regs. 3 and 5 of the Civil Code (Second Schedule) (Notifications and Forms) Regulations, there is an obligation to file with the Registrar for Legal Persons the updated information through the prescribed forms or by notification to the Registrar within 14 days from the date of any amendments to the statute. Copies of the amended documents/ consolidated statutes must also be filed.

320. *Criterion 24.6* – The Maltese authorities rely on a range of measures to obtain beneficial ownership information in a timely manner on legal persons incorporated under Maltese Law as follows: (1) the vast majority of legal persons have an on-going business relationship with a corporate service provider and/or a lawyer or accountant at the incorporation stage and on an on-going basis as Maltese legal persons must have a registered address in Malta; (2) all companies set up in Malta have a share capital requirement and the authorities estimate that in practice 80% of all these companies' share capital is deposited into a Maltese bank account. Details of the relevant bank or account information is typically provided as part of the registration documentation for companies, and are thus available and accessible at the relevant Registry; and (3) with effect from 1 January 2018 all new Maltese limited liability companies, partnerships, foundations and associations were required to obtain beneficial ownership information and disclose such information to the pertinent registries pursuant to the Companies Act (Register of Beneficial Owners) Regulations, 2017; Civil Code (Second Schedule) Register of Beneficial Owners – Foundations) Regulations, 2017 and Civil Code (Second Schedule) (Register of Beneficial Owners – Associations) Regulations, 2017. The purpose of these Regulations was to implement Directive (EU) 2015/849 (4th AMLD). In respect of non-Maltese legal persons administered by a corporate service provider, lawyer or accountant beneficial ownership information would be collated by a subject person in accordance with the CDD requirements under the PMLFTR.

321. Companies and other commercial partnerships registered in Malta prior to 1 January 2018 are required, as per Reg. 8 of the Companies Act (Register of Beneficial Owners) Regulations, 2017, to set up their own register of beneficial owners by the end of June 2018. These companies are furthermore required to submit to the Registrar of Companies the first notification / declaration on their beneficial owners as at either (i) the date of the first anniversary of the company's registration that falls due after 30 June 2018; or, (ii) where there is a change in beneficial owners occurring after 30 June 2018 and before the date of the said anniversary, as at the date of such change.

322. The period for submitting beneficial ownership information in regard to Foundations and Associations established prior to 1 January 2018 has been extended to 30 June 2019 as per the Civil Code (Second Schedule) (Register of Beneficial Owners-Foundations) (Amendments) Regulations, 2018 and as per the Civil Code (Second Schedule) (register of Beneficial Owners-Associations) (Amendment) Regulations, 2018. The Maltese authorities have advised that this extension is because the VOs sector, being quite large in Malta, requires more time to adapt to the new requirements in view of the penalties stipulated in the Regulations.

323. The instruments establishing the Beneficial Ownership Registers grant access to beneficial ownership information to the following: (i) national competent authorities with designated responsibilities for combating money laundering and terrorist financing; (ii) the Financial Intelligence Analysis Unit; and (iii) national tax authorities. In addition, any other authority which does not fall within any of these categories, but is listed as a competent authority under the PMLFTR

is also granted access to the said information. Additionally, access is also granted to (i) subject persons in terms of the PMLFTR providing services in or from Malta, for the purpose of carrying out CDD in accordance with the said regulations; and (ii) any person who, or organisation which, in a written request, satisfactorily demonstrates and justifies a legitimate interest specifically related to the prevention of money laundering and the financing of terrorism. However, in the latter case, access would be only granted to the name, the month and year of birth, the nationality, the country of residence and the extent and nature of the beneficial interest of the beneficial owners

Companies & Partnerships

324. Reg. 5 of the Companies Act (Register of Beneficial Owners) Regulations requires that a company shall obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners, which shall at least include the following particulars: (a) the name, the date of birth, the nationality, the country of residence and an official identification document number indicating the type of document and the country of issue, of each beneficial owner; (b) the nature and extent of the beneficial interest held by each beneficial owner and any changes thereto; and (c) the effective date on which a natural person became, or ceased to be, a beneficial owner of the company or has increased or reduced his beneficial interest in the company.

325. The definition of beneficial owner is defined in the PMLFTR and means any natural person or persons who ultimately own(s) or control(s) the company through direct or indirect ownership of more than 25% or more of the shares or voting rights or control through other means. In the absence of such a natural person or natural persons, the senior managing official shall be considered the beneficial owner. The definition of beneficial owner is broadly compliant with the FATF definition.

326. These Regulations also apply to partnerships as if reference to company were a reference to partnership en nom collectif and partnership en commandite (limited partnership).

Foundations

327. Reg. 4 of the Civil Code (Second Schedule) (Register of Beneficial Owners-Foundations) Regulations requires that a foundation shall obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners, which shall at least include the following particulars: name; date of birth; nationality; country of residence, an official identification document number including the type of document and country of issue, the role of the beneficial owner, and in the case of a beneficiary, the nature and extent of the benefit and any changes thereto.

328. Reg. 2 defines the term 'beneficial owner' as the founder; administrator(s); the protector or members of the supervisory council, if any, the beneficiaries where identified in the foundation instrument or where the individuals benefiting from the foundation have yet to be determined, the class of persons in whose main interest the foundation is set up or operates and any other natural person exercising ultimate and effective control over the foundation by any means including any person whose consent is to be obtained, or whose direction is binding.

Associations

329. Reg. 4 of the Civil Code (Second Schedule) (Register of Beneficial Owners-Associations) Regulations requires that an association shall obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners, which shall at least include the following particulars: name; date of birth; nationality; country of residence, an official identification document number including the type of document and country of issue, the nature and extent of the beneficial

interest and any changes thereto and the role of the relevant person i.e. the administrators, the protector or members of the Supervisory Council, if any, and any other natural person exercising ultimate and effective control over the association by means of indirect ownership or by other means including any person whose consent is to be obtained or whose direction is binding for material actions to be taken.

330. *Criterion 24.7* – Malta has imposed obligations on companies, associations and foundations to ensure that beneficial ownership is accurate and up-to-date as follows:

Companies and Partnerships

331. Reg. 5(1) of the Companies Act (Register of Beneficial Owners) Regulations provides that every company shall obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners. Furthermore, Reg. 6(1) stipulates that where there is a change in the beneficial ownership of a company, the company is obliged to deliver a notice to the registrar, within fourteen days after the date on which the change is recorded with the company, notify the Registrar of the updated including the nature and extent of the beneficial interest and the effective date of changes made.

Foundations

332. Reg. 4(1) of the Civil Code (Second Schedule) (Register of Beneficial Owners – Foundations) Regulations provides that every foundation shall take all reasonable steps to obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners. Furthermore, Reg. 7(2) then provides that where there is a change in the beneficial ownership of the foundation the foundation shall, within 14 days from the date on which the change is recorded with the foundation, notify the Registrar of the updated including the nature and extent of the beneficial interest and the effective date of changes made.

Associations

333. Reg. 4(1) of the Civil Code (Second Schedule) (Register of Beneficial Owners – Associations Regulations, 2017) imposes a requirement that every association shall take all reasonable steps to obtain and at all times hold adequate, accurate and up to date information in respect of its beneficial owners. Furthermore, Reg. 8(2) requires that where there is a change in the beneficial ownership of an association, the association shall, within 14 days notify the Registrar with updated information including the nature and extent of the beneficial interest and the effective date of changes made.

334. Notwithstanding the above, the assessment team has identified major shortcomings with the Maltese beneficial ownership regime which are detailed in R.24.8, which could call into question the accuracy of beneficial ownership information in Malta.

335. *Criterion 24.8* – The Maltese authorities take a multi-pronged approach to obtaining beneficial information in a timely manner on legal persons incorporated under Maltese law and legal arrangements, but the assessment team has identified the following shortcomings with each of these methods, which could call into question the accuracy of beneficial ownership information for some legal persons in Malta:

a) Trustees have been regulated and supervised by the MFSA since 2004 and CSPs since 2013, (albeit subject to AML/CFT supervision prior to this date), as they were deemed to be subject persons under the PMLFTR. However, there is no legislative provision requiring a subject person to incorporate a company or register a partnership and maintain its registered office. Therefore, legal

persons may be created without the scrutiny of an entity subject to Maltese AML/CFT supervision. Moreover, lawyers providing company services are exempt from registration with the MFSA in view of the fact that they are already subject persons. However, lawyers are not subject to adequate market entry measures.

b) All companies set up in Malta have a share capital requirement. There is no requirement for this to be deposited in a Maltese bank subject to AML/CFT supervision. The authorities estimate that in practice 80% of these companies' share capital is deposited into a Maltese bank account. However, this is likely to reduce further as the corporate service providers interviewed advised that it was becoming increasingly difficult to bank their clients in Malta due to the enhanced scrutiny of CDD checks by the Maltese banks. Therefore, beneficial ownership information would not be available to the Maltese authorities via this approach for approximately 20% of companies.

336. c) Centralised registers of beneficial ownership have been created for both legal persons and trusts. These are maintained respectively by the Registrar of Companies; Registrar of Legal Persons (Associations and Foundations) and the MFSA. However, the registers for legal persons are currently being retroactively populated. Hence, the assessment team could not fully assess the effectiveness of this new mechanism. Notwithstanding the above, the assessment team identified the following shortcomings with the register of beneficial ownership for companies and other commercial partnerships: (i) directors (or equivalent) and the company secretary are responsible for providing basic and beneficial ownership information to the Registrar of Companies and other competent authorities. However, to date there is no requirement for the director and/or the company secretary to be resident in Malta, and hence to be subject to Maltese AML/CFT supervision; and (ii) the Registry of Companies is not empowered in legislation[96] to undertake on-site visits to verify the accuracy of beneficial ownership information held on companies and commercial partnerships.

337. Foundations and Associations – Administrators are responsible for providing basic and beneficial ownership information to the Registrar where the administrator is a body corporate, the declaration of beneficial ownership shall be signed by at least two persons entrusted with the management and administration thereof. However, administrators of foundations and associations are not required to be resident in Malta and therefore to be subject to Maltese AML/CFT supervision. In the case of a non-resident administrator, Art. 29 (in respect of foundations) and Art.49 (in respect of associations) of the Second Schedule to the Civil Code requires the appointment of a person ordinarily resident in Malta to act as the local representative of the legal person in Malta. Nonetheless, it is the administrator who is obliged to obtain and maintain beneficial ownership information.

338. *Criterion 24.9* – All company information (including beneficial ownership) that is collected by the Registrar of Companies is retained in the company register throughout the lifetime of the company and thereafter.

339. With regard to the dissolution of a company Art. 324(2) of the Companies Act requires that the liquidator shall keep the accounts, accounting records and documents of the company for a period of ten years from the date of publication of the striking of the company's name off the register, but there is no explicit obligation for the liquidator to retain BO information. The authorities clarified

[96] The Companies Act (Register of Beneficial Owners) (Amendment) Regulations, 2019 will provide the Register of Companies with the power to undertake onsite visits in order to establish the current beneficial ownership

that since the company is obliged by law to keep a register of beneficial owners, such register is to be considered as an important document which the liquidator should keep.

340. Subject persons under the PMLFTR are required, in terms of Reg. 13(2)(a) of the PMLFTR, to keep records of CDD measures carried out, including information obtained on the company and the identity of its beneficial owners, for a period of 5 years (which may be extended up to a cumulative maximum of 10 years where the FIAU considers this to be necessary), as from the date of carrying out of an occasional transaction or termination of a business relationship with the company.

341. *Criterion 24.10* – Competent authorities have all the powers necessary to obtain timely access to basic and beneficial ownership information, including from subject persons. This is explained under c.27.3 (which is relevant to DNFBPs), c.29.3 (FIU) and c.31.1 (law enforcement). As explained under c.24.3, basic information for companies and partnerships is available online, but not in respect of foundations and associations. Furthermore, with effect from 1 January 2018, all new Maltese limited liability companies, partnerships, foundations and associations were required to obtain beneficial ownership information and disclose such information to the pertinent registries. With regard to legal persons established prior to the effect of these new regulations, beneficial information must be submitted to the authorities by no later than 30 June 2019. Art. 43(12) of the Trusts and Trustees Act sets out that any person operating in or from Malta, who acts as mandatory (nominee) in the holding of securities, is required to be licensed by the MFSA irrespective of the extent of his/her activities, whether remuneration is payable therefor or whether (s)he holds himself/herself out as providing such services or not.

342. *Criterion 24.11* – Companies are prohibited from issuing share warrants to bearer pursuant to s.121 of the Companies Act. This prohibition also includes bearer shares.

343. *Criterion 24.12* –

344. *Nominee Directors* - The Companies Act does not distinguish between different types of directors and does not recognise nor provide for nominee directors. All persons that act as directors are subject to the same duties and obligations under the Companies Act. The general duties of company directors are provided under Art. 136A of the Companies Act.

345. *Nominee Shareholders* – Malta allows companies to have nominee shareholders, however it has the following mechanisms to ensure that they are not misused: (i) Art. 43(12) of the Trusts and Trustees Act sets out that any person operating in or from Malta, who acts as mandatory (nominee) in the holding of securities, is required to be licensed by the MFSA irrespective of the extent of his activities, whether remuneration is payable therefor or whether he holds himself out as providing such services or not; (ii) Art. 43(9)(a) of the Trusts and Trustees Act provides that holding upon trust of securities in a Maltese legal person by trustees, who are not authorised in terms of the Act (e.g. a non-Maltese trustee), shall only be permitted if a qualified person is engaged in writing by the trustee and such agreement is notified to the MFSA prior to any acquisition taking place and (iii) Reg. 5(2) of the Companies Act (Register of Beneficial Owners) Regulations provide that every company shall obtain beneficial owners information from the shareholders of the company and, or from any natural person whom it has reasonable cause to believe to be a beneficial owner, who shall be bound to provide the said information to the company without delay, and every beneficial owner who acquires, disposes of, increases or reduces his beneficial interest in the company shall be bound to immediately provide the said information to the company.

346. *Criterion 24.13* – Criminal sanctions are provided for under all three sets of regulations governing the beneficial ownership registers (a fine not more than EUR 5,000 or to imprisonment for a term not exceeding six months or to both such fine and imprisonment) in respect of the provision of misleading of false information. Failure to obtain, retain and provide beneficial ownership information to the registries is punishable by penalties ranging from EUR 500-1,000, together with daily penalties ranging from EUR 5-10 for every day during which the default continues under the Register of Beneficial Ownership Regulations (Companies, Foundations and Associations). Taking into account the nature and scale of business undertaken in Malta these financial sanctions are not considered dissuasive and proportionate for companies, commercial partnerships and foundations.

347. *Criterion 24.14* – As explained in c.24.3 above, basic information on companies registered in Malta is available online and publicly accessible, hence also by foreign competent authorities. Basic information on foundations and associations is publicly available. Access to the beneficial ownership registers is explained at c24.6. The FIAU's ability to request both basic and beneficial ownership information is explained at c.24.10. Refer also to R.37 and R.40.

348. *Criterion 24.15* – The quality of assistance received from counterparts in other countries in response to requests for basic and beneficial ownership information or requests for assistance in locating beneficial owners residing abroad, is done on a case-by-case basis whereby the Maltese authorities will inform the foreign authority about the quality and usefulness of the assistance afforded and/or if further clarifications or information is required. The FIAU has advised that it retains statistical information about the quality and usefulness of information received from foreign counterparts and also rates such assistance. However, the authorities have not explained how the AGO or the MFSA and MGA monitor the quality of assistance received from other countries.

Weighting and Conclusion

349. Malta meets c.24.1, 24.3 - 24.6, 24.10, 24.11, 24.12 and 24.14; mostly meets 24.2, 24.9, and, 24.15 and partly meets c.24.7 24.8. and 24.13. The rating has been influenced by the following factors: (1) an in-depth analysis of how all types of Maltese legal persons and legal arrangements could be used for ML/FT purposes has not been finalised; (2) shortcomings in mechanisms could call into question the accuracy of beneficial ownership information; (3) there is no explicit obligation for the liquidator to retain beneficial ownership information; (4) it is not considered that the financial sanctions are dissuasive and proportionate in respect of failing to submit beneficial ownership information to the Registries in respect of companies, commercial partnerships and foundations; and (5) no information provided by the country on how the AGO or the MFSA and MGA monitor the quality of assistance received from other countries. **R.24 is rated PC.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

350. In the 4th Round Malta was rated as C with former R.34.

351. *Criterion 25.1* – (a) Trustees authorised in terms of the Trusts and Trustees Act are considered as subject persons under the PMLFTR and therefore required to identify beneficial owners and take reasonable measures to verify their identity pursuant to Reg. 7(1)(b) thereof. In the case of trusts (both Maltese and foreign law express trusts) the beneficial owner shall consist of the settlor, the protector, if any, any other trustee, the beneficiaries, or where the individuals benefitting from the trust have yet to be determined, the class of persons in whose main interest the trust is set up or operates; and any other person exercising ultimate and effective control over the trust by any means. It should be pointed out that the PMLFTR makes no distinction between different kinds of trusts, and

therefore this obligation is applicable vis-à-vis all trusts. Under Reg. 7(2)(b) subject persons should ensure that documents, data or information held by the subject person are kept up-to-date as part of the on-going monitoring. Furthermore, Art. 43(4)(f) of the Trusts and Trustees Act sets out that licensed trustee should establish adequate systems for maintaining records of the identity and residence of beneficiaries, the dealings and the assets in connection with trusts and compliance with applicable law. Art. 43(A) of the Trusts and Trustees Act exempts private trustees who (i) do not hold themselves out as trustee to the public; (ii) are not remunerated, even indirectly, except as permitted by any rules issued by the Authority (however, no such rules exist); and (iii) do not act habitually as trustee, in any case in relation to more than five settlors at any time. Such trusts are governed by a detailed notarial procedure and therefore such trusts are covered for AML/CFT purposes by the notary who is a subject person in terms of the PMLFTR.

(b) There is no explicit requirement in the Trusts and Trustee Act requiring trustees to hold basic information on regulated agents of, and service providers to, the trust, including investment advisors or managers, accountants and tax advisors. However, pursuant to Art. 1124A. of the Civil Code there is a fiduciary duty on trustees to carry out their obligations in good faith and act honestly and exercise due diligence and Art. 25 of the Trusts and Trustees Act requires trustees to ensure that investment managers are competent. Moreover, Section 3 of the Code of Conduct requires trustees to have procedures in place to ensure that proper due diligence is carried out, therefore it is assessed that Malta complies with this criterion.

(c) Professional trustees are required to ensure that CDD documents, data or information is kept up to date (Reg. 7(2)(b) PMLFTR) and maintained for at least five years after their involvement with the trust ceases (Reg. 13(1)(a) PMLFTR). Art. 21(4)(a) of the Trusts and Trustees Act requires trustees to keep accurate accounts and records.

352. There are no requirements set out under (a), (b) and (c) which apply to an express trust that is governed by the law of Malta where the trustee is resident outside of Malta. However, there are two mitigating measures set out in Trusts and Trustee Act: (i) Where a foreign trustee holds shares in a Maltese company or immovable property in Malta under trust (irrespective of governing law), such foreign trustee is required to appoint a Maltese licensed trustee as a "qualified person" to ensure due compliance with all fiscal, prevention of money laundering and other legal obligations in connection with the property held under trust. Such qualified person appointment is subject to the MFSA's statement of "no objection", prior to the acquisition of the property under trust (Art. 43(9); (ii) Where Trustees who are not resident in Malta, and no property under trust is held in Malta nor any transactions taking are place in Malta, the only connection with Malta would be the governing law chosen for the trust agreement. However, Art. 14A is restrictive in terms of the settlor reserved powers, thus making it less attractive for foreign trustees to choose Maltese law as the governing law of a trust which has no further connection with Malta.

353. *Criterion 25.2* – Under Sections 3.0 and 9.6 of the Code of Conduct made pursuant to Art. 52 of the Trusts and Trustees Act Trustees are required to keep and preserve appropriate records in Malta which will at least include such records as are appropriate for their functions. Furthermore, as referenced at c.25.1(c) CDD documents shall be kept up-to-date pursuant to the PMLFTR.

354. Further details on the maintenance of beneficial ownership records can be located at c.25.5.

355. *Criterion 25.3* – In the course of establishing a business relationship or carrying out an occasional transaction, subject persons have to determine who their customer is, which would include establishing in which capacity the prospective customer is requesting a given service or

product (Reg. 7(3) PMLFTR) Trustees are required to disclose their status when carrying out transactions pursuant to Art. 32 of the Trusts and Trustees Act.

356. *Criterion 25.4* – Notwithstanding the provisions of the Professional Secrecy Act trustees are not be prevented by law or enforceable means from providing competent authorities with any information relating to the trust upon request, with information on the beneficial ownership and the assets of the trust to be held or managed under the terms of the business relationship.

357. *Criterion 25.5* – Competent authorities have all the powers necessary to obtain timely access to basic and beneficial ownership information, including from registered agents. This is explained under c.27.3 (which is relevant to DNFBPs), c.29.3 (FIU) and c.31.1 (law enforcement).

358. With effect from 1 January 2018 all new Maltese trusts which generate tax consequences are required to provide beneficial ownership details (as per definition in PMLFTR) to the Register of Beneficial Owners of Trusts administered by the MFSA pursuant to the Trusts and Trustees Act (register of Beneficial Owners), Regulations, 2017. The purpose of these Regulations was to implement Directive (EU) 2015/849 (4th AMLD). For those trusts in existence within the scope of the Regulations before 1 January 2018 the deadline for submitting beneficial ownership information was 1 July 2018. This register can be accessed by all Malta national competent authorities, including LEAs.

359. *Criterion 25.6* – Please refer to c.24.14 above concerning the provision of international cooperation in relation to basic and beneficial ownership of companies in Malta which likewise applies to the provision of international cooperation in relation to basic and beneficial ownership information on trusts and other legal arrangements (Art. 49 of the Trusts and Trustees Act). Moreover, in terms of Reg. 6(5) of Trusts and Trustees Act (Register of Beneficial Owners) Regulations, the authorities referred to the above and the FIAU may, in pursuance of their functions in accordance with applicable law, provide information on beneficial owners accessible to them in terms of this regulation to competent authorities and to FIUs of other jurisdictions.

360. *Criterion 25.7* –

361. (a) Art. 51(6) of the Trusts and Trustees Act provides that any person who contravenes or fails to comply with any of the provisions of this Act, saving any higher punishment which may be provided under any other law, shall be liable, on conviction, to a fine not exceeding EUR 466,000 or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment. Furthermore, pursuant to Reg. 9 of the Trusts and Trustees Act (Register of Beneficial Owners) Regulations, where a trustee authorised or registered in terms of the Act contravenes or fails to comply with any of the provisions of these regulations, the MFSA may impose an administrative penalty which may not exceed EUR 150,000.

362. (b) TCSPs (including the exempt persons referenced in 25.1) are subject to proportionate and dissuasive sanctions for failing to comply with the PMLFTR by the FIAU. Please refer to the analysis under R.35.

363. *Criterion 25.8* **–** The competent authorities have proportionate and dissuasive sanctions for failing to grant to competent authorities timely access to information. Under Art. 51(6) of the Trusts and Trustees Act any trustee who fails to furnish information to the MFSA regarding trusts, saving any higher punishment which may be provided under any other law, shall be liable, on conviction, to a fine not exceeding EUR 466,000 or to a term of imprisonment not exceeding four years, or to both such fine and imprisonment. Additional sanctions are provided for under Art. 54(7) of the Trust and

Trustees Act. Under Reg. 21 PMLFTR any trustee who fails to furnish information is subject to an administrative penalty of not less than EUR 1,000 and not more than EUR 46,500. Additionally, infringements of an investigation order can be liable to a fine not exceeding EUR 11,646.87 or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

Weighting and Conclusion

364. Malta meets c.25.2 – 25.8 and mostly meets c.25.1. There is no explicit requirement placed on the trustee of an express trust that is governed by Maltese law where the trustee is resident outside Malta to obtain and hold information in line with c.25.1. **R.25 is rated as LC.**

Recommendation 26 – Regulation /and supervision of financial institutions

365. In the 4th Round Malta was rated as LC with former R.23. The assessors concluded that there were effectiveness issues as there were a low number of AML/CFT onsite inspections and no infringements were being identified at FIs as a result of these inspections. In the 5th round effectiveness issues are no longer analysed in the TC Annex.

366. *Criterion 26.1* – The FIAU is the authority tasked with the monitoring and supervision of FIs for compliance with the AML/CFT requirements under the PMLA and PMLFTR (Art. 16(1)(c) and 26 PMLA). Art. 27 PMLA empowers the FIAU to request the assistance of other supervisory authorities to carry out, on behalf of or jointly with the FIAU, onsite or offsite inspections on subject persons (defined in the PMLFTR and includes all FIs as listed in the FATF Recommendations) falling within the competence of the supervisory authority. Following the creation of the AML Unit in 2015, the MFSA commenced joint inspection visits to FIs with the FIAU. Prior to 2015 the MFSA only undertook ad-hoc AML/CFT inspection visits to FIs, either jointly with the FIAU, or on behalf of the FIAU. A MoU is in place between the MFSA and FIAU to regulate the cooperation between them regarding AML/CFT supervision.

367. *Criterion 26.2* – All Core Principles FIs are required to be licensed as follows: credit institutions are licensed under Art. 5 Banking Act; investment services (securities) are licensed under Art. 3 of the Investment Services Act; and collective investment schemes are licensed under Art.4 of the Investment Services Act.

368. Any insurance or re-insurance business is authorised under Art. 7 of the Insurance Business Act. Insurance Intermediaries and Tied Insurance Intermediaries are required to be registered or enrolled under Art. 13 and 37 of the Insurance Intermediaries Act, respectively. The applications for registration or enrolment refer to two separate applications. An application for registration is applicable for individuals desirous of applying for registration on the Brokers/Agents/Managers Register. An application for enrolment is applicable for a company desirous of acting as an insurance intermediation company after enrolling in the Brokers/Agents/Mangers List. Retirement scheme administrators appointed by retirement schemes registered in Malta are licensed under Art. 6 of the Retirement Pensions Act.

369. Other FIs: MVTS and money or currency changing services are licensed under Art. 3 of the Financial Institutions Act.

370. *Criterion 26.3* – The MFSA undertakes fitness and properness checks to prevent criminals and their associates from holding a significant or controlling interest, or management function, in an FI. The fit and proper test comprises three main factors: integrity, competence and solvency and applies to all types of FIs. All qualifying shareholders (a person who holds a direct or indirect holding in a

company which represents 10% or more of the share capital or voting rights in the FI), controllers, directors or persons who will effectively direct or manage the business and key function holders must be assessed and approved by the MFSA before they can be involved in licensable activity. Fit and proper decisions are made through the EU SSM for members of the management board and supervisory board of the significant banks in Malta, and for qualifying shareholders of all banks.[97]

371. The Banking Act (Arts. 7, 13 &14); the Investment Services Act (Arts 6 & 10); the Insurance Business Act (Arts. 8 & 38); and the Insurance Intermediaries Act (Arts. 9 & 10) (i.e. Core Principles FIs) contain legal provisions requiring that those persons holding (or being the beneficial owner of) a significant or controlling interest, or holding a management function are fit and proper.

372. Qualifying shareholders, directors, controllers, key function holders (senior managers who have a significant influence over the direction and management of the FI) are required to complete a Personal Questionnaire and provide an original certificate of good conduct issued by the police in order to certify that the applicant has no criminal background (including a certified translation if the good conduct certificate is from a foreign country). A criminal conduct record (fedina penale) is also requested on a risk-based approach. By signing the Personal Questionnaire, the potential applicant authorises the MFSA to undertake due diligence with third parties for the purpose of determining their integrity, competence and solvency. The authorities have advised that all the information submitted in the Personal Questionnaire by the applicant is corroborated with third parties to check its authenticity and accuracy. As part of its due diligence procedure the MFSA will carry out a number of checks including: (i) requesting information from the FIAU (ii) checking EU/UN sanction lists; (iii) checking the Shared Intelligence Service (SIS) database operated by the UK's FCA (which is a mechanism for UK regulatory bodies, designated professional bodies and recognised investment exchanges to collect and share material on individuals and firms – MFSA is a member of this mechanism); (iv) making open source enquiries and (v) checking third party screening databases. Where relevant, the MFSA also sends due diligence enquiries to a foreign competent authority with the aim of obtaining any additional relevant information that will assist it in its assessment of the fitness and properness of an applicant. In addition, the authorities advise that enhanced due diligence reports from external intelligence companies are commissioned on subjects with high risk profile.

373. Furthermore, both when processing applications for a licence, and when reviewing proposed changes in the qualifying shareholding of a licence holder, the MFSA has advised that it always requires an organogram setting out all the persons/entities that will form part of its shareholding structure, up to the ultimate beneficial owner/s and with the relevant percentage holdings of the voting rights and capital.

374. The assessment team was informed that the MFSA had recently enhanced its application processes to prevent criminals and their associates from holding or being the beneficial owner of a significant or controlling interest, or a management function of FIs and TCSPs by, *inter alia*, introducing; (1) closer liaison with the FIAU and the MFSA's prudential supervisors throughout the application process; (2) increased scrutiny of an applicant's business model and corporate governance structure from an AML/CFT perspective (3) increased scrutiny of dominant shareholders and (4) increased scrutiny of the source of wealth and source of funds of those persons

[97] The ECB has the power to make fit and proper decision only for the banks which are considered as significant. National authorities are responsible for fit and proper decisions in relation to less significant banks.

holding significant or controlling interests. However, at the time of the onsite visit this had not been fully embedded into the MFSA's authorisation procedures for all types of licence applications.

375. On-going fit and proper checks are also carried out before onsite inspections and during routine supervisory desk top monitoring. However, the MFSA does not subject persons holding a significant or controlling interest or management function in an FI or TCSP to regular UN sanctions and adverse media screening and therefore is reliant on its licensed community to self-report any convictions or intelligence provided by third parties, such as the general public or other competent authorities. Regular on-going monitoring could assist in the identification of triggers and the undertaking of regulatory actions and would be particularly beneficial in the context of Malta as an international finance centre, and therefore a large proportion of its supervised entities are beneficially owned by persons located outside of Malta.

376. Other FIs: Art. 5 of the Financial Institutions Act provides that no company shall be granted a licence unless all qualifying shareholders, controllers and all persons who will effectively direct the business of the FI are suitable persons to ensure its prudent management. Pursuant to Art. 9 of the Financial Institutions Act a change of qualifying shareholding requires the prior approval of the MFSA. The aforementioned fitness and properness checks equally apply to other FIs.

377. *Criterion 26.4* – FIs (both core principles institutions and others) are regulated and supervised for AML/CFT purposes. The IMF/World Bank conducted a Financial Sector Assessment Programme (FSAP) in 2002/2003 and the MFSA commissioned an independent assessment using the same format as the FSAP in 2010. At the time of the onsite visit the authorities were unable to confirm their level of current compliance with the core principles where relevant for AML/CFT purposes.

378. The FIAU is in terms of Art. 26(1) responsible for ensuring that subject persons are complying with their AML/CFT obligations under the PMLA and the PMLFTR. The FIAU is assisted by the MFSA in the AML/CFT supervision of FIs that fall under the regulatory competence of the MFSA.

379. Reg. 6(1) PMLFTR requires FIs forming part of a group to implement group-wide AML/CFT policies and procedures, and policies and procedures on data protection and sharing of information for the prevention of ML/FT. The MFSA has advised that there are eleven licence holders with branches outside of Malta (one credit institution; one payment institution; three insurance companies and six investment services licence holders). Before a Maltese licence holder establishes a branch outside Malta, the said licence holder is required by law to communicate its programme of operations to the MFSA. It is only when the latter is satisfied of the proposed operational set-up for the branch, that all information pertaining to the branch, is communicated to the host regulator. Following the setting up of the branch, the MFSA maintains regular contact with the host regulator. However, the authorities were unable to provide details of how groups are supervised on a consolidated basis for AML/CFT purposes.

380. *Criterion 26.5* – Art. 26(2) PMLA stipulates that the FIAU must carry out its responsibilities of ensuring compliance by subject persons with their AML/CFT obligations, on a risk sensitive basis. However, there are no formalised policies in place, outlining how the frequency and intensity of on-site and off-site supervision for all types of FIs is being determined, taking into account the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta.

381. In 2012 the FIAU and MFSA adopted a risk-based approach to AML/CFT supervision by way of the FIAU collecting data through the Annual Compliance Report (ACR), which all FIs are bound to submit to the FIAU on an annual basis. Upon creation of the MFSA's AML Unit in 2016, the task of

analysing the results of ACRs and determining the risk scores for FIs and TCSPs, fell upon the MFSA, with the results made available to the FIAU. However, there are significant limitations with the ACR, as the questions are rudimentary, in that they do not solicit quantitative information on the client base; elaborate further on the appropriateness of the policies and procedures in place; and do not vary in accordance with the sector or type of entity being requested to provide information. Therefore, the way the questions are framed in the ACR does not enable the Maltese authorities to assess ML/FT residual risks at subject persons. However, the Maltese authorities strengthened their understanding of ML/FT risks in the banking, TCSP and remote gaming sectors in 2017 by: (1) undertaking an extensive data collection exercise on all credit institutions and TCSPs: and (2) introducing a prudential supervision questionnaire which the MFSA's prudential and conduct supervisory units were required to complete. These data collection exercises sourced more granular data to assess the inherent risks, including information on the type of products/services offered by the subject person, distribution channels and customer interfaces, details on the volume and value of transactions; details on various types and numbers of customers, deposit balances and countries dealt with (indicating number of customers and beneficial owners, deposit balances and funds under management per high risk/significant jurisdictions). The exercise also collected detailed information on internal AML/CFT controls. Prudential questionnaires were aimed at putting in place a formal procedure to ensure that the AML/CFT supervisors have structured, regular and timely access to information from the MFSA and MGA prudential and conduct supervisors. This information was integrated in the risk assessment of subject persons, together with other sources of information such as information sourced from the analysis section of the FIAU.

382. Nonetheless, it remains unclear how this incorporates wider ML/FT group risks. However, the ML/FT risk assessments of other types of FIs (securities, insurance and MVTS) and DNFBPs (lawyers, notaries, accountants and real estate agents) were at the time of the on-site based on data mainly collected through the ACR, which the assessment team considers is insufficient for the nature, scale and complexity of business in Malta.

383. The FIAU's assessment of residual ML/FT risk is currently a manual process. However, the FIAU is in the process of developing a Compliance System which will automate a number of processes, such as the assessment of ACRs and the allocation of risk scores. The objective is to enable the FIAU's Compliance Section, the MFSA and the MGA to have a 'near real time' risk snapshot of the profile of all the entities subject to AML/CFT obligations and an up-to-date risk overview by sector and across all sectors. It is currently intended that the Compliance System will be fully operational in June 2019.

384. The FIAU, in conjunction with the MFSA and MGA, has risk-rated all subject persons which completed ACRs and has assigned risk-ratings (very high; high; medium high; medium and low) to each of these. At the time of the evaluation the supervisory authorities were in the midst of overhauling their policies, procedures and operations on risk-based supervision. The assessment team was informed that, higher risk entities would be subject to onsite inspections, medium risk entities would be subject to offsite inspections[98], and low risk entities would be subject to

[98] This refers to specific off-site supervisory examinations triggered in view of the medium risk identified and does not include ACRs/REQs and ad-hoc off-site reviews triggered by compliance notes generated by the FIAU Analysis Section and sent to the FIAU Compliance Section which are applicable to all subject persons irrespective of the level of risk they pose.

supervisory meetings. However, the authorities were not in a position to provide the assessment team with a documented procedure outlining this process.

385. *Criterion 26.6* – All FIs are expected to submit an ACR on a yearly basis, hence updated information to determine the ML/FT risks posed by the various sectors and operators is collected on a yearly basis. The risk assessment is not determined exclusively on the basis of information sourced through the ACRs, and the FIAU and the MFSA take into consideration intelligence that might be available to the analysis section of the FIAU or information that is in possession of the prudential supervisory teams at the MFSA. However, with the exception of credit institutions and TCSPs, where a new risk methodology is in place, it is difficult to ascertain how prudential data is incorporated into the risk methodology. The authorities report that these sources of information allow the FIAU and the MFSA to have updated and relevant information that allows them to review their risk assessments whenever there are major events or developments in the management and operations of the financial institution or group. However, there is no formalised documented procedure outlining this process: as noted under c.26.5, at the time of the on-site visit the supervisory authorities were in the midst of overhauling their policies, procedures and operations on risk-based supervision.

Weighting and Conclusion

386. Malta meets 26.1; 26.2; mostly meets 26.3 and partly meets 26.4; 26.5 and 26.6. The rating has been influenced by the following factors: (1) at the time of on-site visit, there were no formalised procedures in place, setting out how the frequency and intensity of on-site and off-site supervision for all types of FIs is being determined, taking into account the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta; (2) the authorities were unable to confirm their level of current compliance with the core principles where relevant for AML/CFT purposes; and (3) at the time of the on-site visit, increased scrutiny on wider ML/FT risk elements had not been fully embedded into the MFSA's authorisation procedures for all types of licence applications. Moreover, the MFSA does not subject all relevant persons to regular UN sanctions and adverse media screening. For these reasons, **R.26 is rated PC**.

Recommendation 27 – Powers of supervisors

387. In the 4th Round Malta was rated as C with former R.29.

388. *Criterion 27.1* – As explained under c.26.1 the FIAU is the authority tasked with the monitoring and supervision of FIs and DNFBPs for compliance with the AML/CFT requirements under the PMLA and PMLFTR. This is set out under Art. 16(1)(c) and 26 PMLA. Subject persons are defined in the PMLFTR and include all FIs as listed in the FATF Recommendations. Art. 26 PMLA grants the necessary powers to the FIAU to carry out such responsibilities, which include the powers to carry out on-site examinations, to request information or documents from subject persons to establish compliance or to engage external experts to assist it in carrying out specific tasks (including compliance) requiring certain expertise (Art. 26A PMLA). Art. 27 PMLA empowers the FIAU to request the assistance of other supervisory authorities to carry out, on behalf of or jointly with the FIAU, onsite or offsite inspections on subject persons falling within the competence of the supervisory authority. Following the creation of the AML Unit in 2015, the MFSA commenced joint inspection visits to FIs with the FIAU. Prior to 2015 the MFSA only undertook ad-hoc AML/CFT inspection visits to FIs, either jointly with the FIAU, or on behalf of the FIAU.

389. Criterion 27.2 – Pursuant to Art. 26(2)(c) PMLA the FIAU has the authority to conduct on-site inspections with the aim of establishing compliance with the AML/CFT provisions under the PMLA and PMLFTR. Additionally, Art. 27(3)(b) PMLA enables the FIAU to request other supervisory authorities to carry out, on behalf of or jointly with the FIAU, on-site or off-site inspections on those subject persons falling under the competence of that supervisory authority.

390. *Criterion 27.3* – Pursuant to Art. 26(2)(a) PMLA the FIAU may authorise its officers, employees or agents (hence including officers of other supervisory authorities assisting the FIAU) to require subject persons to provide any information and documentation that may be required to establish compliance with the AML/CFT provisions of the PMLA and the PMLFTR, and to answer to any questions that may be reasonably required.

391. Art. 26.2(b) PMLA also empowers the FIAU to require, by virtue of a notice in writing served on a subject person the production, within a specific time and at a specific place, of documents that are reasonably required for the performance of its AML/CFT supervisory function. "Reasonably" under Art. 26 (2)(a) and (b) of the PMLA is interpreted to mean documents or information that are required and necessary by FIAU officers to carry out the compliance examination and establish whether the subject person is complying with his AML/CFT obligations. "Within a specific time and at a specific place" means that the information and documentation has to be provided according to the timeframe and place that are established and communicated to the subject person by the FIAU in terms of Art. 26(2)(b) PMLA. There is no common practice in this respect and the timeframe set by the FIAU would depend on the urgency of the matter and the nature of the supervisory examination being carried out. The FIAU is not required in terms of Art. 26 PMLA or any provision or law to give a specific period of notice to subject persons prior to conducting on-site inspections. However, by way of practice and in normal circumstances, the FIAU notifies subject persons about the carrying out of an on-site inspection 30 days prior to the visit. Given that Art. 26 PMLA does not oblige the FIAU to notify the subject persons prior to the carrying out of on-site examinations, the FIAU is empowered to carry out surprise on-site examinations or on-site examinations within a short notice. The Maltese authorities have advised that in 2018 the FIAU initiated 4 on-site inspections (3 banks and 1 CSP Group of Companies) without providing prior notice to the entity in question or by giving short notice.

392. The aforementioned provision is also complemented by the general power conferred to the FIAU in terms of Art. 30A PMLA to demand from any person, authority or entity, any information that the FIAU deems relevant and useful for the purpose of pursuing its functions under Art.16.

393. The Maltese authorities have advised that a request made by the FIAU as above is sufficient for FIs to be obliged to comply and there is no requirement to obtain a court order, warrant or other form of authorisation from any other entity or institution. Moreover, accordance with Reg. 21 PMLFTR, the failure to comply with any lawful requirement, order or directive issued by the FIAU may be subject to the imposition of administrative penalties by the FIAU.

394. As regards copies or removal of documents FIAU officers are empowered in terms of Art. 26(2)(a) and (b) PMLA to require subject persons to provide documents or information for the purposes of carrying out compliance examinations (be it on-site or off-site). In terms of Art. 26(3) PMLA FIAU officers may make notes and take copies (in whole or in part) of such documents.

395. *Criterion 27.4* – As detailed in c.26.1 the FIAU is the authority tasked with the monitoring and supervision of FIs and DNFBPs for compliance with the AML/CFT requirements under the PMLA and PMLFTR. Reg. 21 PMLFTR provides for the imposition of administrative sanctions. The MFSA is

empowered to restrict, suspend or withhold licenses or authorisations of FIs, where these would not abide by their licensing conditions, which include a condition to comply with all AML/CFT legislation.

396. Further details of sanctions can be found at c.35.2. It is noted in more detail under R.35 that the civil sanctions provided by Reg. 21(7) PMLFTR do not extend to the "senior management" at the subject person. Therefore, c.27.4 is rated as mostly met.

Weighting and Conclusion

397. Malta meets c.27.1 – c27.3 and mostly meets c27.4. As a result of the issue also raised under R.35 ("lack of civil sanctions for senior management"), **R.27 is rated LC**.

Recommendation 28 – Regulation and supervision of DNFBPs

398. In the 4th Round Malta was rated as PC with former R.24. The assessors concluded that there were effectiveness issues as there were insufficient resources devoted to AML/CFT supervision of compliance and reporting of lawyers, notaries, dealers in precious metals and stones and real estate agents. It was assessed that the risk-based approach concerning the oversight of all of the DNFBPs was not formalised. In the 5th round effectiveness issues are no longer analysed in the TC Annex.

399. *Criterion 28.1* – Casino licensees and Gaming licensees are considered to be relevant activities in terms of Reg. 2(1) PMLFTR. Thus, any person or entity licensed to operate a casino under the Gaming Authorisations Regulations (S.L.583.05) (the 'Regulations'), issued under the Gaming Act (Chapter 583 of the Laws of Malta) is considered to be a subject person and subject to AML/CFT regulation and supervision under the PMLA and the PMLFTR. Additionally, Reg. 2(4) of the PMLFTR explicitly specifies that casino and other games that are provided through the internet or other electronic means, are also subject to AML/CFT obligations and supervision. It is noted that until 1 January 2018 only land-based casinos were considered as DNFBPs, with internet-based and cruise casinos becoming DNFBPs through the amendments to the PMLFTR. The recent 'Gaming Act' (Chapter 583 of the Laws of Malta) seeks to consolidate the main laws governing gaming in Malta, including the Gaming Act (Chapter 400 of the Laws of Malta) and the Lotteries and Other Games Act. The Gaming Act (Chapter 583) became applicable to remote gaming operators as of 1 July 2018 and will apply to land-based operators, including casinos, as of 1 January 2019.

400. (a) Land-based and online casinos must hold a licence issued by the MGA.

401. Art. 3 of the Gaming Authorisations Regulations 2018 stipulates that no person may provide or carry out a gaming service or critical gaming supply unless he is in possession of a valid licence. The Gaming Definitions Regulations define a gaming service as "making a game available for participation by players, whether directly or indirectly" and a critical gaming supply as "indispensable in determining the outcome of game/s forming part of the gaming service; and, or an indispensable component in the processing and, or management of essential regulatory data". Therefore, all gaming is regulated under the Gaming Authorisations Regulations 2018 including land-based casinos, land-based gambling, online gambling, cruise casinos and controlled skill games.

402. (b) Market entry measures are in place to prevent criminals and their associates from holding a significant or controlling interest or management function in a land based and online casino.

403. Pursuant to Reg. 11 of the Gaming Authorisations Regulations, 2018 the MGA is required to assess fitness and properness on any person that holds a qualifying interest of at least 10%. Any change in the ownership of any share capital of the company or its affiliates must be notified to the

MGA within three working days and any documentation required by the Authority as part of the notification process is required by not later than thirty days after the change. Should such changes result in a situation which would have disqualified the company from obtaining a licence, the MGA must inform the licensee accordingly and the situation must be remedied within a timeframe specified by the Authority, otherwise the Authority must revoke the licence as specified in the Gaming Authorisations and Compliance Directive (Art. 37(2)(a)). Moreover, Art. 17 of the Gambling Authorisations Regulations 2018 prohibits the assignment of an authorisation to prevent the due diligence checks from being bypassed after the granting of the licence by persons who would not otherwise satisfy the requirements. Art. 9 and 10 of Compliance and Enforcement Regulations describes the grounds on which a licence can be cancelled or suspended, which include that if any authorised person or a key function holder in the authorised person ceases to be fit and proper. Any changes in the management or board of directors of the company requires prior approval in writing from the MGA prior to affecting the change.

404. When processing applications for a licence, and when reviewing proposed changes in the qualifying shareholding of a licence holder, licence holders are required to provide an organogram setting out all the persons/entities that will form part of the shareholding structure, up to the ultimate beneficial owner/s and with the relevant percentage holdings of the voting rights and capital to enable the MGA to undertake its fitness and properness checks.

405. Associates of criminals are not considered in the Gaming Act, Gaming Regulations, Directives and/or Guidelines. However, these are taken into consideration as part of the fitness and propriety procedures and assessment and criminal probity screening performed by the MGA and discussed at Fit and Proper Committee level. The MGA rejects applicants found to having direct or indirect links with criminals.

406. The MGA's Fit and Proper Guidelines indicate that "all persons involved", including persons with a beneficial interest or a controlling interest and directors and key functions Compliance and Enforcement Regulations the administrative and financial strategies; marketing and advertising; legal affairs; player support; responsible gaming; The prevention of fraud; risk management; prevention of money laundering and the financing of terrorism; data protection and privacy; technological affairs; network and information security; and internal audit. For licensees operating casinos and bingo halls the operation of the urn or any other gaming device which requires human intervention; management of the pit, gaming area and the surveillance systems of the gaming premises; all key functions should be of high repute, integrity and honesty. The assessment is based on risk, and conducted on a case-by-case basis, but criteria to be taken into consideration include whether the person has been investigated, charged or convicted for a criminal offence, subject to any civil suit, publicly criticised for any function. Ineligibility criteria include conviction for an offence against the Act, taken to be related to an offence against the Act or against any other law relating to gaming or betting. Such a condition may however be dispensed with depending on the nature of the offence. The new Gaming Act (Chapter 583) will limit the licensing of casino employees to key personnel rather than having the requirement applicable to all employees. The rationale for this change is to enable the MGA to focus on persons responsible for the key functions at a gaming operator. Reg. 23 of the Gaming Authorisations Regulations, 2018 states that no person shall provide a key function unless in possession of a key function certificate. The key functions listed in schedule 4 to the Gaming Authorisations Regulations are broad and cover a multitude of management functions.

407. Art 11 (c) of the Gaming Authorisations Regulations states that licences shall not be issued (or renewed) unless the MGA is "reasonably satisfied that all persons involved in the applicant company are fit and proper persons". An application form is to be filled in by "every natural person that is a director, shareholder, UBO, key function or any other person that the Authority may request". MGA cannot issue a key function certificate unless it is satisfied that such person is fit and proper to fulfil his obligations and discharge his duties is prima facie competent to perform the key function (Art. 8 of the Gaming Authorisations and Compliance Directive). The certificate can be cancelled if the Key Function "ceases to be, in the opinion of the Authority, fit and proper to hold such authorisation" (Art. 11 of the Gaming Authorisations Directive).

408. Any of the above natural persons involved in a gaming company are required to undergo a rigorous due diligence process. All natural persons are required to complete a Personal Declaration Form and provide an original certificate of good conduct issued by the Police where they have been residing in the last two years in order to certify that the applicant has no criminal convictions. As part of its due diligence procedure the MGA will undertake open source enquiries and check UN sanctions; local credit reports; court freezing orders; Interpol's most wanted list, as well as other public databases to ascertain if there is any negative information on the applicant. The MGA also applies EDD measures on a risk-sensitive basis. EDD measures must be applied: (a) where the applicant is from a higher risk jurisdiction and (b) where the applicant is a considered a high-risk person (including politically exposed persons ("PEPs")).

409. Following licensing the MGA proactively checks the integrity of its licensees by undertaking: weekly criminal probity report screening on all persons involved in MGA licensed businesses; routine compliance audits every two to three years; desk top reviews; thematic reviews and monitoring of the monthly player fund reports; tax reports, bi-annual industry returns; management accounts and audited financial statements.

410. Cruise Casinos – In view of territoriality restrictions, the applicability of the regulatory regime to cruise casinos is only valid for a term not exceeding the time during which the cruise ship is moored at or within Maltese territory; be valid only in regard to registered passengers of the cruise ship; and it is not transferable and shall be limited to cruise ships. The MGA does not issue a licence to cruise casinos, but a permit allowing the cruise ship to operate its casino in Maltese territorial waters between 6:00pm and 6.00am of the following day while the cruise ship is moored or within Maltese territory. The operation of cruise casinos within Maltese territorial waters normally only lasts for one night. Since 2015, the MGA has received less than 10 applications. Approvals expire once the cruise ship leaves the territorial waters.

411. (c) Casino and gaming licensees are subject persons in terms of Reg. 2(1) PMLFTR and required to comply with the AML/CFT requirements envisaged under the PMLA, PMLFTR and any Implementing Procedures issued by the FIAU. The FIAU is the authority tasked with the monitoring and supervision of casinos and gaming licensees for compliance with the AML/CFT requirements under the Art. 26(1) PMLA. Art.27 PMLA empowers the FIAU to request the assistance of other supervisory authorities to carry out, on behalf of or jointly with the FIAU, onsite or offsite inspections on subject persons falling within the competence of the supervisory authority. In 2017 the MGA set up an internal unit dedicated to AML/CFT supervision to be able to assist the FIAU in the AML/CFT supervision of gaming operators and from January 2018, the MGA started performing Off-site and On-site AML/CFT Compliance to online gaming operators. In August 2006 the MGA and FIAU signed an MoU to regulate the cooperation between them on a number of aspects including

AML/CFT supervision. The MFSA and FIAU are currently in the process of updating the MoU to reflect the joint efforts in AML/CFT supervision of casino and gaming licensees and are aiming to complete the MoU in the first quarter of 2019.

412. *Criterion 28.2* – All DNFBPs envisaged under the FATF Glossary are deemed to be subject persons under the PMLFTR, and are subject to the AML/CFT supervision (see however exemptions noted under c.22.1). Pursuant to Art. 26 PMLA, the FIAU is the authority responsible to monitor compliance of all DNFBPs with the AML/CFT requirements set out under the PMLA and the PMLFTR. In terms of Art. 27(3)(b) PMLA the FIAU cooperates with and requests the assistance of other supervisory authorities to carry out joint on-site or off-site examinations or to request such authorities to carry out AML/CFT on-site or off-site inspections of subject persons regulated by these authorities on behalf of the FIAU. As far as DNFBPs are concerned, the MFSA is responsible for the authorisation and regulation of trust and company service providers, and thus assists in the FIAU in the AML/CFT supervision of such entities. In the case of other categories of DNFBPs, excepting gaming operators, AML/CFT supervision is carried out by the FIAU acting on its own.

413. Criterion 28.3 – All categories of DNFBPs are subject to systems for monitoring compliance with AML/CFT requirements set out under the PMLA and PMLFTR.

414. *Criterion 28.4* – DNFBPs other than casinos

(a) The FIAU's powers under the PMLA described under R.26 and R.27 are applicable to all categories of DNFBPs. On-site and off-site supervisory powers are set out, *inter alia*, under Art.26 and 27 PMLA.

(b) There is no single competent authority exercising measures to prevent criminals and their associates from being professionally accredited or holding (or being the beneficial owner of) a significant or controlling interest or holding a management function in a DNFBP.

415. *Real Estate Agents* – there is no specific law regulating the real estate sector, therefore there are no relevant measures in place. However, since 2016 Malta has been seeking to regulate the sector and the Maltese authorities have advised that it remains their intention to legislate on this matter in late 2018/early 2019.

416. *Dealers in Precious Metals and Stones* - there is no specific law regulating these dealers, therefore there are no relevant measures in place.

417. *Legal and accounting profession* - the National Risk Assessment states that there is no specific law regulating the legal profession, other than ethical standards issued by and subject to monitoring by the Commission for the Administration of Justice, established under the Commission for the Administration of Justice Act. However, under the Code of Organisation and Civil Procedure in order to exercise the profession of advocate a person must be of "good conduct and good morals" and the authorities have advised that candidates for a warrant must present a clean police conduct certificate. The same process applies to foreigners wishing to practice law in Malta, but the police certificates are not verified. While the authorities have the legal authority to disqualify an advocate upon conviction of a crime, there are no proactive on-going fitness and properness checks for lawyers. Therefore, it is assessed that the market entry measures in Malta for sole practitioners, partners or employed professionals in law firms are not adequate. Notaries are regulated pursuant to the Notarial Profession and Notarial Archives Act and pursuant to Art. 6 no person shall be appointed as a notary unless he is of good conduct and character. Art. 14(f) of the Notarial Profession

and Notarial Archives Act stipulates that a notary may be removed from office by the President of Malta where he is found guilty of theft, fraud or crimes against public faith.

418. Art. 3(2)(a) of the Accountancy Profession Act stipulates that a person shall not qualify for a warrant to practice as accountant if he is not of good conduct and good morals. The Accountancy Board established under Art. 6 of the Accountancy Profession Act is responsible for regulating the accountancy profession in the public interest and is responsible to deal, through disciplinary committees with cases of professional misconduct and other disciplinary proceedings in respect of warrant holders or holders of a practicing certificate including cases leading to the suspension or withdrawal of any warrant or practicing certificate issued under this Act.

419. *Trust and Company Service Providers* – As explained at c.26.1 the MFSA is responsible for both the prudential and conduct of business regulation, monitoring and supervision of Trustees and Company Services Providers (CSP) pursuant to the Trust and Trustees Act and the Company Service Providers Act respectively. Art. 43(4) of the Trusts and Trustees Act requires an individual acting as trustee or a body corporate, including its directors and qualifying shareholders (10% or more of the capital) be fit and proper. Art. 5(1) of the CSP Act stipulates that an applicant be fit and proper and where the applicant is a company or other type of legal entity, its directors and shareholders (25% or more of the shares or voting rights) be fit and proper. The MFSA's fitness and properness criteria for TCSPs are set out the Code of Conduct for Trustees and the MFSA Rules for Corporate Service Providers.

Company Service Providers Statutory Exemption and De Minimis Ruling

420. The following company service providers are exempt in the CSP Act from registration with the MFSA: advocates, notary public, legal procurator or certified public accountants in possession of a warrant, as well as authorised trustees under the Trusts and Trustees Act. However, these persons are subject persons and are required to notify the FIAU that they are acting as CSPs by way of business. The authorities have advised that as at 31 October 2018 there were 588 CSPs of which 400 were not licensed under the Company Service Providers Act. Approximately 70 of these are persons licensed under the Trusts and Trustees Act, and therefore subject to market entry requirements, however approximately 343 persons are lawyers, notaries public, auditors and accountants, and as explained above lawyers are not subject to adequate market entry measures.

421. The MFSA has made rules under Art. 8 of the CSP Act. These rules contain a de minimis provision that any individual who holds 10 or less directorships and company secretarial positions in companies, other than those licensed, recognised or authorised by the MFSA is not considered as an individual holding himself out as providing directorship services by way of business (irrespective of whether they receive remuneration for these services) and therefore not subject to registration or notification under the Act. Accordingly, these persons are not considered subject persons under the PMLFTR and subject to AML/CFT supervision by the FIAU.

422. In establishing whether an individual may be considered to be providing company services by virtue of the directorships and/or company secretarial positions held, it is recommended that a final determination is sought from the MFSA and the MFSA provided examples of such determinations. However, with the absence of statistics on the number of individuals acting as director/company secretary in a third-party capacity for 10 or less companies, the assessment team was unable to assess the impact of this *de minimis* rule. However, directors of Maltese legal persons are the natural persons accountable to competent authorities for providing beneficial information, therefore this

lacuna has implications under c.24.8 as these persons are not subject to AML/CFT supervision. The Maltese authorities argue that subjecting individuals acting as director/company secretary for not more than 10 companies goes beyond the FATF standards, as it captures all directors/company secretaries, including those not acting in the context of a professional relationship with a third party. However, the assessment team does not agree with this point of view as the exemption is applicable to individuals holding up to 10 appointments irrespective of whether they receive remuneration for these services

Trustee Statutory Exemptions

423. Under Art. 43(7) of the Trusts and Trustees Act there is a statutory exemptions from licensing in respect of any person in possession of a warrant to carry out the profession of an advocate, notary public, legal procurator or certified public accountant, but only if acting as a trustee is limited to what is necessary and incidental in the course of carrying out his profession. The Maltese authorities have advised that these relate to very specific circumstances where such a person would usually be acting as a trustee on an occasional basis and only as part of a specific transaction or ancillary function to his profession. For example, a lawyer holding clients' monies required for the execution of a contract would create fiduciary obligations, but these arise only incidentally due to the nature of the lawyer's profession and activity. However, the MFSA does not maintain any statistics on how many trusteeships are held by these unlicensed persons and therefore it is unknown if this provision is being abused. Art. 43(A) also exempts private trustees who (i) do not hold themselves out as trustee to the public; (ii) are not remunerated, even indirectly, except as permitted by any rules issued by the Authority (no such rules exist); and (iii) do not act habitually as trustee, in any case in relation to more than five settlors at any time. Such trusts are governed by a detailed notarial procedure and therefore such trusts are covered for AML/CFT purposes by the notary who is a subject person in terms of the PMLFTR. It should be noted however that all the exemptions referred to in Art. 43(7) refer to persons who are already subject persons in their own right and therefore subject to AML/CFT supervision.

424. (c) The FIAU in conjunction with the MFSA/MGA (where applicable) is the authority tasked with the monitoring and supervision of all DNFBPs for compliance with the AML/CFT requirements under the PMLA and PMLFTR and has a broad range of sanctions and these are referred to in more depth at c.35.1. However, it is noted under R.35 that the civil sanctions detailed in Reg. 21(7) PMLFTR do not extend to the "senior management" at the subject person.

425. *Criterion 28.5* –

All DNFBPs, other than casinos

426. As explained under R.26 the FIAU is assisted by other supervisory authorities (mainly the MFSA & MGA) in the AML/CFT supervision of DNFBPs that would fall under the regulatory competence of such authorities. Art. 26(2) PMLA stipulates that the FIAU must carry out its responsibilities of ensuring compliance by subject persons with their AML/CFT obligations, on a risk sensitive basis. However, the frequency and intensity of on-site and off-site supervision does not fully take into account, for all types of DNFBPs, the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta.

427. The risk assessment of DNFBPs, excepting TCSPs and casinos, is carried out on the basis of information obtained from those persons, through data collection exercises, predominantly through the ACR which all subject entities are bound to submit to the FIAU on an annual basis. As detailed in

c.26.5 there are significant limitations with the ACR, as the questions are rudimentary and do not elaborate further on the appropriateness of the policies and procedures in place. The questions do not vary in accordance with the sector or type of entity being requested to provide information, and many of the questions are binary and do not solicit quantitative information on the DNFBPs client base. Therefore, the way the questions are framed in the ACR does not enable the Maltese authorities to assess the true ML/FT vulnerabilities at the DNFBPs under their supervision. Furthermore, the risk assessment of DNFBPs does not take into consideration the risks posed by the establishments or branches in foreign jurisdictions. Some of the limitations of the ACR are acknowledged by the Maltese authorities and in 2017 the FIAU and the MFSA carried out an extensive data collection exercise on all TCSPs, to strengthen the authorities' risk understanding of this sector and the respective operators. It should also be noted that approximately 343 lawyers and accountants also provide corporate services, a material sector in terms of ML/FT risk in Malta, which as TCSPs were covered under the extensive data collection exercise of 2017.

Online Gambling and Casinos

428. It is noted that until 1 January 2018 only land-based casinos were considered as DNFBPs, with internet-based and cruise casinos becoming DNFBPs through the amendments to the PMLFTR and therefore subject to AML/CFT supervision.

429. In September 2017 the MGA carried out a data collection exercise on the AML/CFT controls that remote gaming licensees already had in place. The results obtained from this exercise, together with data already held by the MGA and collected through the annual Industry Performance Return, was aimed at allowing the MGA to assess and risk rate the various remote gaming operators in Malta as well as to devise a supervisory plan covering remote gaming operators for 2018. Though the Industry Performance Return does not consider ML/FT specifically, the MGA indicates that it allows it to have a good understanding of operators' business operations including the location of their operations, games offered, etc. Furthermore, the MGA is continuing to enhance its understanding of the ML/FT risks of individual online gaming operators through the annual AML/CFT Questionnaire. This questionnaire was circulated at the end June 2018 and the MGA is currently receiving and processing the information sourced through these questionnaires. The authorities indicate that this questionnaire will provide MGA/FIAU with new data on operators, which updates their control measures in place and captures specific risk criteria that will be used to update the AML/CFT Risk Matrix 2019.

430. The FIAU, in conjunction with the MFSA and MGA (where applicable), has risk-rated all subject persons which completed ACRs and has assigned risk-ratings (very high; high; medium high; medium and low) to each of these. At the time of the evaluation the supervisory authorities were in the midst of overhauling their policies, procedures and operations on risk-based supervision. The assessment team was informed that with effect from 2018, higher risk entities would be subject to onsite inspections, medium risk entities would be subject to offsite inspections, and low risk entities would be subject to supervisory meetings. However, the authorities were not in a position to provide the assessment team with a documented procedure outlining this process

Weighting and Conclusion

431. Malta meets c28.1, c.28.2 and 28.3 and partly meets 28.4 and 28.5. The rating has been influenced by the following factors: (1) lawyers, DPMS and real estate agents are not regulated by sectorial legislation, therefore there are concerns regarding the adequacy of market entry measures and on-going fitness and properness measures for these persons; (2) the frequency and intensity of

both onsite and offsite inspections for DNFBPs, other than casinos and TCSPs, does not fully take into account the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta; (3) statutory exemptions and *de minimis* ruling by the MFSA might result in some persons not being subject to market entry measures and/or subject to AML/CFT; and (4) civil sanctions do not extend to the "senior management" at the subject person. **R.28 is rated as PC.**

Recommendation 29 - Financial intelligence units

432. In its MER of 2012, Malta was rated C with the former R.26.

433. *Criterion 29.1* – The FIAU, established by means of Act XXXI of 2001 (PMLA) and operational since 2002, is a government agency in the form of a corporate body having a distinct legal personality. According to Art. 16(1) PMLA, the FIAU is responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating ML and FT. The FIAU seems to have similar powers in relation to predicate offences associated to ML, as the mentioned article, when listing the specific functions that the FIAU is responsible for, refers to activities suspected to involve property that may have derived directly or indirectly from, or constitutes the proceeds of criminal activity.

434. *Criterion 29.2* – According to Art. 16(1)(a) PMLA, the FIAU is responsible for receiving reports from subject persons (both FIs and DNFBPs) regarding transactions suspected to involve ML/FT or property that may have derived directly or indirectly from, or constitutes the proceeds of criminal activity. Subject persons are under the obligation imposed by Reg. 15(3) PMLFTR to submit a report to the FIAU whenever they know, suspect or have reasonable grounds to suspect that funds are the proceeds of criminal activity or are related to FT, or that a person may be connected with ML/FT.

435. The Maltese legislation does not require subject persons to submit cash transaction reports, wire transfer reports or other threshold-based declarations or disclosures, as subject persons are only bound to submit reports on suspicious transactions or activities.

436. *Criterion 29.3* – (a) The FIAU is legally empowered (Art. 30(1) PMLA) to demand from any subject person, including but not limited to the subject person who may have made the suspicious transaction report, any additional information that it may deem useful for the purposes of integrating and analysing the suspicious transaction report or any other information in its possession.

(b) The same powers can be exercised by requesting information also from any Government ministry, department, agency or other public authority, or any other person, physical or legal, or supervisory authority. On that basis, the authorities indicate that the FIAU has access to, *inter alia*, information held by the Police and supervisory authorities such as the MFSA and the MGA; employment and tax records; citizenship, passport and identification details; information relating to the purchase and registration of property, vessels, vehicles and aircraft, VOs; and cross border cash declarations.

437. The law states that the FIAU is able to obtain any information, thus specifying the subjects and databases to which the FIAU can access. The FIAU seems to be able also to demand administrative, financial and law enforcement information from subject persons, other authorities, LEAs and any other person or entity. The law provides for the appointment of a Police Liaison Officer whose functions includes that of making available to the FIAU or to any member of its staff any information at the disposal of the police or which is part of police records to the extent that such information is relevant to the exercise of the FIAU's functions (Art. 24(3) PMLA).

438. The law does not specify what type of information the FIAU may request from subject persons. However, it stipulates that the FIAU is empowered to request any information which it deems useful for pursuing an analysis (Art. 30 PMLA) or for pursuing any of its functions at law (Art. 30A PMLA). According to the Maltese authorities, this legal provision has been drafted in this manner so as to ensure that the FIAU has the widest possible powers to source the necessary information (irrespective of what type of information this may be) to conduct its functions effectively.

439. *Criterion 29.4* – The FIAU analyses information provided through suspicious transaction reports, information obtained through requests sent to subject persons, other authorities and persons or entities, information obtained from foreign FIUs, or any other information that it has access to or has in its possession.

(a) The FIAU's analysis can be operational in nature. In particular, Art. 16(1)(a) PMLA stipulates that it is the FIAU's function to supplement suspicious reports received with additional information that may be available to it or that it may demand to draw up an analytical report to be sent for further investigation to the Police. The FIAU is empowered to perform operational analysis not only upon the submission of STRs but also out of its own volition when it becomes aware of or comes in possession of information that raises the FIAU's suspicion (Art. 16(1)(l) and Art. 31(2) PMLA).

440. To assist its operational analysis, the FIAU makes use of IT tools and software (these include the FIAU's database, intelligence databases namely C6 and World-Check, I2 software, FIU.Net and XBD), that identify any information already held by the FIAU which is linked to an analysis being carried out, map out links between individuals, transactions, countries and/or entities depending on the case, as well as identify potential links to other jurisdictions which may have previously been unknown to the FIAU as being connected to the analysis being carried out.

(b) As regards strategic analysis, Art. 16 (1) PMLA stipulates that the FIAU is responsible to analyse information with a view to combating ML and FT. Further, Art.16 (1) (f) specifies that information is gathered by the FIAU for the analytical purposes with a view of detecting areas of activity which may be vulnerable to ML or FT. The provisions of the law thus extend the FIAU's powers to both operational and strategic analysis. The organisational chart of the FIAU includes a Manager specifically vested with the strategic analysis function.

441. Criterion 29.5 – In case of a reasonable suspicion of ML or FT, or that property may have derived from, or constitutes the proceeds of, criminal activity, the FIAU sends any analytical report, or any information, document, analysis or other material in support of the analytical report, to the Commissioner of Police for further investigation (Art. 16(1)(b) and (d) and Art. 31 PMLA). In addition, Art. 16(1)(k) PMLA enables the FIAU to cooperate and exchange information, upon request or spontaneously, with any supervisory authority and other competent authority.

442. As regards the regime to be assigned to STRs, in terms of dedicated, secure and protected channels for dissemination, the FIAU does not disseminate STRs itself, but the information contained in the STR, any supplemental information and the results of the analysis is sent to the Malta Police for further investigation. This is in line with the FIAU's obligation under Reg. 15(11) PMLFTR to protect and keep confidential the identity of persons and employees who report STRs. Maltese legislation does cater specifically for the dissemination of STRs results (i.e. analytical reports and other information) to the Malta Police (Art. 16(1)(b) PMLA and in a more detailed manner under Art. 31 PMLA). Moreover, cooperation with supervisory authorities other competent authorities is regulated under Art. 27 and 27B PMLA.

443. Communication with other relevant and competent authorities is done via face-to-face meetings, telephone calls, hard copy documents, use of encrypted memory drives, and emails, where the email system used is secured and encrypted using TLS encryption. Analytical reports are passed on to the designated Police Liaison Officer in hard copy. Should the FIAU have any additional supporting documentation which is only available in soft copy, this is passed on accordingly to the Police Liaison Officer via email which, as stated above is secured and encrypted, or other secure means (such as military grade encrypted USBs).

444. *Criterion 29.6* – (a) The FIAU's Confidentiality Policy sets rules and procedures to ensure the confidentiality and security of information, including on the handling, storage and internal and external access to information, depending on the information's level of sensitivity. Moreover, the financial analysts within the FIAU, by way of procedure, exchange information with foreign counterparts only through secure channels, mainly the ESW and the FIU.Net. In addition, confidentiality obligations are specifically recalled in the PMLA (Art. 34), to which FIAU officers and employees and agents, whether still in the service of the FIAU or not, have to adhere to. In particular, they shall treat any information acquired in the exercise of their duties or the exercise of their functions under the PMLA as confidential and shall not disclose any information relating to the affairs of the FIAU, which they have acquired in the performance of their duties or the exercise of their functions. Breaches of Art. 34(1) PMLA are subject to a criminal sanction under the CC. Art. 34 PMLA also stipulates the circumstances where FIAU information and/or documentation may be disclosed or disseminated. The list of exemptions provided for by Art. 34 seems too large (in particular (e)) and leaves room to subjects mentioned to disclose information received in carrying out their functions, even though it gives the FIAU discretion in deciding when such information may be disclosed (see also c.40.6). Furthermore, in terms of Art. 33 PMLA any official or employee of the FIAU who discloses to a third party that an analysis is being carried out or that the FIAU received a STR, or that the FIAU transmitted information to the police for further investigation shall be guilty of a criminal offence and shall be liable on conviction to a fine.

(b) Every officer and employee of the FIAU is screened by the MSS prior to their employment with the FIAU and every three years thereafter. The obtainment of the necessary clearance is a prerequisite for engagement and continued employment with the FIAU. All FIAU staff members require a security clearance at "SECRET" level. Moreover, the FIAU obtains a complete police conduct certificate prior to employing an individual. This certificate provides the complete history of an individual's criminal records and indicates any criminal conviction that the individual might have had.

(c) Physical controls are implemented to safeguard the FIAU premises and information held by the FIAU. IT controls are also put in place including email encryptions and firewalls; user account management and periodic user verification; user access monitoring; security awareness notices and communications; and limited access to hardware and databases. As regards access to information held by the analysis section of the FIAU, only the Director and Deputy Director of the FIAU and the financial analysts have access to the analysis database which holds STRs, requests for information and miscellaneous intelligence reports.

445. *Criterion 29.7* – (a) The FIAU is defined by the law as a body corporate having distinct legal personality (Art. 15 PMLA).

446. Art. 18(1) PMLA stipulates that the FIAU shall be composed of a Board of Governors and a Director. The Board is appointed by the Minister responsible for Finance from a panel of persons

nominated by the AG, the Governor of the Central Bank of Malta, the Chairman of the MFSA and the Commissioner of Police respectively. The Chairman and Deputy Chairman are appointed by the Prime Minister from among the persons appointed by the Minister. Art. 19(5) PMLA stipulates that the members of the Board shall discharge their duties in their own individual judgement and shall not be subject to direction or control of any other person or authority. No reference is made in the law to specific professional skills and personal characteristics to be possessed by the members of the Board, and to be periodically assessed, in order to adequately assume responsibilities for the policy to be adopted by the FIAU. The Board is required to provide to the Minister of Finance a copy of its annual accounts, certified by auditors, and a report on the operations of the FIAU on an annual basis (Art. 42 PMLA). The report is tabled at the House of Representatives by the Minister.

447. The Board is, in accordance with Art. 18(2) PMLA, responsible for the policy to be adopted by the FIAU and to be executed and pursued by the Director, as well as to ensure that the Director carries out that policy accordingly. The authorities indicate that "policy" covers a number of policy documents that regulate the operations of the FIAU, including on administration (e.g. travel or confidentiality), compliance (e.g. policy on sanctions and publications of sanctions) and analysis (financial analysis procedure). Of the FIAU functions listed under Art. 16(1)(a) to (l) the Board is only in charge of advising the Minister on "all matters and issues relevant to the prevention, detection, analysis, investigation, prosecution and punishment of ML and FT offences". In practice, the authorities indicate that the Director and staff of the FIAU also provide advice to the Minister. Advice is provided on issues such as AML/CFT legislative proposals or AML/CFT issues of a strategic nature.

448. As per Art. 23 PMLA, the Director (and the other officers and staff) of the FIAU are appointed or recruited by the Board according to such procedures and on such terms and conditions and in such numbers as the Board may determine. Art. 18(3) stipulates that it is the Director who is responsible for executing the policy established by the Board and for carrying out all the functions of the FIAU, including the functions of analysing, requesting and/or forwarding or disseminating information, which are not attributed to the Board under the Act, "in accordance with the policy and subject to the general supervision of the Board".

449. In practice, upon receipt of an STR, the initial decision to start analysis (and/or to share information with foreign jurisdictions) is taken by the Financial Analysis Managers. A Financial Analyst carries out a preliminary analysis, which is discussed in a prioritisation meeting, attended by analytical officers and chaired by the Managers of the section. A decision can be taken to carry out more detailed analysis and initiate an analytical case. Once the analysis is carried out the case is then presented by the analytical officer before the Financial Analysis Committee. This internal committee is composed of all analytical officers, an officer from the legal section, the Deputy Director and the Director and attended by the Police Liaison Officer, who does not hold any voting rights. The Committee determines whether there is a reasonable suspicion of ML, FT or proceeds of criminal activity and whether to close the case, request additional information, or disseminate the case to the Police. In the latter case, an analytical report drawn up by the analyst assigned to the case is forwarded to the Malta Police for further investigations, after an internal review has been conducted by the analyst's respective manager and the Director or Deputy Director of the FIAU to ensure that the analyst's findings are presented in a clear, comprehensive and understandable manner.

450. The authorities indicate that the Board of Governors, or other external persons have no involvement in the carrying out of these operational functions and that the members of the Board do

not have access to any information, data, documentation stored or databases maintained by the FIAU. The authorities indicate that the Board receives reports containing aggregated information on the operations of the FIAU. In exceptional circumstances, especially when the Board is required to assess the operations of the Unit and whether these are in line with agreed policies and processes, there could also take place discussions on specific cases, however in full respect of confidential and sensitive information. The appointment/recruitment of the Director, other officers and staff of the FIAU is carried out by the Board according to procedures, terms and conditions determined by the Board. In practice, the FIAU follows the general public service-sector procedures. The law does not provide specific mechanisms and procedures for the appointment of the Director.

451. (b) Art. 16(1)(k) PMLA empowers the FIAU "upon request or on its own motion and subject to such conditions and restrictions as it may determine, to cooperate and exchange information with" foreign counterparts, supervisory authorities, even if located outside Malta, and with other competent authorities. The Director of the FIAU is responsible for carrying out this function.

452. (c) The FIAU falls within the structure of the Ministry for Finance, having however distinct legal personality and separate premises where all its operations take place and information and databases are maintained and stored.

453. (d) The financial resources available to the FIAU consists of fees originating from its supervisory functions (including revenue from pecuniary sanctions imposed for breaches of AML/CFT obligations), resources allocated by the Ministry for Finance and other income. Art. 15(2) establishes that the FIAU is autonomous in entering into contracts, acquire, hold or dispose of its property, using its assets and acquiring technical resources and other equipment which it deems necessary. The obtainment and deployment of human resources are planned for a period of three years and the related plans, as well as the initiation of external recruitment processes, are subject to the approval of the Ministry for Finance.

454. *Criterion 29.8* – The FIAU has been a member of the Egmont Group of FIUs since 2003.

Weighting and Conclusion

455. Malta meets Criteria 29.1, 29.2, 29.3, 29.4, 29.5, 29.6 and 29.8 and partly criterion 29.7, which is due to the absence of specific mechanisms and procedures for the appointment of the Director. On the basis of the above, **R.29 is rated as LC**.

Recommendation 30 – Responsibilities of law enforcement and investigative authorities

456. This Recommendation, which was formerly R.27, did not form part of Malta's fourth round MER in 2012.

457. *Criterion 30.1* – The Malta Police is the LEA designated to investigate criminal offences, including ML offences, associated predicate offences and FT offences. Within the Malta Police, the Economic Crimes Squad is responsible for investigating criminal offences of a financial nature. It has within it a special designated Anti-Money Laundering Unit which is tasked with the investigation of ML offences (even though nothing precludes other police units from investigating ML offences as well). In fact, ML investigations are also carried out by other sections of the Malta Police, such as the Drug Squad (in conjunction with the investigation of drug-related offences) or the Criminal Investigations Department (in conjunction with the investigation of serious organised crime). The Anti-Money Laundering Unit is generally tasked with the investigations of more complex ML cases, while other less complex ML cases would usually be investigated by the section investigating the

predicate offence. In relation to smuggling/contraband and the respective excise duties and VAT issues, the Customs Department may report cases to the Police; the latter may initiate *ex-officio* an investigation (jointly with the Customs Department or separately). In relation to tax crimes (including VAT), it should be noted that the Police do not have the power to prosecute (although they can initiate investigations). Such prosecutions require the authorisation of the CFR, which has the powers to investigate administratively. With regard to terrorism-related offences (including FT), the Malta Police has a special designated unit (the "Counter-terrorism Unit") tasked with the investigation.

458. *Criterion 30.2* – Police officers investigating predicate offences are authorised to pursue related ML/FT offences.

459. *Criterion 30.3* – The AMU which was set up within the Court Registry in 2012 (Art. 23D of the CC) was until recently the competent authority to identify, trace and initiate freezing and seizing of property that is or may become subject to confiscation, or is suspected to be proceeds of crime. Since August 2018 the ARB has been tasked with the above issues. The assessment team notes that the role of the ARB does not apply to procedures initiated prior to its establishment. While the ARB is the designated authority which fulfils the requirements of criterion 30.3, Malta is not fully compliant with regard to cases assigned to the AMU before August 2018, as the latter lacks the full capacity with regard to asset-tracing, in particular abroad.

460. *Criterion 30.4* – There are no competent authorities other than the Malta Police which have the responsibility to pursue financial investigations of predicate offences.

461. *Criterion 30.5* – Malta has not designated any specific anti-corruption enforcement authority. Corruption and any related ML/FT offences are addressed in the same manner as other predicate offences.

Weighting and Conclusion

462. In relation to tax crimes, the Police can initiate investigations but requires the authorisation of the CFR for their prosecutions. While the ARB is the designated authority which fulfils the requirements of criterion 30.3, Malta is not fully compliant with regard to cases assigned to its predecessor before August 2018 with regard to asset-tracing (in particular abroad) and management. **R.30 is rated LC.**

Recommendation 31 - Powers of law enforcement and investigative authorities

463. This Recommendation, which was formerly R.28, did not form part of Malta's fourth round MER in 2012.

464. *Criterion 31.1* – Competent authorities conducting investigations of ML, associated predicate offences and FT are empowered by the CC to obtain access to all necessary documents and information for use in those investigations and in prosecutions and related actions, including powers to use compulsory measures for: (a) the production of records held by FIs, DNFBPs and other natural or legal persons (Art. 355AD(3) and (4)); (b) the search of persons and premises (Art. 355E to 355J, 355K to 355O, 355AF and 355AG); (c) taking witness statements and (d) seizing and obtaining evidence (Art. 355P to 355U).

465. *Criterion 31.2* – Malta's competent authorities are empowered to use a wide range of investigative techniques for the investigation of ML, associated predicate offences and FT, such as undercover operations (Art. 435E (3) CC), accessing computer systems (Art. 355P and 355Q CC) and

controlled deliveries (Art. 435E CC with regard to the investigation of any criminal offence and Art. 30B DDO with regard to the investigation of drug-related offences envisaged under that law). The Malta Police does currently not have the power or authorisation to directly intercept communications during criminal investigations. However, the Commissioner of Police may request the MSS to petition the Minister of the Interior (responsible for the Security Services) to authorise interceptions for use in a criminal investigation. As the law currently stands the Police are not able to make use of the possibility to intercept communications through its own independent decision.

466. *Criterion 31.3* – The Police (Art. 355AD CC) are empowered to enquire with banks and other FIs whether natural or legal persons control accounts. Requests for information are disseminated by email which is secured and encrypted. There may still be instances where requests for information are hand-delivered if this is requested by particular institutions. With regards to the timeliness of responses, the Police will indicate its own timeline to persons holding/controlling accounts, non-adherence to which is subject to sanctions. With regard to the process of identification of assets, this does not imply a prior notification to the owner.

467. Criterion 31.4 – The FIAU can, upon request (Art. 34(3) PMLA), disclose information or documents to a competent authority in or outside Malta investigating ML (including the related offences under the Dangerous Drugs Ordinance and the Medical and Kindred Profession Ordinance) and FT, but apparently not with regard to the associate predicate offences (as they are not explicitly mentioned in the law). The Malta Police has to request the prior express authorisation of the FIAU should they intend to further disseminate or use the information or document provided for other purposes. Moreover, the FIAU is empowered to report to the Malta Police and provide information on suspicions of ML/FT as well as information on the underlying criminal activity (Art. 16(l) of the PMLA).

Weighting and Conclusion

468. The Malta Police does currently not have the power or authorisation to directly intercept communications during criminal investigations, but must request prior authorisation. The FIAU is only authorised to disclose information or documents upon request to a competent authority in or outside Malta with regard to ML and FT, but not related predicate criminality. **R.31 is rated LC**.

Recommendation 32 – Cash Couriers

469. This Recommendation, which was formerly SR.IX, did not form part of Malta's fourth round MER in 2012.

470. *Criteria 32.1* – Reg. 3 of the Cash Control Regulations obliges any person entering, leaving or transiting through Malta (whether entering from/heading towards a State which is a member of the EU or not) and carrying a sum equivalent to EUR 10,000 or more in cash, to submit a declaration to Customs. Due to the broad definition of "cash" it applies to BNI. However, cargo and mail transportation of cash are not covered (although the sending of cash by mail is limited to EUR 10 by law).

471. *Criteria 32.2* – Persons making physical cross-border transportation of currency or BNI of a value equal to or exceeding EUR 10,000 are required to make a written declaration to the Controller of Customs. They are required to confirm the truthfulness of their declaration and are warned about the consequences of false, inaccurate or incomplete declarations.

472. *Criterion 32.3* – The criterion is not applicable since Malta has a declaration system.

473. *Criterion 32.4* – Upon discovery of a false declaration or a failure to declare, the carrier is interviewed by customs for the purposes of the cash declaration form. The carrier is then requested to fill in a (new) cash declaration form. In doing this, the carrier is obliged to provide (further) details of the provenance/origin of the cash or BNIs.

474. *Criterion 32.5* – In accordance with Reg. 3(4) of the Cash Control Regulations, persons who make a false declaration or who do not fulfil their obligation to declare sums of cash as required under Reg. 3(2) shall be guilty of a criminal offence and shall be liable to a fine equivalent to 25% of the value of such sum. Reg. 3(4) also states that the maximum fine may not exceed EUR 50,000. Reg. 3(5) provides for the forfeiture of the undeclared amount in excess of EUR 10,000, or the whole amount when it is indivisible.

475. *Criterion 32.6* – Malta has a database containing the details of declarations made and details of breaches of these regulations. All information obtained through the declaration process as well as information on discovered breaches has to be transmitted to the FIAU on a bi-weekly basis (Reg. 4(1) and (2) of the Cash Control Regulations).

476. *Criterion 32.7* – Further to the transmission of information from Customs to the FIAU mentioned under c.32.6, the Customs Department coordinates with various sections within the Police (including the Immigration Unit, the Economic Crimes Unit and the Police Anti-Drug Squad) on the basis of an agreement and with the possibility of forming JITs. Customs also liaise with the MSS. Customs, Police and Security Services exchange information on possible suspects carrying cash at the border.

477. *Criterion 32.8* – Mechanisms to restrain currency or BNIs are foreseen under Art. 355P CC and Reg. 3(1) of the Cash Controls Regulation. Art. 355P CC empowers the Police to seize anything if they have reasonable grounds for believing that it has been obtained in consequence of the commission of an offence (including ML/FT offences) or that it is evidence in relation to an offence which would require its seizure to prevent it being concealed, lost, damaged, altered or destroyed. Reg. 3(3) empowers the authorities to seize the undeclared or falsely-declared amount in excess of EUR 10,000 (or the whole amount if it is indivisible).

478. *Criterion 32.9* – The information referred to under c.32.9(a), (b) and (c) is retained in a database held by the Comptroller of Customs in accordance with Reg. 4(1) of the Cash Controls Regulation and Regulation 1889/2005. It is shared in accordance with Art. 6 and 7 of Regulation 1889/2005 on a bi-weekly basis with the FIAU and on request with the police. The information is available for international cooperation.

479. *Criterion 32.10* – Information collected from the declaration system is stored, safeguarded, and processed pursuant to Maltese data protection requirements emanating from the Data Protection Act. The Maltese authorities have stated that the declaration system is not affecting the trade payments between countries nor the freedom of capital movements.

480. *Criterion 32.11* – Persons who are carrying out a physical cross-border transportation of currency or BNI that are related to ML/FT or predicate offences are subject to convictions for ML/FT. However, concerns remain about the lack of fully proportionate and dissuasive sanctions with regard to the FT offence (see c.5.6). Upon conviction for ML/FT, the cash or other monetary instruments are subject to confiscation (see R.4). Reg. 3(5) and (6) of the Cash Control Regulations provide for the confiscation of undeclared amounts in excess of EUR 10,000, or the whole undeclared amount when the cash/BNI is indivisible. The forfeiture is not applicable where the value of the

carried amount is exactly EUR 10,000. The provisions of these regulations are applicable whenever a person makes a false declaration or fails to make a declaration as required, and irrespective of whether suspicions of ML/FT arise.

Weighting and Conclusion

481. Malta does not have a declaration system for cargo and mail transportation of cash (although the legislation limits the sending of cash by mail to EUR 10). Concerns about the full dissuasiveness of the sanctions for the FT-offence are also affecting compliance with criterion 32.11.a). **R.32 is rated LC.**

Recommendation 33 – Statistics

482. In the 4th Round Malta was rated as LC with former R.32. The assessors concluded that there was no detailed statistics of the number of confiscations and confiscation orders and that the statistics for on-going supervision of FIs (other than credit institutions) was not broken-up by category. The assessors also raised that it was impossible to assess the effectiveness of maintaining statistics on international exchange of information due to the lack of requests and that there was an insufficient review of the Maltese AML/CFT system as a whole.

483. *Criterion 33.1* – (a) *STR received and disseminated* – The FIAU retains statistical data on the number of STRs received and the number disseminated to the Malta Police for further investigations.

(b) *ML/FT Investigations, Prosecutions and Convictions* – The Malta Police holds statistical data on investigations and prosecutions of ML and FT offences. Statistical information is also kept on convictions delivered by the criminal courts.

(c) *Property frozen, seized and confiscated* – The Registrar of the Criminal Courts keeps statistical information on all freezing orders and confiscations. The ARB is also responsible for the collection and retention of statistical data concerning:

(i) the number of investigation, attachment, freezing and confiscation orders issued under the CC or under any other law;

(ii) the estimated value of property attached, seized or frozen, at the time the issue of the attachment or freezing order; and

(iii) the estimated value of property recovered at the time of confiscation.

(d) *MLA or other international requests for co-operation made and received* – The AGO, which is the central designated authority for mutual legal assistance in criminal matters, has a database which keeps statistical data about the requests for assistance received and made (which includes all forms of requests for legal assistance ranging from the traditional letters of requests and extradition requests to European Arrest Warrants and Freezing Orders), the legal arrangements upon which the request was made, the requesting and requested countries and the status of the request (among others). This database is also linked to the Eurojust Case Management system in line with the consolidated version of the EU Council Decision 2002/187/JHA.

Weighting and Conclusion

484. The only criterion under this recommendation is met. **R.33 is rated C**.

Recommendation 34 – Guidance and feedback

485. In the 4th Round Malta was rated as PC with former R.25. The assessors concluded that there were no sector specific guidelines on ML/FT techniques and methods and that the FIAU was not ensuring that the feedback mechanism to subject persons was working effectively in practice. The assessors were also unable to assess the effectiveness of the new provisions in the Implementing Procedures Part I due to the recent adoption at the time of the on-site visit.

486. *Criterion 34.1* –

Guidelines

487. Under Reg. 17 PMLFTR, the FIAU is empowered to issue legally-binding procedures and guidance, together with the relevant supervisory authorities, as may be required for the carrying into effect of the provisions of the AML/CFT regulations stipulated under the PMLFTR. The main guidance document issued by the FIAU and which provides general guidance on the application of all the AML/CFT obligations envisaged under the PMLFTR is the Implementing Procedures Part I. These Implementing Procedures lay down legally-binding procedures and provides guidance, and is applicable to all subject persons (i.e. both the financial and the non-financial sectors). The Implementing Procedures Part I were issued on 20 May 2011 and were most recently updated on 27 January 2017. Although the PMLFTR was introduced on 1 January 2018, at the time of the onsite visit, the FIAU was in the process of consulting on a revised Part I of the Implementing Procedures[99]. Historically, the FIAU has also issued sector-specific guidance named Implementing Procedures Part II in respect of Banks (updated in February 2013) and Land-Based Casinos (updated in September 2015) and Remote Gaming (issued on 19 July 2018). However, the banks and land-based casinos guidance will require updating to reflect the recent legislative amendments to the PMLA and PMLFTR. Specific guidance for the CSP sector is currently being drafted and specific guidance for virtual financial asset operators was issued for consultation on 31 October 2018. Sector specific guidance for the insurance and investment sectors remains to be drafted.

488. Apart from the issuance of general and sector specific AML/CFT guidance and procedures the FIAU also issues ad-hoc guidance to address particular obligations or matters of AML/CFT relevance (e.g. Guidance note on high-risk and non-cooperative jurisdictions; Interpretative note on the AML/CFT obligations of professional firms and FT – Red Flags and Suspicious Activities and business risk assessments).

Feedback and Outreach

489. Pursuant to Art.16 PMLA the FIAU is responsible for the promotion of training of, and to provide training for personnel employed with any subject person on matters relevant to the prevention of ML and FT and to advise and assist subject persons to put in place and develop effective measures and programmes to prevent ML and FT.

490. The FIAU organises or participates at a number of seminars and conferences organised by private bodies and educational entities on AML/CFT matters and obligations. For example, in 2017 the FIAU held two half day seminars on the revised Implementing Procedures Part I (in February and April 2017) which were attended by close to 900 subject person officials and employees. In January 2018 the FIAU, jointly with the MFSA, held a one-week seminar dedicated to the carrying out of risk assessments and the application of the risk-based approach. During this one-week seminar, sector-

[99] This was issued for consultation on 30 October 2018. It is anticipated that the final version will be published by the end of 2018.

specific training was provided to credit institutions, investment companies, trustees, company service providers, notaries and real estate agents.

491. Apart from organising training events, the FIAU also provides continuous assistance to subject persons on specific AML/CFT issues over the phone or via e-mail. Between the period December 2015 to June 2018, the FIAU informed the assessment team that it has replied to approximately 300 queries. Moreover, the FIAU in 2017 set up a newsletter, to which the MLROs of all subject persons registered on the FIAU database were requested to subscribe. The FIAU has also launched a public Linked-In profile. The FIAU uses these resources and social media platforms to circulate and publicise guidance, interpretative notes and other material that the FIAU publishes on its website to ensure a wider circulation.

492. In terms of Art. 32 PMLA the FIAU is empowered to provide feedback (on its own motion or following requests by subject persons) on the outcome of STRs and on other information to assist subject persons in carrying out their reporting duties under the PMLFTR. Reg. 15(12) PMLFTR stipulates that the FIAU shall provide subject persons and supervisory authorities, where applicable, with feedback on the effectiveness of STRs.

493. The FIAU analysis section provides feedback on the outcome of STRs submitted to the subject person making that STRs when: (i) the analytical report concerning that STR is sent to the Police; (ii) the information contained in that STR is exchanged on a spontaneous basis with a counterpart FIU or a local competent authority but no analytical case is opened by the FIAU; and (iii) no analytical case is opened on the basis of that STR or an opened analytical case (concerning that STR) is closed by the FIAU.

494. Moreover, the FIAU also provides information on the status of STRs reported, upon the request of the subject person lodging that STR. Additionally, as from February 2014, the FIAU Analysis Section has introduced a new procedure whereby each and every STR submitted is being reviewed with the purpose of providing feedback on its quality to the subject person concerned. By virtue of such a feedback procedure subject persons are informed about the adequacy of the STR submitted. In particular, the FIAU indicates whether: (i) the suspicious transaction or activity was clearly and completely described; (ii) whether sufficient detail was provided; and (iii) whether the supporting documentation furnished was necessary for the analysis of the case.

495. The FIAU also provides a score which rates the overall quality and completeness of the STR. This latter procedure is intended to educate and provide specific guidance to subject persons on the specifics of reporting, in a bid to improve the quality of STRs submitted.

Weighting and Conclusion

496. There remain gaps in sector specific guidance which would assist FIs and DNFBPs in applying AML/CFT measures. **R.34 is rated LC.**

Recommendation 35 – Sanctions

497. In the 4th Round Malta was rated as PC with former R.17. The assessors concluded that a low number of sanctions had been imposed on subject persons; no pecuniary sanctions had been imposed on FIs; no sanctions had been imposed on FIs senior management; and sanctions had not been imposed in an effective and dissuasive manner. It was also identified that the FIAU did not publish the sanctions it imposes.

498. *Criterion 35.1* – Malta has a range of proportionate and dissuasive sanctions.

Financial Institutions and DNFBPs

499. Under Art. 13 PMLA, the Minister responsible for Finance may make Regulations for the imposition of criminal punishments, administrative penalties and other measures, that may be imposed in respect of any contravention, breach or failure to comply with any rules, regulations or directives made under this Act. Art. 13 also lays down the maximum punishments that can be imposed by means of regulations. Reg. 21 PMLFTR provides for the imposition of administrative penalties of not less than EUR 1,000 and not more than EUR 46,500 in respect of every breach in AML/CFT obligations. With respect to minor contraventions the FIAU may impose an administrative penalty of not less than EUR 250 or issue a reprimand in writing instead of an administrative penalty. With respect to serious, repeated or systemic contraventions, pursuant to Reg. 21(4)(b) the FIAU may impose the following penalties:

(i) where the subject person committing such contravention carries out a relevant activity (hence a DNFBP) penalties of up to EUR 1,000,000 or twice the amount of the benefit derived from the breach (where the benefit can be quantified); and

(ii) where the subject person committing such contravention carries out a relevant financial business (hence FIs) the maximum penalty that may be imposed increases up to EUR 5,000,000 or 10% of the total annual turnover of the institution.

500. Reg. 21(3) stipulates that administrative penalties may be imposed either as a one-time fixed penalty or as daily cumulative penalty until the particular issue is rectified. They shall be imposed by the FIAU through an administrative process and without the need of a judicial hearing. It is in fact the Compliance Monitoring Committee ("CMC"), composed of FIAU officials from the compliance, the legal unit as well as the Director and Deputy Director of the FIAU, that is responsible for the review of potential breaches of AML/CFT obligations and the imposition of administrative penalties where such breaches subsist. This function is exercised in accordance with sanctioning policies and procedures that are approved by the Board of Governors of the FIAU.

501. The FIAU also has the power to: (1) require subject persons to terminate a business relationship within a stipulated period of time pursuant to Reg. 18 PMLFTR and (2) issue directives in writing ordering a subject person to do or to refrain from doing any act pursuant to Art. 30C PMLA.

502. Reg. 16(1) PMLFTR imposes a criminal sanction for disclosing prohibited information (tipping-off: see also c.21.2.). Any subject person, official or employee of a subject person or a supervisory authority who discloses prohibited information (as envisaged under Reg. 16.1) shall be liable to a fine not exceeding EUR 115,000 or imprisonment of up to 2 years, or to both such fine and imprisonment. Although Art.13 PMLA empowers the Minister of Finance to issue rules or regulations which cater for the imposition of criminal sanctions for breaches of AML/CFT obligations envisaged under the PMLA, PMLFTR or Implementing Procedures, excepting tipping-off which is criminalised, there are currently no regulations or rules catering for the imposition of criminal sanctions for other AML/CFT breaches envisaged under the PMLFTR and the Implementing Procedures. However, R.35.1 does provide countries with flexibility to decide whether civil or administrative powers would be more appropriate.

503. Pursuant to Art. 13C PMLA, penalties exceeding EUR 10,000 are published in accordance with policies and procedures established by the FIAU's Board of Governors and are currently published on the FIAU website.

504. Reg. 21(8) PMLFTR states that the imposition of administrative penalties does not prejudice the ability of other supervisory authorities or authorities (who would be responsible for the authorisation, licensing, registration, regulation of the granting of a warrant to subject person) to take additional actions as it may deem appropriate. As per Reg. 21(6), the FIAU must inform the relevant supervisory authority in a timely manner when it imposes an administrative penalty on a subject person. The MFSA is empowered to restrict, suspend or withhold licenses or authorisation of financial services licensees, where these would not abide by their licensing conditions, which include a condition to comply with all AML/CFT legislation. The MGA may order the suspension or cancellation of a remote gaming license if the license holder is in breach of the provision of the PMLFTR pursuant to Reg. 13(1)(g) of the Remote Gaming Regulations. With regard to casinos the MGA may, in terms of Art. 18 and 19 of the Gaming Act cancel a casino license as a result of a breach of a licence condition or where the authority is satisfied that the casino licensee is not, or has ceased to be a suitable person to be the licensee of a casino.

NPOs

505. Art. 31 of the VOA currently in force provides that "Where any person acts in breach of any of the provisions of this Act or any regulations made thereunder, and a specific penalty is not provided for the offence under this Act or any regulations made thereunder, such person shall, on conviction, be liable to a fine of not less than EUR 116.47 but not more than EUR 2,329.37 or to a term of imprisonment for a period not exceeding six months, or to both such fine and imprisonment."

Targeted financial sanctions related to TF and terrorism

506. Art.6 of the NIA lays down the following criminal penalties for any breach of sanctions (including TFS related to terrorism and terrorist financing), whether EU, UN or national sanctions.

507. For Individuals: If found guilty by a Court of Law, the penalties are a term of imprisonment for a term from twelve months to twelve years or a fine of not less than EUR 25,000 and not exceeding EUR 5,000,000, or to both such imprisonment and fine.

508. For Entities: the payment of a fine of not less than EUR 80,000 and not exceeding EUR 10,000,000. The Court may also order:

- the suspension or cancellation of any licence, permit or other authority of the entity to engage in any trade, business or other commercial activity;
- the temporary or permanent closure of any establishment which may have been used for the commission of the offence;
- the compulsory winding up of the body corporate;
- the exclusion from entitlement to public benefits or aid.

509. Criterion 35.2 – Pursuant to Reg. 21(7) PMLFTR, where a contravention is committed by a subject person who is a body or other association of persons, the administrative penalty may be imposed on any person who at the time of the contravention was a director or similar officer (e.g. a partner in a limited partnership) responsible for the management of the body or association of persons, or whoever was purporting to act in such a capacity. Furthermore, the FIAU is empowered to recommend to other supervisory authorities that a director or similar officer be precluded from exercising managerial functions within any subject person. However, the civil sanctions detailed in Reg. 21(7) PMLFTR do not extend to the "senior management" at the subject person.

510. With regard to TFS related to FT and terrorism, Art. 6(4A) of the NIA provides that where an offence against the provisions of this Act is committed by a body corporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body corporate, shall be guilty of an offence unless he proves that the offence was committed without his knowledge and that he exercised all due diligence to prevent the commission of the offence.

Weighting and Conclusion

511. Malta meets c.35.1 and partly meets 35.2. The civil sanctions detailed in the PMLFTR do not extend to the "senior management" at the subject person. **R.35 is rated LC**.

Recommendation 36 – International instruments

512. In its 2012 report, Malta was rated LC with former R.35 and SR.I. Assessors found that although the Palermo and TFC were in force, there were reservations about the effectiveness of implementation in some issues. Furthermore, the regime for freezing funds was not satisfactorily implemented, an aspect which is no longer assessed under this Recommendation.

513. *Criterion 36.1* – Malta ratified the Vienna Convention on the 28 February 1996. Malta signed the Palermo Convention on the 14 December 2000 and ratified it on the 24 September 2003. Malta signed the Merida Convention on the 12 May 2005 and ratified it on 11 April 2008. Malta signed the TFC on 10 January 2000 and ratified it on 11 November 2001. Malta signed the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism on the 16 May 2005 and ratified it on 30 January 2008.

514. *Criterion 36.2* – The Vienna Convention, the Palermo Convention and the TFC were transposed into national law mainly through the PMLA, the CC, the DDO and the MKPO. The Merida Convention was transposed into national law mainly through the CC, the PMLA, the Permanent Commission against Corruption Act and the Extradition Act.

515. The relevant provision implementing Art. 5 of the Vienna Convention in the DDO (where different procedures are established in relation to offences committed in Malta or cognizable outside Malta) and Art. 120E and Art. 120F MKPO, concerning the freezing of property and confiscation orders cognizable by courts outside Malta, are not fully aligned. The different sets of rules may cause confusion in practice. The third-party confiscation provisions are not fully covered.

516. In relation to the implementation of the provisions of the Conventions regarding confiscation procedures (Art. 5 of the Vienna Convention; Art. 12, 13 and 14 of the Palermo Convention; and Art. 51-55 of the Merida Convention), the Asset Recovery Regulations of 2015 have entered into force in their entirety on 20 August 2018.

Weighting and Conclusion

517. Malta meets criterion 36.1, as it has ratified all the relevant Conventions. As regards criterion 36.2, relevant provision implementing Art. 5 of the Vienna Convention are not fully aligned, with different rules that may cause confusion in practice. Furthermore, the principles on third party confiscation are not fully implemented. **R.36 is rated PC.**

Recommendation 37 - Mutual legal assistance

518. In its 2012 report, Malta was rated C with former R.36 and SR.V.

519. *Criterion 37.1* – Malta has the legal basis to provide the MLA requested by foreign jurisdictions. This legal framework is comprised of a network of international treaties, conventions and EU Framework Decisions (which are directly applicable under national law), the CC and subsidiary legislation, the PMLA, the Dangerous Drugs Ordinance (DDO), the Medical and Kindred Professions Ordinance, the Extradition Act and subsidiary legislation thereto. MLA is also provided on the basis of the principle of reciprocity.

520. Art. 649 CC provides for the execution of letters of request in general. The DDO and PMLA deal more specifically with requests relating to dangerous drugs and psychotropic substances and ML respectively. Requests for assistance in relation to FT, which is criminalised under the CC, are also regulated by Art. 649.

521. In 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 hearing of a witness or expert by video conference.

522. Investigation and attachment orders may be issued upon the request of foreign judicial, administrative or prosecuting authorities under Art. 435B CC, whose provisions are also reflected in Art. 9 PMLA and Art. 24B DDO which provide for the issuance of an investigation and attachment order upon the request of a foreign authority in connection with investigations related to drug related offences and money laundering.

523. The above mentioned Art. 435B CC refers to cases where a "relevant offence" is suspected to have been committed, such as, in terms of Art. 435D, "an act or omission which if committed in Malta, or in corresponding circumstances, would constitute an offence, liable to the punishment of imprisonment or of detention for a term of more than one year, but excludes offences under the DDO and the PMLA". According to information provided by the authorities, Malta is also able to provide MLA for offences which carry less then twelve months imprisonment.

524. *Criterion 37.2* – The AGO is the Maltese Central Designated Authority for the transmission and receipt of letters of request. MLA requests are generally executed in chronological order of their receipt, except for requests highlighted as urgent by the requesting jurisdiction, which receive priority. Once a request is received information about that letter of request is inserted in the computerised case management database held by the AGO, so as to ensure that each stage of the execution of the request for legal assistance and the progress thereof can be monitored.

525. *Criterion 37.3* – In general requests for legal assistance are not prohibited or made subject to unreasonable or unduly restrictive conditions. Art. 649 CC provides that the only restrictions to MLA are instances for which a request received would be contrary to fundamental principles of Maltese law, the public policy or the internal public law of Malta. Treaties, conventions, or other legal arrangements to which Malta is a party with other countries specifically provide for other restrictions such as the requirement of dual criminality as condition to provide MLA. For requests for assistance by authorities of jurisdictions with whom Malta has no arrangement, the granting of judicial assistance is made conditional on reciprocity.

526. *Criterion 37.4* – Maltese legislation does not provide for grounds to refuse to execute a request for legal assistance in view of the fact that it involves fiscal matters or on the grounds of secrecy and confidentiality requirements of FIs or DNFBPs. As noted under c.37.3, Art. 649 CC states that the only limitations for the execution are instances in which the request goes against the fundamental principles of Maltese law, public order and internal public law of Malta. In addition, under Maltese

law, secrecy and confidentiality do not seem to be an inhibiting factor when executing MLA requests. Art. 6B of the Professional Secrecy Act provides that whoever is requested to provide information by a law enforcement or regulatory authority investigating a criminal offence or a breach of duty, by a magistrate in the cause and for the purposes of in genere proceedings or by a court of criminal jurisdiction in the course of a prosecution for a criminal offence, must provide the requested information notwithstanding any professional secrecy or confidentiality obligations. Only information that is subject to legal privilege (Art. 642(1) CC and Art. 588(1) of the Code of Organisation and Civil Procedure) would be exempted. In the execution of letters of request, a magistrate is given the powers pertaining to a Magistrate conducting an in genere inquiry (Art. 649(5B) CC).

527. Moreover, where an investigation order is granted in furtherance of a letter of request (similarly to an investigation order issued for purpose of a local investigation) such an order will prevail over any obligation of confidentiality or professional secrecy. Art. 24A(3)(b) DDO stipulates that an investigation order shall, without prejudice to the legal privilege, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise. This is recalled by Art. 435B CC and Art. 9 PMLA, hence the provision is also applicable to investigation orders issued under these provisions.

528. *Criterion 37.5* – Art. 649(5B) CC stipulates that the execution of the requests of mutual assistance should be similar to the *in genere* proceedings (which deal with inquiries conducted by the Inquiry Magistrate into offences carrying a penalty of three years imprisonment or more), that are conducted in confidentiality and behind closed doors so as not to prejudice the pending investigation.

529. *Criterion 37.6* – As already noted, Art. 649 CC states that the only limitations to the execution of a letter of request are instances in which the request goes against the fundamental principles of Maltese law, public order and internal public law of Malta. Dual criminality is a condition for providing assistance if coercive actions are requested, since most coercive actions in Malta can be undertaken during the investigation of a criminal offence (e.g. attachment of funds which requires a criminal offence punishable by at least twelve months imprisonment). The condition of dual criminality is also a ground for not rendering assistance if the applicable arrangement between Malta and the requesting country stipulates such a condition. In any case, dual criminality is not required in terms of mutual recognition instruments adopted between EU member states such as the European Investigation Order, transposed into Maltese Law by virtue of the European Investigation Order Regulation (Subsidiary Legislation 9.25).

530. *Criterion 37.7* – The execution of MLA in general does not seem to be conditioned or limited by differences in the way countries denominate or categorise the offences. However, Art. 435D CC (3) provides for the concept of relevant offence valid for the purposes of investigation, confiscation and freezing of property. The same article requires that the equivalent relevant offence in Malta would be punishable by at least one year imprisonment before executing a mutual legal assistance request with regard to investigation, freezing or confiscation orders concerning offences cognizable by foreign courts. This seems to restrict the range of offences in relation to which the country should provide MLA.

531. *Criterion 37.8* – According to numerous provisions in the CC (e.g. Art. 435A - Special powers of investigation; Art. 435B - Powers of Investigation in connection with offences cognizable by Courts outside Malta; Art. 435BA - Issuing of monitoring order of banking operations; Art. 435E - Controlled

deliveries and joint investigations with the competent authorities of other countries; Art. 649 - Examination of witnesses in connection with offences cognizable by courts of justice outside Malta), and in the DDO and the Medical and Kindred Professions Ordinance (Art. 24B - Powers of investigation in connection with offences cognizable by Courts outside Malta), Malta provides MLA to the extent that the same investigative measures and powers which are available to Maltese enforcement and/or judicial authorities in terms of Maltese law may also be used in the context of a request for legal assistance, such as (but not limited to) controlled deliveries; investigation orders and bank monitoring orders.

Weighting and Conclusion

532. Malta meets all the criteria, except 37.7 (due to the apparent narrow range of offences in relation to which the country can provide MLA). **R.37 is rated LC.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

533. In the 2012 MER, Malta was rated C with former R.38 and SR.V.

534. *Criterion 38.1* – The measures provided for in the relevant legislation and described under R.4 are equally available upon request of a foreign country. There is no need for the local authorities to start the investigation to give effect to a foreign request for attachment, freezing or confiscation: the AG files an application before the Criminal Court specifying the reasons given by the foreign competent authority as to why the freezing or confiscation order should be issued and the Court will decree immediately such an application. This decree is normally issued and served in less than two days from when the application is filed in Court.

535. As noted under R.37, Art. 435B CC (and Art. 9 PMLA and Art. 24B DDO) provides that the Criminal Court can issue an attachment order upon application from the AG based on a foreign request in respect of a person suspected by the foreign authority of a "relevant offence". The order attaches in the hands of the garnishees all money and other movable property due or pertaining or belonging to the suspect and prohibits the suspect from transferring or otherwise disposing of any movable or immovable property.

536. Art. 435C CC (and Art. 10 PMLA and Art. 24C DDO) provides rules regarding the freezing (temporary seizure) of all or any or the money or property, movable or immovable, of a person accused before a foreign court of a "relevant offence". The freezing order has the effect of attaching in the hands of all third parties, all the money and movable property due or pertaining or belonging to the accused. It shall also prohibit the accused from transferring, pledging, hypothecating or otherwise disposing of any movable or immovable property.

537. Art. 24D DDO, Art. 11 PMLA and Art. 435D CC provide that upon receipt of a request for the enforcement of a confiscation order the AG may apply to the Civil Court demanding the enforcement in Malta of the order.

538. Maltese authorities confirmed that freezing, seizing and confiscation orders can be executed also in relation to offences that are not "relevant". No specific information has been provided whether all categories of property listed under c.38.1 are covered. In particular, no specific information has been provided on freezing or seizing property which does not belong or is not due to a suspect, and which could however constitute laundered property, proceeds of crime or instrumentalities.

539. *Criterion 38.2* – In terms of Maltese law there is no legal basis to execute a foreign civil *in rem* confiscation order since the underlying conduct has to be qualified as a criminal offence under Maltese law. For a confiscation order to be issued, the Maltese authorities require a conviction and an order by the Court for the confiscation of the relevant property. As long as the suspect/perpetrator is known, the Maltese authorities can proceed with the issue of provisional measures such as attachment order or freezing order, even if the said suspect or perpetrator is absent from the Maltese islands. However, such measures cannot be taken if the suspect is unknown, or deceased given that criminal investigations/proceedings are extinguished with the demise of a person.

540. *Criterion 38.3* – Malta has not in place arrangements for the coordination of the seizure and confiscation of assets with other countries that are coordinated through the Office of the AG as the central designated office dealing with MLA in their national legislation. These arrangements are based on the Council Framework Decision 2006/783/JHA of 6 October 2006 on the application of the principle of mutual recognition to confiscation orders; the Vienna Convention, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1999 and the Palermo Convention. The ARB Regulations have entered into force in August 2018. They provide that the Bureau is responsible to establish and maintain professional cooperation with equivalent institutions abroad and collaborate with them in such regulatory frameworks as are established by treaty or statute. The Bureau is also responsible for the handling of requests for assistance or for information from a foreign recognised Asset Recovery Office. There is no specific mechanism for managing, and when necessary disposing of, property frozen, seized or confiscated in the context of MLA.

541. *Criterion 38.4* – Malta indicates that it is able to share confiscated property with other countries, including non EU-countries, in all cases, especially if confiscation is a direct or indirect result of co-ordinated law enforcement actions. Reg. 14 of the Confiscation Orders (Execution in the European Union) Regulations (Subsidiary Legislation 9.15) stipulates that where the amount gathered from the execution of the captioned confiscation order is of EUR 10,000 or less the amount shall accrue in favour of the Government of Malta. In all the other cases the amount is shared fifty – fifty between Malta and the issuing State of the confiscation order. In the event of property, such property shall be sold and the proceeds shall be disposed in line with the aforementioned guidelines. The same regulation also allows for the said property to be transferred to the issuing State provided that the confiscation order covers an amount of money and the State has given its consent. Confiscation orders covering cultural objects forming part of the national heritage of Malta shall not be sold or returned to the issuing State. In the past Malta has shared confiscated property with other (EU and non-EU) countries even if the aforementioned Regulations were not applicable.

Weighting and Conclusion

542. Malta does not (fully) meet criteria 38.1, 38.2 and 38.3 because Maltese law does not clearly indicate the categories of property to be identified, frozen, seized or confiscated upon request of a foreign country. However, taking also into account information provided under R. 4, this appears to be a minor shortcoming. There is no legal basis to execute a foreign civil in rem confiscation order since the underlying conduct has to be qualified as a criminal offence. **R.38 is rated PC.**

Recommendation 39 – Extradition

543. In its 2012 report, Malta was rated C with former R.39 and SR.V.

544. *Criterion 39.1* – Art. 15(1) of the Extradition Act stipulates deadlines within which extradition proceedings before the Court of Magistrates (as a Court of Committal) must be concluded. Art. 15(1) stipulates that once a person is arrested in pursuance of a warrant for extradition purposes, such person shall be brought before the Court of Magistrates (as a Court of Committal) as soon as practicable and in any case not later than 48 hours from his arrest. Art. 15(4) (with reference to Art. 401 CC) provides that the extradition proceedings before the Court of Committal should be completed within two months from the arraignment date (this deadline can be extended to further periods of two months which in aggregate cannot be extended further than six months). The execution of extradition requests follows the same timelines if a person is arrested in furtherance of a European Arrest Warrant (EAW), with the exception that - in terms of Reg. 27A of the Extradition (Designated Foreign Countries) Order - the decision on surrender shall be taken by the Court within one month starting on the day when the person was arrested. If an appeal is filed (in terms of the Reg. 32A), the decision by the Court of Criminal Appeal shall be taken by not later than one month starting on the day when the appeal is filed by the AG or by the person in respect of whom the warrant was issued.

(a) Both ML and FT are extraditable offences under Art. 8 of the Extradition Act, since they are punished by over one year imprisonment (Art. 8 provides that an offence is considered to be an extraditable offence if it is punishable with a term of twelve month imprisonment or a greater punishment).

(b) The AGO is the Maltese Central Designated Authority for the receipt and execution of the extradition requests. The Extradition Law provides a clear procedure and deadlines for each stage of the execution of extradition requests. The authorities indicate that the AGO stores information about received extradition requests and the progress in their execution. Requests are executed in chronological order, without any other prioritisation system.

(c) The conditions for the non-execution of requests as defined by the Extradition Law do not appear unreasonable or unduly restrictive.

545. *Criterion 39.2* – There is no distinction in practice between Maltese nationals and non-Maltese nationals when dealing with extradition requests. Art. 11(2) of the Extradition Law, which states that the competent minister may refuse to grant the authority to proceed in the event that the requested person is a Maltese citizen (e.g. for instance in the event that the principle of reciprocity comes into play), establishes a discretionary power which, to the authorities' knowledge, was never used.

546. *Criterion 39.3* – Art. 8(2) of the Extradition Act stipulates that in determining whether an offence is an extraditable offence or otherwise, the description of the offence shall not be regarded as material if the offences under the law of Malta and that of the requesting country are substantially of the same nature.

547. *Criterion 39.4* – Simplified extradition proceedings have been implemented with regard to EU member states under the Extradition (Designated Foreign Countries) Order (European Arrest Warrant Regime). Given that these procedures are based on the principle of mutual recognition, the Court of Committal in Malta does not have to determine whether the requested person has a *prima facie* case to answer. All extradition proceedings can be simplified further if the requested person consents to his extradition, according to Art. 15(5) of the Extradition Act. This provision states that, if the person arrested declares before the Court of Committal that (s)he is willing to be extradited, the said Court (upon being satisfied of the voluntariness of such declaration) shall commit him/her to custody to await the return and all the provisions of the Extradition Act for the extradition shall be

deemed to be satisfied. The competent minister shall thereupon order the return to the requesting country. No appeal shall lie from the decision of the Court committing the person to custody under this provision.

Weighting and Conclusion

548. Malta is able to execute extradition requests, including those related to ML and FT, without undue delay and on the basis of specific procedures provided by the law. **R.39 is rated C.**

Recommendation 40 – Other forms of international cooperation

549. In its 2012 report, Malta was rated C with former R.40 and SR.V.

550. *Criterion 40.1 – FIAU.* Art. 16(1)(k) PMLA includes among the functions assigned to the FIAU that of cooperating and exchanging information, upon request or spontaneously with any foreign body, authority or agency which it considers to have functions equivalent or analogous to those of the FIAU (i.e. receipt and analysis of STRs and dissemination of analytical reports) hence counterpart FIUs, and to those of a supervisory authority. The FIAU's cooperation with regulatory or supervisory authorities outside Malta and with counterpart FIUs is regulated, respectively, by Art. 27(1) and 27A PMLA. As regards, in particular, FIU-to-FIU cooperation, Art. 27A(6) provides that whenever the FIAU receives an STR or any other information which concerns another member state of the EU, the FIAU is bound to inform the FIU of that member state and to provide it with any relevant information it may have.

551. *Police.* Art. 92 of the Police Act stipulates that the Malta Police may (directly or through regional or international police organisations) co-operate with any state agency having similar powers and duties in any other country.

552. There is no explicit obligation to provide assistance in a timely manner, except for FIU-to-FIU cooperation.

553. *Criterion 40.2* –

(a) Competent authorities have a lawful basis for cooperation (see c.40.1).

(b) and (c) Legislation leaves it to the competent authorities' discretion to determine the means and channels to be used for cooperation, including the most efficient ones. In particular, the FIAU makes use of the Egmont Secure Web and the FIU.Net system to exchange information with foreign counterpart FIUs. The Police make use of the Interpol, Europol and SIENA and other information channels such as CARIN and the Swedish Initiative. Generally the MFSA exchanges information with other regulators or supervisors using the most appropriate means (which can include emails, normal mail, courier services or phone conversations). Documents exchanged or provided may be password-protected, as appropriate. Submission of financial returns to the European Supervisory Authorities is made through a secure mechanism.

(d) As per the FIAU's Financial Analysis Procedure, requests are categorised as high or medium priority and are to be replied to within 5 or 30 calendar days respectively. Although the prioritisation of requests by the Police is not formalised in written guidelines and policies, in practice, priority is given to requests for any restraint of criminal assets (or suspected criminal assets), searches and arrests. The Police indicated that, in general, they aim to reply to requests within a week's time, which could be extended depending on the volume of information that needs to be exchanged. In normal circumstances, this will not be longer than a fortnight and/or three weeks.

(e) As regards the FIAU, the measures for safeguarding the information described under c.29.6 (Art.34(1) PMLA) apply to the information received from foreign authorities. As regards the Malta Police, the information received by foreign counterparts and all communications exchanged are safeguarded and secured through various measures (Art. 6 of the Second Schedule of the Police Act on breaches of confidentiality; security clearance to be obtained by the officers of the International Relations Unit of the Malta Police; security of the Unit's premises; measures on the use of information in the context of Europol and Interpol).

554. *Criterion 40.3* – In terms of Art. 27A(2) PMLA the FIAU may negotiate and sign agreements and memoranda of understanding with foreign counterparts FIUs to regulate the exchange of information and cooperation with such foreign counterparts. The FIAU, however does not need to have an agreement or MoU in place to be able to cooperate and exchange information with counterpart FIUs. The FIAU has over the years negotiated and signed 16 MoUs with foreign FIUs. The Malta Police is also authorised to cooperate and exchange information with foreign counterparts (Art. 92 of the Police Act), without the necessity to have specific arrangements or memoranda of understanding in place.

555. *Criterion 40.4* – According to the Maltese authorities, Art. 16(1)(k), 27 and 27A PMLA also allows the provision of feedback to counterpart FIUs and foreign regulatory and supervisory authorities on the use and usefulness of information that is provided. The FIAU is bound by the Egmont Principles for Information Exchange, under which it is required, upon request and whenever possible, to provide feedback to foreign counterparts. In practice, the FIAU provides feedback to foreign counterparts whenever such feedback is requested. The authorities indicated that, as part of its general powers (Art. 92 of the CC and Subsidiary Legislation 164.02), the Malta Police provides feedback on the use and usefulness of information that is received from foreign counterparts, whenever requested.

556. No reference has been made to the timeliness to be ensured by the authorities when providing feedback to their counterparts.

557. *Criterion 40.5 – FIAU.* Art. 27A (4) PMLA provides that the FIAU may refuse to disclose information to foreign counterparts only on the basis of specific reasons (where such disclosure would not be in accordance with fundamental principles of Maltese law; where the foreign counterpart does not have duties of secrecy and confidentiality that are at least equivalent to those of the Unit or does not provide effective measures to protect confidentiality and secrecy of information; or on grounds of lack of reciprocity or repeated non-cooperation by the foreign counterpart). The conditions that the FIAU imposes whenever it exchanges information with foreign FIUs are consistent with those recalled in the international principles (information to be used only for the purposes of ML, associated predicate offences and FT investigation, and no further use or dissemination without the prior consent of the FIAU). Art. 27A(1) PMLA authorises the FIAU to cooperate and exchange information with counterpart FIUs, irrespective of the nature or status of that FIU. Art.27A(4) of the PMLA states that requests for information received from EU member states' FIUs may only be refused by the FIAU if in the latter's opinion such disclosure would not be in accordance with fundamental principles of Maltese law.

558. *Malta Police.* Reg. 4(3) of the Simplification of Exchange of Information or Intelligence between the Malta Police Force and Other State Agencies of the Member States of the European Union having Similar Powers Regulations the Police may refrain to communicate information or intelligence where there are "factual reasons" to assume that the communication would (a) harm essential

national security interests of Malta; (b) jeopardise the success of a current investigation or a criminal intelligence operation or the safety of individuals; or (c) clearly be disproportionate or irrelevant with regard to the purpose for which it has been requested.

559. *Criterion 40.6 – FIAU.* Art. 34(1) PMLA stipulates that the FIAU, its officers, employees and agents (whether still in the service of the FIAU or not) shall treat any information acquired in the exercise of their duties or the exercise of their functions under the PMLA as confidential and shall not disclose any information relating to the affairs of the FIAU, which they have acquired in the performance of their duties or the exercise of their functions (which includes information received from foreign counterparts). Art. 34(1) also lists a number of exemptions from this confidentiality rule, allowing FIAU, officers, employees and agents to disclose such information (i) when authorised to do so under any of the provisions of the PMLA; (ii) for the purpose of the performance of their duties or the exercise of their functions under the PMLA; (iii) to any competent court or tribunal in any appeal proceedings; (iv) in the form of an aggregation of data or other statistical information, which in the opinion of the FIAU does not lead to the identification of any specific person and which does not prejudice any analysis or investigation; and (v) when specifically and expressly required to do so under a provision of any law. Although the authorities indicated that no legislation has obliged the FIAU to disclose information, concerns remain with respect to provision (v), as it seems to be too broad and to leave space to possible legislative provisions requiring the FIAU to disclose information acquired in performing its duties as FIU. The authorities indicated that, in line with the FIAU's obligations under clause 32 of the Egmont Principles for Information Exchange, whenever the FIAU receives information from a foreign FIU, the FIAU ensures that such information is only used for the purposes for which it was sought and provided. The prior consent of the counterpart FIU is requested whenever the information needs to be used for other purposes or prior to being disseminated to other authorities. In practice FIAU analysts ensure that written confirmation has been obtained from the respective foreign FIU prior to sharing information with such authorities.

560. *Malta Police.* The authorities explain that police officers are bound by confidentiality obligations from disseminating or disclosing information from foreign partners without the necessary authorisations. Moreover, handling codes are used in certain instances (e.g. for information shared through the EUROPOL channel) to clearly indicate the use that may be made of exchanged information. Police officers making use of the obtained information are made aware of these handling codes and their significance.

561. *Criterion 40.7 – FIAU.* Art. 34(1) PMLA imposes confidentiality and non-disclosure obligations on the FIAU, its officers, employees and agents and stipulates that FIAU officers, employees or agents are to "treat any information acquired in the performance of their duties or the exercise of their functions under the Act as confidential", and this obligation continues to apply also once any officer, employee or agent terminates his engagement with the FIAU. Art. 34(1) makes no distinction between information obtained domestically and that obtained from foreign FIUs.

562. As per Art. 27A(4) PMLA, in exchanging information with its counterparts, the FIAU is entitled to refuse disclosing any document or information "if in its opinion the foreign authority, body or agency does not have duties of secrecy and confidentiality that are at least equivalent to those of the Unit or does not provide effective measures to protect confidentiality and secrecy". However, this is only applicable to non-EU member state FIUs, since it is deemed that those are subject to the same level of confidentiality and secrecy. When exchanging information with foreign authorities other

than FIUs, the FIAU makes its own considerations as to the degree of information that is to be made available and the conditions to govern any such exchange of information.

563. *Malta Police.* Art. 6 of the Second Schedule to the Police Act which imposes confidentiality obligations on law enforcement agents and officers applies information received from national sources and information received from foreign counterparts and authorities. The authorities indicate that, by way of general practice, police officers do not exchange information, or would only exchange basic information, in cases where the requesting counterpart LEA is known to have issues with safeguarding and protecting the confidentiality of information exchanged.

564. *Criterion 40.8 – FIAU.* According to Art. 30A PMLA, the FIAU may request information from any person, authority or entity for the purposes of pursuing its functions under Art. 16 PMLA (including those of cooperating and exchanging information with counterpart FIUs and supervisory authorities). On the basis of these provisions the FIAU is authorised to conduct inquiries and obtain information also on behalf of foreign counterpart FIUs.

565. *Malta Police.* The authorities indicated that Art. 92 of the Police Act (which authorises the Police to cooperate with foreign counterparts) is interpreted widely to also confer the authority to make inquiries and obtain information (for intelligence purposes) on behalf of their counterparts. This power is used and exercised regularly in practice by the Malta Police. Within the EU, "Reg. 3(2) of the Simplification of Exchange of Information or Intelligence between the Malta Police Force and Other State Agencies of the Member States of the European Union having Similar Powers Regulations" provides that the Police may also provide to their counterparts information that is accessible to the Malta Police (which would include information accessible through requests for information), unless such information may only be accessed by the Police pursuant to an authorisation by a judicial authority, in which case the AG would need to consent to sharing the information.

566. *Criterion 40.9* – On the basis of texts under the criteria analysed above (in particular, c.40.1 and c.40.2), the FIAU has an adequate legal basis for providing co-operation on ML, associated predicate offences and FT.

567. *Criterion 40.10* – Please refer to text under c.40.4.

568. *Criterion 40.11* – The FIAU can exchange with foreign FIUs any information it has access to or can obtain directly or indirectly (see in particular Art. 30A and Art. 27A PMLA).

569. *Criterion 40.12* – Refer to text under c.40.1 which provides an explanation of the legal basis for the FIAU to cooperate and exchange information with foreign regulatory and supervisory authorities. Refer also to text under c.40.5 according to which the FIAU is authorised to cooperate with foreign supervisory authorities irrespective of their nature or status.

570. As explained under c.40.1, the MFSA has the necessary legal basis to cooperate and exchange information with foreign counterparts. The relevant laws do neither distinguish between exchange of information for prudential or AML/CFT-related purposes, nor do they pose any restrictions based on the nature or status of the foreign authority.

571. *Criterion 40.13* – Refer to the text under c.40.8. The FIAU may exchange information that is available domestically with foreign regulatory or supervisory authorities where the FIAU believes that such information would assist those authorities in ensuring that the financial or other sectors are not used for criminal purposes or to safeguard their integrity.

572. The MFSA may use its general powers at law to request information, to enter business premises etc. (Art. 16(1), (a) and (b) of the MFSA Act) in order to obtain the requested information on behalf of foreign counterparts. It may then use the powers given to it by law to cooperate and exchange information with foreign counterparts in order to furnish that information to such foreign counterparts.

573. *Criterion 40.14* – The authorities indicated that the abovementioned MFSA's and the FIAU's powers to exchange information in their possession with foreign supervisors would cover (a) to (c).

574. *Criterion 40.15* – The MFSA may use its general powers to request information, to enter business premises etc. (Art. 16(1)(a), (b) of the MFSA Act) in order to obtain the requested information on behalf of foreign counterparts. It may then use the powers given to it by law to cooperate and exchange information with foreign counterparts in order to furnish that information to such foreign counterparts. With regard to the ability to authorise or facilitate the ability of foreign counterparts to conduct inquiries themselves in the country, a number of sectorial laws are in place. These include: the Investment Services Act: Art. 17A(3); the Banking Act: Art. 25(5); and the Insurance Business Act: Art. 32D(2). Besides applicable legislation, the MFSA is also bound by the terms of the MoUs to which it is a signatory many of which contain provisions concerning the possibility of conducting joint investigations and participation by the requesting authority in interviews conducted by the requested authority.

575. *FIAU*. According to Art. 30A PMLA, the FIAU may request information from any person, authority or entity for the purposes of pursuing its functions, including cooperating and exchanging information with counterpart supervisory authorities (Art. 16(1)(k) PMLA). Moreover, in terms of Art. 27(1) PMLA the FIAU may exchange information with any regulatory or supervisory authority outside Malta, where that information would assist that foreign authority. Art. 27(1) and Art.16(1)(k) PMLA also enable the FIAU to cooperate with such authorities, which includes conducting joint investigations with foreign supervisors.

576. *Criterion 40.16 – MFSA*. According to Art. 17(4) of the MFSA Act, information divulged to the authority under conditions of confidentiality in pursuance to a request within the terms of a bilateral or multilateral agreement, memorandum of understanding or other similar arrangement for the exchange of information or other form of collaboration with overseas authorities or bodies, are treated as confidential. No court or tribunal may order the disclosure of such information, unless the prior written approval of the authority or body is obtained. Where the MFSA makes requests for assistance on the basis of an MoU or MMoU to which it is a party, the MFSA follows and abides by the confidentiality and permissible uses provisions contained in any MoU or MMoU in terms of which the request is made (e.g. Art. 10 of the IOSCO MMoU). Should the MFSA need to use information provided for other purposes, it would request the consent of the authority that provided the information. With regards to internal use of information the MFSA has never received information which was subject to restriction on internal use within the MFSA. In any case internal use of information is always strictly on a need-to-know basis.

577. The same approach is applied in case of requests for assistance made by the MFSA which are not based on an MoU or MMoU. If the requested authority provides the information requested subject to certain conditions/limitations (e.g. on disclosure), the MFSA will act in line with those conditions subject to consultation with the requested authority. Art. 17 of the MFSA Act obliges MFSA to treat such information as confidential and "shall not, directly or indirectly, disclose such

information to any other person, except with the consent of the person who had divulged the information."

578. *FIAU*. Art. 34(1) PMLA provides that the FIAU, its officers, employees and agents (whether still in the service of the FIAU or not) shall treat any information acquired in the exercise of their duties or the exercise of their functions under the PMLA as confidential and shall not disclose any information relating to the affairs of the FIAU, which they have acquired in the performance of their duties or the exercise of their functions (which includes information received from foreign supervisors).

579. Art. 34(1) also provides that the FIAU may not be bound to disclose any information that the FIAU receives from foreign supervisors, and it is in the FIAU's discretion when such information may be disclosed. The authorities indicate that the FIAU may for example refuse to disclose such information without the consent of the foreign supervisor. Considerations and concerns expressed under Criterion 40.6 can be also extended here.

580. *Criterion 40.17* – The Malta Police is able under Art. 92 of the Police Act to cooperate and exchange information with foreign counterparts for intelligence and investigative purposes relating to ML, associated predicate offences or FT. This is done through either direct bilateral contacts, or the use of international communication networks of Interpol, Europol and SIENA. Although there is no specific legal basis in this regard, the general powers (i.e. Art. 92 CC and S.L. 164.02) authorise and oblige the Malta Police to cooperate with foreign counterparts and provide requested information for the purposes of identifying and tracing the proceeds and instrumentalities of crime. Information that is exchanged by the Malta Police outside the context of MLA would only be exchanged for intelligence and investigative purposes.

581. *Criterion 40.18* – The Malta Police is authorised to conduct inquiries and obtain information on behalf of foreign counterparts (see also c.40.8).

582. *Criterion 40.19* – The Malta Police is able to form joint investigative teams with foreign counterparts to conduct cooperative investigations. The Joint Investigation Teams (EU Member States) Regulations empowers the AG to authorise the setting up of a joint investigation team to carry out investigations into criminal offences in one or more of the EU Member States setting up the team in terms of the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union. This is complemented by Art. 93 of the Police Act which allows the Commissioner of Police to authorise the competent authorities of an EU Member State to conduct in Malta, jointly with or under the supervision or direction of the Police, patrols and other operations by officers or other officials of that State. According to Art. 92 of the Police Act, the Malta Police is duly authorised and empowered to form joint investigative teams not only with EU LEAs but also with LEAs from non-EU jurisdictions.

583. *Criterion 40.20* – Art. 16(1)(k) does not clearly refer to exchanges of information between the FIAU and foreign non-counterpart authorities. The "diagonal cooperation" seems to fall into the general provision enabling the FIAU to cooperate with "any competent authority". Art.34(3) of the PMLA allows the FIAU to disclose any document or information to an authority outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute any offence of ML or FT. In practice, whenever information is exchanged directly with a law enforcement agency, the counterpart FIU of that jurisdiction is notified. Moreover, the FIAU is authorised to exchange information with regulatory and supervisory authorities outside Malta in line with Art. 27 PMLA. Art. 17(2) of the

MFSA Act allows the MFSA to disclose information to local or overseas enforcement or regulatory authorities, bodies or other entities for the purpose of preventing, detecting, investigating or prosecuting the commission of acts that amount to, or are likely to amount to, a criminal offence under any law or to an offence or breach of a regulatory nature, whether in Malta or overseas.

Weighting and Conclusion

584. Competent authorities are generally able to provide a wide range of direct and indirect international assistance, with deficiencies that refer, particularly: (1) to the wide range of exemptions from the confidentiality rules, allowing FIAU, officers, employees and agents to disclose such information, *inter alia*, "when required to do so under a provision of any law"; and (2) to the absence of an explicit obligation to provide assistance and a feedback in a timely manner by the authorities (with the exception of the FIAU). In the light of the above, **R.40 is rated LC**.

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
1. Assessing risks & applying a risk-based approach	LC	• Exemptions from the AML/CFT regime are limited to circumstances of lower risk and - while not specifically considered in the NRA - are not inconsistent with the authorities' understanding of risk.
2. National cooperation and coordination	C	
3. Money laundering offence	C	
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	LC	• FT offence is slightly more restrictive in its objective element than the one provided by the FT Convention; • Criminal sanctions for natural persons for the FT offence are not fully proportionate and dissuasive.
6. Targeted financial sanctions related to terrorism & FT	LC	• No mechanism exists defining the process for detection and identification of targets for designation based on the designation criteria set out in the UNSCRs.
7. Targeted financial sanctions related to proliferation	C	
8. Non-profit organisations	PC	• Malta has not conducted analysis to identify the subset of non-enrolled VOs which by virtue of their activities or characteristics are likely to be at risk of FT abuse, using relevant sources of available information, therefore the risk assessment of the VO sector is not comprehensive; • Malta has not identified the nature of threats posed by terrorist entities to the VOs which are at risk as well as how terrorist actors abuse those VOs; • Malta has not made available any provisions on the periodic reassessment of the sector's potential vulnerabilities to terrorist activities; • Malta has undertaken outreach to raise awareness amongst VOs but the donor community has so far not been addressed specifically; • No measures have been taken to encourage VOs to conduct transactions via regulated financial channels, whenever feasible; • The measures applied to monitor or supervise the VOs are not based on the level of the VO's risk of FT abuse; • There seems to be no co-operation with the Registers for Legal Persons and for Trusts; • No specific information is given on the procedures to respond to international requests to the CVO in Malta for information regarding particular VOs suspected of FT.
9. Financial institution secrecy laws	C	
10. Customer due diligence	LC	A number of minor deficiencies exist: • no explicit requirement to undertake reviews of existing records; • the requirement to obtain information on the powers that regulate and bind a legal person/arrangement is not clear; • no explicit requirement to effectively manage AML/CFT risks following delay of verification of identity; • FIs are permitted not to pursue CDD at a lower threshold, than the FATF Standard;

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		• consideration of the beneficiaries of a life insurance policy is not an explicit risk factor.
11. Record keeping	C	
12. Politically exposed persons	LC	• There are no specific requirements to consider making a STR where higher risks are identified in relation to life insurance policies with the involvement of a PEP as a beneficiary or the beneficial owner of the beneficiary.
13. Correspondent banking	PC	• Mandatory measures regarding correspondent banking relationships apply only to respondent institutions outside the EU; • Correspondent banks are not required to determine if the respondent has been subject to a ML/FT investigation or regulatory action; • Correspondent banks are required to document rather than clearly understand the respective responsibilities.
14. Money or value transfer services	LC	• The definition of "payment services", does not appear to cover all stores of value, or "new payment methods" as required by the Standard.
15. New technologies	PC	• The requirement to assess the risk of new products, services and new or developing technologies does not specify that such assessments be undertaken prior to the use of such products, practices and technologies. • No risk assessment for the purpose of identifying and assessing ML/FT risks that may arise in relation to the development of new products and practices, delivery mechanisms or the use of new technologies has been carried out at the country level.
16. Wire transfers	LC	• Regulation (EU) 2015/847 does not specifically address situations where both the ordering and beneficiary institutions are controlled by the same MVTS provider. • Regulation (EU) 2015/847 does not require to file a STR in the country affected by the suspicious wire transfer and to make relevant transaction information available to the FIAU.
17. Reliance on third parties	LC	• Requirement for application of CDD and record keeping, "consistent with PMLFTR", does not amount to compliance with the requirements set out in R.10 (see analysis of R10); • Requirements for reliance on third party that is part of a same group do not amount to compliance with the requirements set out in R.10, R.12 and R.18 (see analysis of R10, R12 and R18). • While PMLFTR prohibits reliance on third parties from non-reputable jurisdictions, it is not equivalent to the obligation to have regard to information on the level of country risk.
18. Internal controls and foreign branches and subsidiaries	LC	A number of minor deficiencies exist: • requirements to appointment of a compliance officer and implement an independent audit function are dependent on an undefined nature and size of the business; • the full scope of information to be exchanged under group-wide AML/CFT programmes is not clearly articulated; • FI's are not required to ensure that their branches and subsidiaries in the EEA have in place similar AML/CFT measures to Malta based on the assumption that all EEA members have implement the 4th AMLD adequately.
19. Higher-risk countries	C	•
20. Reporting of suspicious	PC	• The mechanism to file STRs casts doubts on the fulfilment of

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
transaction		the obligation to do so "promptly" in line with the FATF Recommendations. • The legislation does not clearly and expressly include also the attempted transactions among those to be reported by the subject persons
21. Tipping-off and confidentiality	C	
22. DNFBPs: Customer due diligence	LC	• Deficiencies identified in R.10, 12, 15 and 17 are equally relevant to DNFBPs.
23. DNFBPs: Other measures	LC	• Deficiencies identified in R.20 and R.18 are equally relevant to DNFBPs.
24. Transparency and beneficial ownership of legal persons	PC	• An in-depth analysis of how all types of Maltese legal persons and legal arrangements could be used for ML/FT purposes has not been finalised; • The shortcomings in applied mechanisms call into question the accuracy of beneficial ownership information; • There is no explicit legal requirement for a liquidator to retain beneficial ownership information; • It is not considered that the financial sanctions are dissuasive and proportionate in respect of failing to submit beneficial ownership information to the Registries in respect of companies, commercial partnerships and foundations; • No information provided by the country on how the AG Office or the MFSA and MGA monitor the quality of assistance received from other countries.
25. Transparency and beneficial ownership of legal arrangements	LC	• There is no explicit requirement placed on the trustee of an express trust that is governed by Maltese law where the trustee is resident outside Malta to obtain and hold information in line with c25.1.
26. Regulation and supervision of financial institutions	PC	• There are no formalised procedures in place, setting out how the frequency and intensity of on-site and off-site supervision for all types of FIs is being determined, taking into account the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta; • The authorities were unable to confirm their level of current compliance with the core principles where relevant for AML/CFT purposes; • Increased scrutiny on wider ML/FT risk elements had not been fully embedded into the MFSA's authorisation procedures for all types of licence applications; • The MFSA does not subject all relevant persons to regular UN sanctions and adverse media screening.
27. Powers of supervisors	LC	• Deficiencies identified in R.35 (criterion 35.2) apply, as legislation does not extend to the "senior management" at the subject person.
28. Regulation and supervision of DNFBPs	PC	• Lawyers, DPMS and real estate agents are not regulated by sectorial legislation, therefore there are concerns regarding the adequacy of market entry measures and on-going fitness and properness measures for these persons; • The frequency and intensity of both onsite and offsite inspections for DNFBPs, other than casinos and TCSPs, does not fully take into account the ML/FT risks associated with an institution or group and the wider ML/FT risks present in Malta; • The exemptions and *de minimis* ruling by the MFSA might

Compliance with FATF Recommendations		
Recommendation	**Rating**	**Factor(s) underlying the rating**
		result in some persons not being subject to market entry measures and/or subject to AML/CFT; • Civil sanctions do not extend to the "senior management" at the subject person.
29. Financial intelligence units	LC	• The law does not provide specific mechanisms and procedures for the appointment of the Director.
30. Responsibilities of law enforcement and investigative authorities	LC	• Prosecutions of tax crimes (including VAT) require the authorisation of the CFR.
31. Powers of law enforcement and investigative authorities	LC	• The Malta Police does currently not have the power or authorisation to directly intercept communications during criminal investigations, but must request prior authorisation. • The FIAU is only authorised to disclose information or documents upon request to a competent authority in or outside Malta with regard to ML and FT, but not related predicate criminality.
32. Cash couriers	LC	• Malta does not have a declaration system for cargo and mail transportation of cash. • Concerns about the full dissuasiveness of the sanctions for the FT-offence are also affecting compliance with criterion 32.11.a)
33. Statistics	C	
34. Guidance and feedback	LC	• There remain gaps in sector specific guidance which would assist FIs and DNFBPs in applying AML/CFT measures.
35. Sanctions	LC	• The civil sanctions detailed in the PMLFTR do not extend to the "senior management" at the subject person.
36. International instruments	PC	• Provision implementing Art. 5 of the Vienna Convention are not fully aligned, with different rules that may cause confusion in practice. • The principles on third party confiscation are not fully implemented.
37. Mutual legal assistance	LC	• There is an apparent narrow range of offences in relation to which the country can provide MLA.
38. Mutual legal assistance: freezing and confiscation	PC	• No legal basis to execute a foreign civil in rem confiscation order since the underlying conduct has to be qualified as a criminal offence; • No specific mechanism for managing, and when necessary disposing of, property frozen, seized or confiscated in the context of MLA.
39. Extradition	C	
40. Other forms of international cooperation	LC	• There is no explicit obligation to provide assistance in a timely way, except for FIU-to-FIU cooperation. • No reference has been made to the timeliness to be ensured by the authorities when providing feedback to their counterparts. • The wide range of exemptions from the confidentiality rules, allow FIAU, officers, employees and agents to disclose information received from foreign competent authorities, *inter alia*, "when required to do so under a provision of any law".

GLOSSARY OF ACRONYMS

ACR	Annual Compliance Report
AG	Attorney General
AGO	Attorney General's Office
AMU	Asset Management Unit
AMLU	Anti-Money Laundering Unit
ARB	Asset Recovery Bureau
BNI	Bearer Negotiable Instruments
CC	Criminal Code
CDD	Customer Due Diligence
CFR	Commissioner for Revenue
CSP	Corporate Service Provider
CTU	Counter-Terrorism Unit
CVO	Office of the Commissioner for Voluntary Organisations
DDO	Dangerous Drugs Ordinance
DNFBP	Designated Non-Financial Businesses and Professions
DPMS	Dealer in Precious Metal Stones
EBA	European Banking Authority
ECB	European Central Bank
EDD	Enhanced Due Diligence
EU	European Union
EUR	Euro
FI	Financial Institution
FAC	FIAU Financial Analysis Committee
FIAU	Financial Intelligence Analysis Unit
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
GDP	Gross Domestic Product
STR	Suspicious Transaction Reports
LEA	Law Enforcement Authorities
MFSA	Malta Financial Services Authority
MFTP	Ministry of Foreign Affairs and Trade Promotion
MGA	Malta Gaming Authority
MKPO	Medical and Kindred Professions Ordinance
MLA	Mutual Legal Assistance
MoF	Ministry of Finance
MSS	Malta Security Service
MVTS	Money or Value Transfer Services
NCC	National Coordination Committee on Combatting Money Laundering and Funding of Terrorism
NIA	National Interest (Enabling Powers) Act
NRA	National Risk Assessment
OC	Organised Crime
OCG	Organised Criminal Group
OECD	Organisation for Economic Co-operation and Development
PEP	Politically Exposed Persons
PMLA	Prevention of Money Laundering Act
PMFTR	Prevention of Money Laundering and Funding of Terrorism Regulations
ROC	Registrar of Companies
SMB	Sanctions Monitoring Board
SSM	Single Supervisory Mechanism
STR	Suspicious Transaction Report
TCSP	Trust and Company Services Providers
TFS	Targeted Financial Sanctions
UBOs/BOs	Ultimate beneficial owners/Beneficial owners
UN	United Nations
UNSCR	United Nations Security Council

VO	Voluntary Organisation
VOA	Voluntary Organisations Act
WB	World Bank
WMD	Weapons of Mass Destruction

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Anti-money laundering and counter-terrorism financing measures

Malta

Fifth Round Mutual Evaluation Report

This report provides a summary of AML/CFT measures in place in Malta as at the date of the on-site visit (5 to 6 November 2018). It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of Malta's AML/CFT system, and provides recommendations on how the system could be strengthened.