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CONFIDENTIAL
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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

MALTA

QUESTIONNAIRE FOR THE PROGRESS REPORT 2004

CONFIDENTIAL

1. MONEY LAUNDERING SITUATION AND CONTROL POLICY

- a. *Have there been any changes in the crimes or types of crime considered to be the major sources of illegal proceeds?*

There have been no major changes in the crimes or types of crimes considered to be the major sources of illegal proceeds. Although, as stated in the Replies to the 2nd Round Mutual Evaluation Questionnaire there may have been cases of other crimes identified as predicate offences, these did not constitute a major change in the profile.

- b. *How, if at all, has the money laundering situation in your jurisdiction changed since the evaluation? What do you consider your most important money laundering problem is currently? Do you anticipate any changes in the money laundering threat in the foreseeable future?*

There have been no particular changes in the money laundering situation in Malta since the evaluation in January 2002. The setting up of the FIAU has however gradually changed the culture in the filing of suspicious report in the sense that reporting institutions seem to feel more confident in filing report with the Unit rather than directly with the Police with the result that there has been a noticeable increase in STRs which have gone up to a total of 239 by end 2003, 76 of which were filed during 2003 as opposed to 34 in 2001, prior to the setting up of the Unit. Although banks remain the main reporting institutions, there has been a wider spread of reporting persons.

- c. *What new anti-money laundering initiatives, if any, has your government taken since the evaluation? Are further initiatives planned?*

As had been reported to the Plenary during the discussion of the Evaluation Report¹ the December 2001 extensive amendments to the Prevention of Money Laundering Act providing for the establishment of the Financial Intelligence Analysis Unit were brought in force with the Unit being established in early 2002 and becoming fully operational in mid-2002. The FIAU became a full member of the Egmont Group in the Group's plenary meeting of 2003. The FIAU is also currently participating in an observer status on the European Union Money Laundering Contact Committee. In 2003 the Unit embarked on an awareness campaign whereby, through seminars and the media, it is extending awareness on its functions and operations and the importance of cooperation in the fight against money laundering. This was

¹ The Evaluation Report was discussed in Plenary in April 2003, fifteen months after the Evaluation.

launched through a seminar on *The Role and Responsibilities of Financial Intelligence Units in Combating Money Laundering* which it organised in conjunction with the Malta Financial Services Authority as the single financial services regulator. The FIAU has recently published its first Annual Report on its activities. In accordance with the provisions of the Prevention of Money Laundering Act the Annual Report is to be presented in the House of Representatives by the Minister of Finance before it can be publicly released.

The Prevention of Money Laundering Regulations have also been extensively revised. In August 2003 Legal Notice 199 on the *Prevention of Money Laundering Regulations, 2003* was published replacing and repealing the previous Legal Notice 195 of 1994. Legal Notice 199 has fully implemented the Second European Union Anti-Money Laundering Directive (Council Directive 2001/97/EC of 4 December 2001). In the course of the drafting of the necessary amendments the FIAU held extensive meetings with the industries and professions concerned thus being able to draft a set of regulations that have been accepted by all concerned.

During 2003 the FIAU has also revived the Anti-Money Laundering Joint Committee which has now been reconstituted under the chairmanship of the FIAU. It hosts members who are representative of all subject persons, mainly through their associations or appointed representatives. The Committee meets every other month to discuss issues of common interest. It is currently discussing the effective full implementation of the revised Regulations and the preparations for the consolidation and updating of the guidance notes.

In August 2003 the IMF published its FSAP report on Malta including the ROSC on the country's anti-money laundering regime. Malta underwent an IMF/World Bank FSAP assessment including an assessment of its anti money laundering regime under the 2002 Methodology in October 2002 and January 2003.

Act III of 2002 extended provisional and confiscation measures provided under anti-money laundering legislation to offences carrying over 1 year imprisonment. Moreover the obligation to disclose information otherwise protected by professional secrecy, when ordered to do so *inter alia* by a court of criminal jurisdiction in the course of prosecution for a criminal offence, was introduced by Act XVII of 2002.

The current operational set-up has not changed drastically in recent months.

2. ANTI-MONEY LAUNDERING PROGRAMME – ORGANISATIONAL RESOURCES

- a. *Please describe briefly any major changes since the evaluation in the roles and the responsibilities of the various governmental and non-governmental organisations involved in the anti-money laundering effort.*

As the Plenary had been informed in the discussions on the adoption of the Report, the main changes related to the setting up of the Financial Intelligence Analysis Unit and its role as the disclosure receiving agency, and the role of the Police in investigating money laundering offences.

- b. *Please describe how, if at all, the arrangements for anti-money laundering supervision have changed since the evaluation. Has any training been undertaken specifically for those with anti-money laundering supervisory responsibilities?*

The 2001 amendments to the Prevention of Money Laundering Act providing for the setting up and the functions and responsibilities of the FIAU recognize the FIAU as the authority primarily responsible for anti-money laundering supervision. However, the Act further provides for the FIAU to appoint other regulatory bodies of subject persons that are caught under the regulations to act as agents for the FIAU in undertaking supervisory tasks and reporting directly to the FIAU. This arrangement however does not exonerate such regulatory bodies from their own responsibilities in ensuring that those that they regulate and supervise do comply with the regulations. In such cases the regulatory authority would still report any shortcoming to the FIAU as the anti-money laundering supervisory authority. In this regard, it is worth noting that the FIAU has already entered into agreements with such regulatory authorities, in particular with the Malta Financial Services Authority as the financial services regulator, to undertake on-site examinations on behalf of the Unit. Furthermore, for those subject persons that do not fall directly under a particular regulatory authority or who are governed by boards or SROs, the Unit has retained direct responsibilities. Finally it is worth noting that the Unit is in the processing of setting up a Compliance Section which will be responsible for the implementation and fulfilment of the Unit's supervisory responsibilities under the Act.

As regard training, both the FIAU and the Malta Financial Services Authority have provided adequate training to their supervisory staff.

Supervisory staff within the Malta Financial Services Authority have participated in an internal seminar on anti-money laundering matters. They are also often engaged in internal discussions with the Authority's money laundering reporting officer on various aspects of money laundering prevention.

The Analysts at the FIAU attended seminars and followed training courses abroad related to the duties, whilst the FIAU Director was attached for some time with the Belgian FIU.

- c. *Have there been any changes to the resources dedicated to combating money laundering since the evaluation? Please indicate, in particular, if there have been any additional staff appointed to the FIAU?*

The only additions to the FIAU staff are basically support staff who are not directly involved in the work in combating money laundering. However, in November 2003 the FIAU prepared and presented to the Minister of Finance a three year Development Plan which would see the Unit developing into three main areas: legal, compliance and financial analysis, apart from the administrative and IT roles. Through this Plan the Unit will increase its staff by an additional five personnel over two years. The Development Plan has been approved and the Unit is now in the process of employing the first two additional staff on legal and compliance matters.

Two additional members of staff were recruited within the Company Compliance Unit of the Malta Financial Services Authority. These members of staff are engaged in supervisory duties related to nominee companies (until their phasing out) and trustees, which duties include also anti-money laundering aspects.

There were no changes at the Police.

Regarding the Attorney General's Office no changes have been effected since the last evaluation

- d. *Since the evaluation have further mechanisms been developed for assuring co-ordination among various anti-money laundering authorities?*

Article 27 of the Prevention of Money Laundering Act as amended provides for the cooperation between the FIAU and other supervisory authorities in fulfilling their respective responsibilities in the fight against money laundering. Article 24 of the Act further provides for the appointment of a Police Liaison Officer who assists the Unit in the analysis and processing of suspicious transaction reports and other information and intelligence data. In pursuing these provisions the FIAU seeks to hold periodic meetings with supervisory authorities, the Police Liaison Officer and other authorities, such as the Attorney General's Office and the Anti-Money Laundering Unit within the Police.

3. MONEY LAUNDERING OFFENCE

- a. *Have there been any changes in the legal provisions since the evaluation? In particular, please indicate if negligent money laundering is covered at present, and if an “all-crime” approach was introduced (or if the list of predicate offences was extended to cover tax offences and drug and non-drug money laundering offences).*

Act III of 2002 extended provisional and confiscation measures provided for under the PMLA to all crimes carrying a punishment of over 12 months imprisonment, whilst introducing the concept of liability of legal persons as well as shifting the burden of proof on to the suspect person/s. No provision has been made for negligent money laundering. Hence provided the relevant offence falls under the list of predicate offences, offences under the Dangerous Drugs Ordinance (which provides for identical provisional/confiscation measures as are found in the PMLA) or carries a punishment exceeding 1 year imprisonment, the provisional/confiscation measures available under anti money laundering legislation become applicable.

- b. *Since the evaluation please indicate how many money laundering (i) investigations (ii) prosecutions and (iii) convictions have taken place? Can you specify for each what the predicate offences were? Were the predicate offences committed in the country or abroad? Please indicate, if possible, how many money laundering investigations emanated from the reporting system and how many were generated by the police?*

Of the 55 cases resulting from reports received, from 2001 to the end of 2003, by the Police from the banks and FIAU, 22 have already been processed and closed. On the strength of these investigations, 3 persons were arraigned for money laundering while another 9 charges were issued against various persons for offences detected during the money laundering investigations. Until the creation of the FIAU all of the reports were received from local banks directly or transmitted from the banks through the Malta Financial Services Authority. The rest of these were filed by the FIAU with the exception for two which were originated by the Police MLU.

- c. *Have the envisaged provisions concerning the liability under the PMLA and the criminal liability of legal persons come into force? If no, when is this envisaged? If yes, have any legal persons yet been subject to sanctions for money laundering?*

Legal persons are now subject to criminal liability in virtue of provisions introduced by Act III of 2002. To date no sanctions for money laundering have been applied although a stockbroker firm and a non-bank financial institution have been under active police investigations since 2002.

4. PROVISIONAL MEASURES AND CONFISCATION

- a. *What further consideration has been given to the legal framework of provisional measures and confiscation? Please indicate in particular whether the changes to the Criminal Code (extending the scope of these measures to offences punishable by at least one year imprisonment) and those to the PMLA (providing for the shifting of the burden of proof), have finally been adopted.*

Whilst the scope of these measures has been extended as afore-said by Act III of 2002 to offences punishable by over 12 months imprisonment, the same legislative enactment extended the shifting of the burden of proof to offences under the PMLA

- b. *Please indicate whether provisional measures and/or confiscation orders relating to the proceeds of crime have been invoked in any domestic money laundering investigation, prosecution, or conviction since the evaluation. Please make the same indication regarding cases of domestic crimes underlying a money laundering offence since the evaluation. Please indicate the number of occasions and approximate value of property involved. Please indicate in particular whether any value orders have been made.*

We have one seizure order that is in place following the arraignment of three persons in 2002. This is estimated to be worth about Lm 60,000 (Euro 130,000 approx.) in cash alone (this amount is foreseen to increase with the possible confiscation of the property which the court-appointed expert has listed as pertaining to the accused) and the case is in the final stages before being sent to trial.

Moreover a number of attachment orders are currently in place the time-limit otherwise applicable thereto being currently suspended due to the fact that the suspect person/s is/are away from the Maltese Islands.

These seizure orders are worth about (Euro 2.2 million -Euro 270,000 -Euro 700,000). There have been no confiscation orders as yet from the Courts with respect to money laundering proceedings.

From records held at the Attorney General's Office, there were 12 cases (not including one dating to 1998) wherein investigation and/or attachment orders were issued upon requests from local authorities. In the 3 cases involving attachment orders, amounts are still attached given that the time-limits applicable to the said orders are suspended. Of the 12 cases which involved the issue of an investigation order, police investigations are still underway in 10 of these (of the 10, 3 date to 2002, 5 to 2003 and 2 to 2004) , whilst as has been stated above 1 case involved 3 persons currently undergoing criminal proceedings and in another case investigations yielded a negative result

5. MEASURES CONCERNING FINANCIAL INSTITUTIONS AND RELEVANT NON-FINANCIAL INSTITUTIONS.

- a. *Have there been any changes since the evaluation to the anti-money laundering measures dealing with customer identification and record keeping applicable to financial institutions and non-financial businesses? In particular, have the Guidance notes under Regulation 5 been clarified?*

The 2003 revised Regulations have amended the identification procedures applicable to both financial institutions and non-financial businesses under Regulation 5 to the extent that:

- the identification process should enable a subject person to establish the business profile of the applicant for business;
- where following identification eventually doubts have arisen or changes have occurred in the circumstances surrounding that business relationship then the identification process shall be repeated;
- subject persons are able to identify and examine with special attention any complex or large transaction and any transactions which are particularly likely, by their very nature, to be related to money laundering.

Regulation 7 which provided for identification procedures for transactions on behalf of another has been repealed and replaced by a new Regulation 7. The new Regulation provides for full and complete identification procedures where:

- the principal is a body corporate, in which case the identification of all qualifying shareholder (10% and more) is required;
- the principal is a body corporate the shareholding of which includes a qualifying shareholding held under nominee, trustee or other fiduciary arrangement, in which case full identification of such beneficial owners is required, with these procedure being also applicable where there are changes in beneficial ownership;

- the applicant for business is acting as a nominee shareholder, trustee or under any other fiduciary arrangement in which case full disclosure of the identity of the beneficial owner supplemented with the relevant authenticated identification documents is required, with such procedures being applicable even where there are changes in beneficial ownership.

Similarly, there have been some changes to the exemptions of identifications procedures under Regulation 8 in accordance with the provision of the EU Second Council Anti Money Laundering Directive. This mainly covers introduced business where such business is introduced by subject persons carrying out relevant financial business, such as banks and other financial institutions.

- b. *Describe briefly what supervision of compliance with the anti-money laundering regime has taken place since the evaluation. Have any specific measures targeted the sectors of investment services and the securities market in particular?*

As already reported the FIAU is primarily responsible for supervision of compliance and to this effect the law provides for arrangements between the FIAU and the relevant supervisory authorities to fulfil this responsibility. As also reported the FIAU has entered into such arrangements in particular with the Malta Financial Services Authority. In the meantime the Malta Financial Services Authority has continued with its responsibilities in ensuring that those institutions that it regulates comply with the Prevention of Money Laundering Regulations.

Since the Second Evaluation the Malta Financial Services Authority has conducted the following supervisory visits, having an anti-money laundering element, to its licence holders:

	2002	2003	2004 (31.03.04)
Credit institutions	3	5	1
Financial institutions	5	7	1
Investment services	52	83	11
Insurance	16	23	4
Nominees	100	122	8

- c. *Have measures been taken to increase supervisory vigilance as regards the reporting duty of supervised entities, and more generally those from under-reporting sectors?*

As reported under Question 1 above with the setting up of the FIAU and the immediate work of the Unit to create more awareness on the importance of reporting suspicious transaction, during 2003 there has been a marked proportional increase in the number of reported transactions. The measures taken by the Unit include one to one discussions with the Reporting Officers of particular institutions, discussions at the Anti Money Laundering Joint Committee, seminars and talks in other for a where such messages would have an impact.

6. SUSPICIOUS TRANSACTION REPORTING

- a. *How many STRs have there been since the evaluation? If possible, please provide a breakdown setting out whether they have come from banks, non-bank financial institutions or others.*

Between January 2002 and the 15th April, 2004, a total 142 STRs were received (40 direct by the Police before the FIAU became fully operational, the rest i.e. 102, by the FIAU) whilst the FIAU also received 30 enquires from foreign FIUs during the same period. The 102 STRs received by the FIAU, in turn, generated 60 enquires to foreign FIUs by the FIAU. The following table gives a breakdown by institution/profession of the 142 STRs received since 2002.

Suspicious Transaction Reports – 2002 to 15 April 2004

Organisation	2002	2003	2004 (up to 15 Apr)	Total
Credit Institutions (Banks)	49	56	11	116
Non Bank Fin. Institutions		4	1	5
Investment Services	1	5	1	7
Insurance	1	1		2
Supervisory Authorities		8	1	9
Legal Professionals*		1		1
Accountancy Professionals*		1	1	2
Totals	51	76	15	142

* The Legal and Accountancy Professionals have become subject to the Prevention of Money Laundering Regulations only since August 2003.

Foreign FIU Enquires	1	20	9	30
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b. *How many of these reports have been passed to the police for investigation?*

For the period January to September, 2002, the Malta Police received 40 reports directly from subject persons when the FIAU was not yet fully operational. A total of 29 reports were referred to the Malta Police by the FIAU in terms of the PMLA for further investigation; 13 reports were referred during 2003 whilst 16 have been referred between January and the 15th April, 2004. Of the 29 reports, 10 concerned new cases and the remaining 19 were additional reports relating to other reports previously reported to the Malta Police either by the FIAU or directly by subject persons prior to the FIAU becoming fully operational.

7. INTERNATIONAL CO-OPERATION

a. *How many requests have been received for investigative or legal assistance under the various international conventions and bilateral agreements relating to money laundering matters or on an FIU to FIU basis since the evaluation?*

Up to 15th April, 2004 the FIAU had received 30 requests for assistance while on its part it had sent out 60 (31 as at December 2003 and another 29 for the current year) requests for assistance. It must be mentioned that the period covered is not the period since the evaluation but the period since the FIAU became operational, i.e. since October 2002.

Under the various international agreements/instruments to which Malta is a party, the Attorney General's Office, in its capacity as central competent judicial authority, received 11 foreign requests for investigative or legal assistance since 2002. Of these (a number of which included provisional/confiscation measures) 6 have been executed, whilst 3 (received: {1} Aug 2003; {2} 2004) are still ongoing and 2 attachment orders have their time-limits suspended as explained above in response to Question 4.b.

There were another 81 Requests for Assistance by foreign Law Enforcement Agencies on cases concerning Money Laundering investigations. These as always were given top priority. So much so, that these have all been concluded from our part and our findings to our foreign counterparts already sent.

- b. *Have any requests been impossible to fulfil or only fulfilled in part?*

The FIAU has been able to adequately reply to all the twenty one requests for assistance that it received. It is worth mentioning that at times one request may result in additional requests for information which, for the purposes of this Report, are still considered as one request. Unfortunately the same cannot be said for the requests made by the FIAU. Out of the 31 request sent out up to December 2003, only 25 replies have been received and out of the 29 requests sent out this year 12 are still outstanding ,one of which dates back to January.

8. INTERNATIONAL CO-OPERATION: PROVISIONAL MEASURES AND CONFISCATION.

- a. *How many formal requests for provisional orders have been received since the evaluation and what was the result?*

Since 2002, 3 requests for provisional measures have been received by the Attorney General's Office from foreign competent judicial authorities.

These requests were as follows: One involved a Danish owned company that was being investigated by the Belgian authorities for money laundering and the other involved an English owned company investigated for fraud and money laundering. In both cases, investigation orders were issued by the courts and the assets held in local banks were attached. Another case dealt with a request for the issue of an investigation order which emanated from the Norwegian authorities and was directed against Norwegian nationals.

- b. *How many external confiscation orders have been requested and enforced since the evaluation? Please indicate if they were property or value based.*

Nil

- c. *If any requests for the above were refused what was the reason?*

Nil

9. SPECIFIC QUESTIONS

- a. *Have you considered the possibility of revoking the reservations made to the Council of Europe anti-money laundering Convention?*

Amendments to existing legislation are at present before Parliament; these amendments will enable Malta to withdraw or amend the said reservations.

- b. *What further measures have been taken to phase out the offshore sector and to reform the nominee regime, and will the objective be achieved by 2004?*

All offshore banks have now converted their licence to an onshore one under the Banking Act 1994 and the relevant Banking Directives and are therefore now subject to the same statutory and regulatory provisions of the domestic banks under the supervisory and regulatory responsibilities of the Malta Financial Services Authority as the single regulator for financial services. There are no other financial institutions registered under the offshore regime. The number of trading and holding companies that are still registered under the offshore regime and which would have to change their status or close down by September 2004 has now been reduced to 73 (as at 31.03.04). There is therefore no doubt that the objective of totally removing the offshore regime as was provided for in the legislation in 1994 will be completely achieved.

As already stated above in this Report, the nominee regime has been addressed through the revised Prevention of Money Laundering Regulations 2003 in so far as the disclosure of beneficial ownership is concerned. The Trusts Act which is due to completely phase out the nominee system and to introduce extensive reform to the trust regime is currently almost finalised. The bill is being translated and is expected to be published over the next few weeks. It is expected to become law by the end of this year.

- c. *Have measures been taken to render the judges and courts more aware of the autonomous nature of money laundering, and of the need to draw the necessary inferences from the evidence produced?*

Since all money laundering offences are triable on indictment only, there is only one judge at present presiding over the Criminal Court who can take cognisance of such offences and every opportunity is taken during submissions to the court to highlight the autonomous nature of MI and the need to more readily draw inferences from circumstantial evidence. The same applies for the Court of Criminal Appeal.

- d. *Have measures been taken to develop a more assets oriented approach at the level of law enforcement and to make provisional measures apply more frequently?*

When commencing a money laundering investigation, the first thing that we do is to draw up a profile of the subject, that is, property owned, vehicles, connections, employment and other business activities, mode of living and company checks. This helps us to see if his assets are matched to his means. If criminal action is taken as a consequence, the assets will be immediately identifiable to the court appointed expert who researches and lists them for possible confiscation.

- e. *Have measures been taken to encourage law enforcement to a wider use of special investigative means in money laundering cases and to improve the use of information gathered thereby in judicial proceedings?*

Special investigative techniques may only be used by the Malta Security Services and not by the Police, although this unit does assist the police in such investigations once requested to do so.

10. ARE THERE ANY OTHER DEVELOPMENTS WHICH YOU WISH TO BRING TO THE ATTENTION OF MONEYVAL?

None.