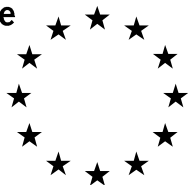


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EUROPEAN COMMITTEE ON CRIME PROBLEMS
COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON
MALTA

SUMMARY

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) and an examiner from the Offshore Group of Banking Supervisors (OGBS) visited Malta between 15-18 September 1998.
2. Criminality in Malta is low by international standards. The major source of illegal proceeds comes from drug dealing and fraud. The most common form of money laundering at present involves local drug traffickers using local banks to launder the proceeds of their criminal activity within Malta. A decision was taken in 1988 to establish an offshore sector, comprising both banks and companies. It was subsequently decided in 1994 to phase out all offshore operations by the end of 2004. However until that sector is phased out its potential vulnerability to money laundering activities remains unless there is in place ongoing and effective supervision which reduces this vulnerability.
3. The Maltese Government considers that only through co-operation and co-ordination, within an international strategy, can money laundering be effectively combated. These considerations inform their anti-money laundering policies. A high priority is thus given to ensuring that legislation meets current international standards and obligations. Malta has signed and ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). They have put in place a legal framework which more than adequately meets the requirements of that convention to combat money laundering in what is seen as the primary domestic problem area of drug dealing. Drug money laundering is criminalised under amendments to the Dangerous Drugs Ordinance 1939 and the Medical and Kindred Professions Ordinance. These offences bear maximum penalties of life imprisonment, provide for any property of a convicted person to be deemed to be derived from money laundering and thus liable to confiscation in addition to a sentence of imprisonment. Malta had not signed and ratified the 1990 Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds of crime (the Strasbourg Convention) at the time of the on-site visit¹. None-the-less Malta has moved beyond the drugs predicate for money laundering offences in what is now the principal Act – the Prevention of Money Laundering Act 1994. However the list of predicate offences in that Act is narrow and should be expanded – at the very least to include all relevant fraud offences. The 1994 Act defines money laundering on the lines of the Vienna Convention. It encompasses laundering of one's own proceeds. It does not matter whether or not the predicate offence was subject to the jurisdiction of the Maltese courts. The law does not however apply directly to legal persons as corporate liability is not recognised in Maltese Law. The full introduction of corporate criminal liability would improve the system and extend the reach of the confiscatory regime. There are nonetheless robust provisions for freezing assets and property during the investigative stage, (which have been used by the Maltese authorities successfully) and for confiscation of assets and value confiscation upon conviction. Again, any property under the control of the convicted person is deemed to be proceeds. While the legal framework is well constructed it is difficult to judge its overall effectiveness as yet. 6 cases have been arraigned in court since 1996 and none of these prosecutions have been completed. The Maltese authorities indicated their willingness to make amendments in the light of the experience in decided cases.
4. Malta ratified in 1994 the European Convention on Mutual Assistance in Criminal Matters and in 1996 the European Convention on Extradition. Additionally they have negotiated or

¹ On 5.11.98 (after the on-site visit) Malta signed the Strasbourg Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

are negotiating a commendable number of bilateral agreements. That said the restricted list of predicate offences inhibits full international co-operation. It also restricts the range of provisional measures and enforcement of confiscation judgements that can be provided on request of other countries. Confiscation judgements in other countries can, however, be enforced if there is a corresponding offence in Malta.

5. The Prevention of Money Laundering Regulations 1994 address the financial system in clear terms and impose broad obligations of identification, record keeping, training and reporting of suspicious transactions in line with FATF recommendations. There is in place a sound structure of supervision, split between the Central Bank, the Malta Financial Services Centre (MFSC) and the Malta Stock Exchange and very recently the Gaming Board for casinos. The supervisory regime is backed up by thorough and comprehensive guidance notes, pioneered largely by the Central Bank. Recently valuable work has been put into harmonising all guidance notes by the Joint Steering Committee, an increasingly important body which comprises representatives of the Central Bank, financial regulators, the enforcement authorities and the Attorney General's office.
6. The Central Bank's on-site inspection regime is very proactive. Equal emphasis is now being put in place on on-site inspections of insurance and investment companies.
7. In the financial sector there is large compliance with FATF recommendations. However although new bearer accounts are no longer available, a small number of pre-1994 bearer accounts remain in existence. While credit balances in them are not great (and direct controls on identification are in place for new transactions) they should be phased out. Both the onshore and offshore sectors include nominee companies which can act on behalf of non-resident beneficiary owners. While Malta has taken serious steps to diminish the dangers this system does not comply fully with the FATF recommendations dealing with the identification of the ultimate owners of companies whose shares are held by nominees. For full consistency of application of the recommendations, and for reasons of transparency a review of the position of nominee companies would assist their anti-money laundering effort.
8. The suspicious transaction reporting system is clearly functioning and copies of those reports helpfully go to the relevant supervisory authorities as well as to the Police. The number of reports however is low overall (28 since 1995, of which 21 are from onshore banks and only 1 from a non-bank financial institution). The continued monitoring of the number and spread of reports by the Joint Steering Committee is critical. Much can be won at a comparatively low cost by the establishment of an FIU, properly resourced to meet local needs, which can build further on the existing co-operation with the financial sector (especially by the provision of more training and feedback). A mandatory rather than voluntary system of declarations of incoming cash and other bearer negotiable instruments would assist overall law enforcement and involve the Customs more actively in this effort.
9. Overall there is in place a sound basis from which Malta can develop a fully operational anti-money laundering system. This process might be assisted by putting the Joint Steering Committee on a more permanent footing, tasking it formally with the strategic overview of the Maltese response to the money laundering threat.