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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

SECOND ROUND EVALUATION REPORT ON
MALTA

SUMMARY

1. Malta was the 7th Moneyval (PC-R-EV) member State whose anti-money laundering regime was assessed in the framework of the second round of mutual evaluations conducted by the Committee. A team of four examiners, including a colleague from a Financial Action Task Force (FATF) member State, visited Valetta from 14 to 17 January 2002. The purpose of this evaluation visit was to take stock of developments that occurred since the first round evaluation (in September 1998) and to assess the overall effectiveness of the Maltese anti-money laundering system in practice.
2. In general, Malta's crime situation has not changed since the first round, though in recent years illegal immigration and trafficking in human beings have increased among profit-generating activities. There are no locally based organised crime groups in Malta, but Maltese citizens and companies registered in Malta may be involved in the activities of international criminal groups, including money laundering operations. Fraud and drug trafficking are still considered as the main sources of illegal proceeds.
3. While money laundering is still a potential threat, the overall risk for Malta has reduced with the process of phasing out the offshore sector by September 2004 and the reform of the nominee regime. Nevertheless, exposure to risk still remains in the financial sector, considered as the most vulnerable to money laundering, but laundering operations could possibly involve the real estate sector, companies and financial services providers as well.
4. The central piece of legislation in the Maltese anti-money laundering regime is the Prevention of Money Laundering Act, 1994 (PMLA 1994), which has been amended several times since the first round evaluation, including in December 2001 by the Prevention of Money Laundering (Amendment) Act, No. XXXI of 2001 for the purpose of setting up the Financial Intelligence Analysis Unit (FIAU). The PMLA 1994 is supplemented by the Prevention of Money Laundering Regulations, 1994 (PMLR 1994), which sets forth the preventive obligations under the Maltese anti-money laundering regime, and legally binding Guidance Notes. These elements constitute together a comprehensive and robust legal framework, which is commended by the examiners.
5. On the criminal law side, money laundering is still criminalised by a number of laws: while the PMLA 1994 criminalises money laundering offences in general, based on a wide list of predicate offences, two earlier ordinances (Dangerous Drugs Ordinance, 1939 and Medical and Kindred Professions Ordinance, 1901) criminalise drug-related money laundering. The list of predicate offences under the PMLA 1994 was further expanded in 1999 to include any serious crimes, though these do not cover tax offences. Negligent money laundering has not been criminalised. While this broader list of predicate offences under the PMLA 1994 is welcome, the examiners recommended that Malta consider harmonising drug and non-drug money laundering offences as well as changing the general definition currently based on a list of predicate offences to an "all-crime" one.
6. During the period of 1998 – 2001, the Maltese authorities have initiated 6 prosecutions for money laundering, none of which resulted - at the time of the second round visit - in convictions. In this regard, the examiners expressed concern about the potential impact of a preliminary judicial decision, handed down in November 1999 by the Court of Criminal Appeal and quashing the by then only indictment for money laundering for lack of evidence. Bearing in mind that the number of money laundering investigations during this period was over 100, the examiners felt that the criminal justice system was not producing the expected

results, despite the high-quality of the legal framework. This was believed to be partly due to the Court's interpretation of evidentiary requirements for prosecutions to succeed, which the examiners recommended for further consideration, possibly through the Prevention of Money Laundering Joint Committee. They also recommended training for all criminal justice personnel on money laundering-related issues and that prosecutors should seek to impress upon judges the autonomous nature of money laundering as well as the need to draw the necessary inferences from the evidence produced.

7. Controlled delivery and purchase of drugs are provided for under the ordinances and require the prior consent of either the Attorney General's Office or a magistrate. These techniques can be used by the Police in money laundering investigations, but all other types of special investigative powers, such as telephone interception or other surveillance activities, can only be carried out by the Security Services for the Police. A wider use of special investigative techniques by the Police was therefore recommended in order to improve the rate of successful money laundering investigations, and the authorities were also invited to consider how to improve the use of information gathered through the use of such techniques in judicial proceedings. The evaluation team welcomed the setting up of a special unit within the Police to deal with money laundering investigations, in particular as it noted serious difficulties in gathering the necessary evidence for money laundering investigations and a backlog of cases pending or finished without prosecution. It further noted that this situation was expected to change with the setting up of the Financial Intelligence Analysis Unit (FIAU), which since 2002 has taken over from the Police the STR-related intelligence work. The evaluation team has also recommended a more asset-oriented approach in law enforcement, e.g. in relation to financial crime.
8. At the time of the second round visit, there was no change in the legal regime of provisional measures and confiscation but the results of the current regime were found to be rather disappointing: while the number of investigations ordered in money laundering cases, including those based upon international cooperation, has been systematically growing since 1998, no similar tendencies could be observed as to the provisional measures taken. Even if considering the size of Malta, such measures do not seem to be applied frequently enough and neither could any remarkable development be observed in terms of the amount of the property seized or frozen. In addition, as the Maltese confiscation system is conviction-based, there were no confiscations obtained in relation to money laundering cases. Therefore, the examiners welcomed that at the time of the second round visit, Malta was already in the process of amending its Criminal Code that would also bring changes in this field, e.g. through the extension of freezing and forfeiture orders to all offences punishable by imprisonment of at least one year and the amendment of the PMLA 1994 providing for the shifting of the burden of proof on to the accused with respect to proof of the lawful origin of proceeds in the absence of a reasonable explanation by the accused, in relation also to offences of money laundering under the said Act, and providing for the forfeiture of proceeds from legal persons.
9. With regard to corporate liability, the examiners noted with satisfaction that the Maltese authorities were in the process of amending the Criminal Code to introduce a specific provision enabling the application of criminal penalties (fines up to 500,000 Liri) to corporate entities in relation to serious crimes, and that a similar provision would be made to the PMLA 1994 concerning money laundering.
10. For enhancing international cooperation, Malta has signed a number of bilateral agreements and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the "Strasbourg Convention") on 19 November

1999, which came into force in March 2000. In this context, the examiners recommended that the Maltese authorities keep under review the reservations made to this Convention and consider the possibility of revoking them. In general, the examiners noted the positive and helpful attitude of the Maltese authorities in international cooperation, which during the review period involved 22 rogatory letters sent to Malta – all of which have been answered – and the sending of 1 request by Malta. The examiners pointed out the potential limiting effect on international cooperation of Malta's list-based money laundering offence, but noted that that even in cases related to fiscal offences, assistance could be provided under certain circumstances, though this assistance would not enable the application of coercive measures.

11. On the preventive side, several important changes occurred since the first round, such as the abolition of bearer accounts from 30 June 2000 by decision of the Central Bank of Malta and the issue of a directive by the latter and identical directives by the Malta Stock Exchange (MSE) and the Malta Financial Service Centre (MFSC) in March 2001 for all banks, stockbrokers and other investment and financial institutions to refrain from undertaking transactions in which nominee shareholding is involved unless they obtain the full disclosure of the beneficial owners. Malta also continued the phasing out of its offshore sector, in accordance with the decision taken in 1994 to close down this sector by 2004. At the time of the visit, around 300 offshore companies remained of the 2600 that had existed.
12. The examiners also noted that the sectoral Guidance Notes issued by the various regulators under statutory authorisation will be amalgamated into a single comprehensive set, but have not been issued at the time of second round on-site visit.
13. The examiners also welcomed the setting up of a single financial regulator, the Malta Financial Services Authority (MFSA), which will license and supervise all activities related to financial services (banking, insurance, investment services and securities) in Malta, while the supervision of compliance with the anti-money laundering legislation will be vested with the new Financial Intelligence Analysis Unit (FIAU), also set up in 2002. The range of regulated entities has not changed since the first round: the PMLR 1994 still cover business related to banking, financial, life assurance, investment and stockbroking activities, casinos, and under certain conditions, auditors, lawyers, notaries and accountants, who are in general not considered as subject persons.
14. The examiners noted with satisfaction that in general, since the first round, money laundering has been an area of attention for all supervisors. This was in particular visible in the insurance sector, which was previously criticised for poor supervision. It was however noted that certain sectors still needed further attention, such as investment services and the securities market, despite recent efforts by the MFSC to enhance supervision in these areas.
15. In the financial sector, compliance with the PMLR 1994 has been in general found satisfactory, but vigilance was recommended with regard to non face-to-face transactions. The examiners also recommended further clarification in the Guidance Notes for the current customer identification procedures under Regulation 5 so that financial institutions understand better that they have to obtain satisfactory evidence of the prospective customer's identity always prior to establishing a business relationship or conducting a transaction.
16. The examiners noted that the management of the company Registry was transferred to the MFSA, which was not expressly required to control the authenticity of the information submitted to it.

17. As far as the reporting of STRs is concerned, the examiners noted that while there was a modest increase since 1999 (1999: 19; 2000: 28; 2001: 31), the bulk of the STRs was still filed by onshore banks (1999: 68.4%; 2000: 82.1%; 2001: 67.7%), that no STRs were filed by insurance companies or other non-bank financial institutions. The examiners recommended an increased supervisory vigilance when inspecting supervised entities as to the observance of their reporting obligations, including the documentation on any non-reported case, and that the FIAU keep the under-reporting sectors under close scrutiny and apply the appropriate measures to trigger better reporting behaviour if necessary.
18. In general, the examiners concluded that Malta had made substantial progress since the first round in consolidating its legal framework and preventive regime against money laundering. Though some of these reforms have not yet been fully implemented in practice at the time of the on-site visit, the evaluation team welcomed the commitment of the Maltese Government to continuously upgrade and perfect the overall anti-money laundering regime. Malta now has a robust criminal legislation in place and a particularly well-regulated financial sector. However, certain sectors still need to be brought under the remit of the PMLR 1994 and the new supervisory arrangements have to prove their efficiency in practice. The results of the criminal enforcement at the current stage are disappointing, both in terms of money laundering convictions and confiscations. The police and the judiciary particularly need training to understand the challenges posed by money laundering investigations and prosecutions. With the rapid implementation of the recommendations in this report, the evaluation team believes that Malta will be able to improve the results soon.

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