



**UNODC**

United Nations Office on Drugs and Crime

# **Country Review Report of the Republic of Malta**

Review by Spain and Cambodia of the  
implementation by Malta of articles 15 – 42 of Chapter III.  
“Criminalization and law enforcement” and articles 44 – 50 of  
Chapter IV. “International cooperation”  
of the United Nations Convention against Corruption for the  
review cycle 2010 - 2015

## **I. Introduction**

1. The Conference of the States Parties to the United Nations Convention against Corruption (hereinafter referred to as UNCAC or the Convention ) was established pursuant to article 63 of the Convention to, inter alia, promote and review the implementation of the Convention.
2. In accordance with article 63, paragraph 7, of the Convention, the Conference established at its third session, held in Doha from 9 to 13 November 2009, the Mechanism for the Review of Implementation of the Convention. The Mechanism was established also pursuant to article 4, paragraph 1, of the Convention, which states that States parties shall carry out their obligations under the Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and of non-intervention in the domestic affairs of other States.
3. The Review Mechanism is an intergovernmental process whose overall goal is to assist States parties in implementing the Convention.
4. The review process is based on the terms of reference of the Review Mechanism.

## **II. Process**

5. The following review of the implementation by the Republic of Malta (hereinafter referred to as Malta) of the Convention is based on the completed response to the comprehensive self-assessment checklist received from Malta, and supplementary information provided in accordance with paragraph 27 of the terms of reference of the Review Mechanism and the outcome of the constructive dialogue between the governmental experts from Spain, Cambodia and Malta, by means of telephone conferences and e-mail exchanges, and involving Mr. D. Luis Rueda and Mr. D. Luis Rodriguez Sol from Spain, Mr. Bun Honn and Mr. Yonn Sinat from Cambodia and Dr. Donatella Frendo Dimech from Malta. The staff members from the Secretariat were Ms. Tanja Santucci and Ms. Jennifer Sarvary-Bradford.
6. A country visit, agreed to by Malta, was conducted from 10 to 13 November 2013. During the on-site visit, meetings were held with representatives from the Attorney General's office, the Police (in particular the Economic Crime Unit, the International Relations Unit and the Interpol Division), as well as the Financial Intelligence Analysis Unit, the Public Service Commission and the Permanent Commission Against Corruption. The reviewing experts met with the Supreme Court and the Administrative court and a meeting with civil society was also held.
7. The reviewing experts wish to acknowledge the positive cooperation exhibited by Maltese authorities in the organization and execution of the country visit as well as the open and constructive dialogue with Maltese officials.

## **III. Executive summary**

## **1. Introduction**

### **1.1. Overview of the legal and institutional framework of Malta in the context of implementation of the United Nations Convention against Corruption**

8. *Malta signed the Convention on 12 May 2005 (C.N.369.2005.TREATIES-12) and ratified it on 11 April 2008 (C.N.276.2008.TREATIES-9). Depositary notifications cover articles 44 (para. 6) and 46 (paras. 13 and 14) (C.N.276.2008.TREATIES-9).*
9. *Malta is a republic, whose parliamentary system and public administration is modelled on the Westminster system. Malta's legal system synthesizes the legal traditions of its colonial rule. A version of the Code Napoleon was adopted in 1852 together with, notably, the Code of Organization and Civil Procedure, the Criminal Code and the Code of Criminal Procedure (each, as amended). Although British common law was never adopted, British legal principles have impacted legislation enacted since independence in 1964, including the Maltese Constitution. Since Malta's accession to the European Union (EU) in 2004, the *acquis communautaire* and future EU regulations prevail over domestic legislation.*
10. *Multiple specialized acts are relevant for this review, including the Criminal Code (CC), Prevention of Money Laundering Act (PMLA), Permanent Commission Against Corruption Act (PCACA) and Extradition Act. At the time of review, legislation was pending before Parliament (Bill No. 57) to amend the PCACA.*
11. *Malta follows a dualist system. International treaties need to be transposed into domestic law, unless there are no contradictory national provisions. Domestic legislation is interpreted in line with international treaties and European Union Framework decisions.*
12. *The Courts are divided into Superior and Inferior Courts. A bench of nineteen judges sits on the Superior Courts, in the first instance and in the appellate court. The Criminal Court presides over trials by jury. The appellate courts are the Constitutional Court, the Court of Appeal and the Criminal Court of Appeal. The Inferior Courts are presided by magistrates who have multiple competences, including as inquiring magistrates in criminal investigations, in the compilation of evidence in criminal trials, and as court of criminal judicature where sanctions do not exceed six months' imprisonment (or with the consent of the accused, ten years).*
13. *Key institutions in the fight against corruption and economic crime are the Attorney General's office, the Police (in particular the Economic Crime Unit, the International Relations Unit and the Interpol Division), the Permanent Commission Against Corruption, the Financial Intelligence Analysis Unit, the Public Service Commission, the Courts and civil society.*
14. *Malta joined the Council of Europe's Group of States against Corruption (GRECO) in 2001 and has been evaluated three times.*

## **2. Chapter III: Criminalization and Law Enforcement**

### **2.1. Observations on the implementation of the articles under review**

Bribery and trading in influence (arts. 15, 16, 18, 21)

15. Active and passive bribery of public officers is criminalized (Articles 115 and 120 Criminal Code, hereinafter CC) and covers persons who discharge any public service, whether in a permanent post or temporarily, including members of Parliament, ministers and judges. The passive version of the offence addresses the request, receipt or acceptance of “any reward or promise or offer.” This includes any “reward in money or other valuable consideration or any other advantage to which he is not entitled” and is interpreted to cover benefits beyond the public officer’s legitimate remuneration as well as gifts to induce acts or omissions (CC Article 115). For active bribery, the bribe giver is prosecuted as an accomplice and is liable to the same punishment as the principal. Attempts are punishable.
16. While the Criminal Code does not distinguish between acts of bribery committed “directly or indirectly”, the two acts are clearly defined in the case of trading in influence (CC Article 121A).
17. Malta has criminalized active and passive foreign bribery (CC Articles 115 to 120 and 121 (4)). The elements described under domestic bribery are equally applicable, including the criminal sanctions.
18. Active and passive trading in influence is criminalized (CC Article 121A) regardless of whether the activity is (or could be) exerted, or whether it leads to the intended result.
19. CC Articles 121 (3) and 120(1) extend the provisions on active and passive bribery of public officials to the private sector.

Money-laundering, concealment (arts. 23 and 24)

20. Money laundering is criminalized for the most part in line with the Convention. The Prevention of Money Laundering Act (PMLA), Article 2 defines key terms under the Convention, including “criminal activity” and “money laundering”. The required mental element includes knowing or suspecting that property is derived directly or indirectly from the proceeds of crime. PMLA Article 2 criminalizes attempts and complicity to money laundering. The conspiracy to commit money laundering is addressed through the application of CC Article 48A.
21. Any criminal offence can be a predicate offence to money laundering (PMLA, Article 2(1), Second Schedule). A person can further be separately charged and convicted of both a money laundering offence and its predicate crimes. As dual criminality is not a requirement for the application of the PMLA, criminal offences committed outside Malta could also qualify as predicate offences.
22. Malta has criminalized concealment as part of the money laundering offence and the PMLA encompasses persons who conceal criminal proceeds without having participated in the predicate offence.

Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)

23. In Malta, embezzlement by public officials (CC Article 127) consists of the breach or abuse of public trust by “misapplying” or “purloining” money or items, including immovable property a person has been entrusted with or received by title. The concept of misappropriation (CC Articles 293-294) refers to the misapplication and conversion by any person of anything which has been entrusted or delivered to them by title, including as public officials.
24. The abuse of public position for personal gain can lead to both disciplinary professional and criminal sanctions. Overall, offences against the due exercise of official powers are addressed in CC Article 112. While the Criminal Code does not mention the performance or failure to perform an act for the purpose of obtaining an undue advantage for the official himself or herself or for another person or entity, Article 112 (which makes no mention of benefits) requires that a person, under colour of his office, exacts that which is not allowed by law, or more than what is allowed by law, or before it is due.
25. Illicit enrichment is not criminalized *per se*, but addressed as the legal consequences of disproportionate wealth. Hence, property can be subject to forfeiture once the court is fully convinced that it has been derived from criminal activity.
26. CC Article 127(2) extends the embezzlement offence to the private sector.

Obstruction of justice (art. 25)

27. CC Articles 102 through 108 and 110 address the obstruction of justice. Furthermore, Article 111 refers to the act of hindrance and suppression of testimony. Any subornation to give false evidence committed by use of specified means (force, threats, intimidation, bribery or other inducement) is considered an aggravating circumstance. A person who instigates false testimony could also be liable as an accomplice.
28. CC Articles 93 through 98 address interference with law enforcement officials.

Liability of legal persons (art. 26)

29. The criminal liability of legal persons is addressed in CC Articles 121D and 248E, and PMLA Article 3. A legal person’s criminal liability requires the prior conviction of a natural person. Penalties against legal persons include fines (CC Article 121D) as well as administrative punishment, including suspension or cancellation of licenses and permits. Sanctions against legal persons are determined taking into consideration the profits generated, the gravity of offences and other relevant factors.

Participation and attempt (art. 27)

30. The participation (as an accomplice, assistant or instigator) in, and attempt to commit, an offence are criminalized under CC Articles 41, 42, 43 and 120 (2) and (3). While the preparation to commit an offence is not punishable under Maltese legislation, certain preparatory acts may comprise offences in themselves.

Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)

31. *Corruption-related offences are generally punishable by at least one years' imprisonment. As there are no sentencing guidelines in Malta, judges enjoy relatively broad discretion in determining aggravating and mitigating circumstances at sentencing and can go below the statutory minimum in "special and exceptional" cases. Depending on the gravity of the offence, consideration is given to whether the person charged has actively cooperated with the police or filed an early guilty plea; more than one circumstance would generally need to be present for a judicial determination of aggravating or mitigating circumstances. Public officials with heightened obligations, such as the police, face potentially higher penalties due to their functions. Judges are not bound by precedent; however, decisions of the Court of Criminal Appeals are persuasive.*
32. *Certain observations were raised concerning the legal framework on immunities and/or jurisdictional privileges granted to Maltese public officials. In this context the reviewers reiterated the importance of striking an appropriate balance between such immunities or privileges and the effective investigation, prosecution and adjudication of corruption offences.*
33. *The Attorney General, whose independence is granted under the Constitution's Articles 91 (5) and 97 (2), is the Prosecutor General. The Police can prosecute cases carrying a punishment of no more than 4 years' imprisonment before the Court of Magistrates and, in cases carrying not more than 10 years' imprisonment, when both the Attorney General and accused agree. Prosecutions are conducted whenever sufficient evidence exists to warrant a conviction, a right to challenge the Police's decision not to prosecute exists.*
34. *Bail is addressed in CC Article 575 and the provision applies to all offences. No stricter conditions on bail are provided for corruption offences. The Restorative Justice Act, Articles 10 and 11, provides that parole can only be granted to prisoners serving a sentence of imprisonment of a term of one year or more.*
35. *Disciplinary proceedings are normally dealt with by the Heads of Department in line with the 1999 Disciplinary Regulations. The Public Service Commission has the duty to ensure that disciplinary action against public officers is fair, prompt and effective. While suspension (with half pay pending investigation and proceedings) of public officials is provided for in the 1999 Disciplinary Regulations (Article 14), their removal or reassignment is possible only upon conviction. Sanctions including dismissal may be decided by the Prime Minister upon recommendation by the Public Service Commission. Disciplinary proceedings and criminal proceedings are separate and distinct.*
36. *Presidential pardon can be given to a person who testifies in particular cases and assists other investigations. It can also be granted if the person returns all illicit proceeds and property derived from the crime and makes compensation to injured parties or the State. The nature of the crime is taken into consideration on a case by case basis.*
37. *Protection similar to that provided to witnesses and experts (see below) is normally available to cooperating offenders only if they are formally witnesses during the trial. Mitigated punishment may be given to cooperating offenders (CC, Article 21).*

Protection of witnesses and reporting persons (arts. 32 and 33)

38. While the protection of victims from potential harm by the accused is granted by CC Article 412C, the general protection for witnesses and experts who testify in criminal proceedings falls under Article 95 (vilification, threats or bodily harm against other public officer) and Article 101 (calumnious accusations). These provisions are limited to public officers and false accusations against persons respectively. Under the witness protection programme, protection is not available to witnesses or experts who are not victims and did not participate in the offence. Although foreseen in Article 84 of the Police Act, no agreements have been signed for the relocation of protected persons outside of Malta.
39. While Disciplinary Regulation 5(2) provides a right of complaint to victims of public corruption, there is no provision protecting those who report corruption. Nevertheless, the recent enactment of the Protection of Whistleblower Act in September 2013 could provide new avenues for protection, but has yet to be implemented. Anonymous reporting is possible in Malta, as Maltese Police are prohibited from divulging their sources.
40. Malta has established victim-friendly facilities; videoconferencing is allowed when the person testifying is a minor and audio-recording or video-recording of any evidence required from a witness is permissible.

Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)

41. Forfeiture of the proceeds derived from a relevant offence, or of such property the value of which corresponds to the value of the proceeds, is mandatory under CC Article 23B. Confiscation is imposed in addition to other applicable sanctions. CC Article 23 also provides for the forfeiture of instruments used or intended to be used in the commission of any crime, and of any property obtained by such crime, as a consequence of the punishment for the crime established by law. Immovable property is confiscated through judicial sale by auction or by claim and possession. Asset tracing, freezing and seizing are authorized through investigation, attachment and freezing orders under the CC and PMLA. As regards the rights of bona fide third parties, CC Article 23 (1) provides for the forfeiture of criminal proceeds “unless some person who has not participated in the crime has a claim to such property”.
42. An investigation order issued by a criminal court to trace assets of all kinds pertaining to a person suspected of a criminal offence overrides all bank secrecy restrictions and bank records are routinely obtained by the Maltese authorities under CC Article 257 and PMLA Article 4.

Statute of limitations; criminal record (arts. 29 and 41)

43. The period of prescription (CC Articles 687 through 694) starts to run only once the perpetrator of the crime becomes known to the Maltese authorities, regardless of when the offence took place. However, if the investigating or prosecuting authorities know of a crime having been committed and do not act timely to uncover the perpetrator, prescription runs nonetheless.

44. CC Article 49 empowers a Maltese court to take into account a final judgment delivered by a foreign court in determining punishment.

Jurisdiction (art. 42)

45. Territorial jurisdiction is outlined in CC Article 121C and extends to offences committed on board ships or vessels, as well as aboard Maltese planes. Furthermore, extra-territorial jurisdiction is established over offences committed against its citizens abroad. Stateless persons who are not permanent residents do not fall under the active personality principle, unless the crime is committed in Malta. The passive nationality principle is under consideration.
46. Concerning preparatory acts to money laundering, or participation, committed outside of Malta, these are covered in PMLA Article 2 (1) (vi).

Consequences of acts of corruption; compensation for damage (arts. 34 and 35)

47. Any criminal offence gives rise to both a criminal and a civil action. Article 1051A of the Civil Code provides for civil remedies in case of corruption for victims. However, no right of compensation for damages shall lie where the party claiming to have suffered the damages has wilfully been a party to the act of corruption. Malta applies the general civil law principle *fraus omnia corrumpit*, i.e., a contract which is the result of corruption may be annulled on this basis.

Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)

48. Corruption offences are investigated by the Economic Crime Division of the Police. Other dedicated authorities include, *inter alia*, the Permanent Commission Against Corruption (PACA), the Attorney General, Magistrates and Courts of Magistrates. The various authorities cooperate closely without the need for formalised agreements.
49. PACA is exclusively concerned with the investigation of public corruption. While nothing prevents members of the public from reporting corruption allegations to the PACA, there are no established or prescribed procedures in place. Its recommendations are presented to the Minister of Justice who decides whether these should be presented before Parliament.
50. The Disciplinary Procedures of the Public Service Commission Regulations Article 5(1) and (2) provide that an officer shall report to the Head of the Department any misconduct or breach of discipline committed by any officer. While failure to report misconduct is not considered an offence, it can be the ground for disciplinary actions.
51. Outreach and formal partnerships with private sector entities are reported as limited in Malta, although the FIAU provided relevant training which also included participants from the private sector. Financial institutions cooperate regularly with the Police in particular.

**2.2. Successes and good practices**



52. Overall, the following successes and good practices in implementing Chapter III of the Convention are highlighted:

- The aggravated punishment structure for passive bribery as an example of accounting for the gravity of offences (arts. 15, 21);
- There is no requirement for the offence of foreign bribery to be linked to “the conduct of international business” (art. 16);
- The ease with which law enforcement institutions appear to cooperate, in particular the police and Attorney General’s office.

### **2.3. Challenges in implementation**

53. The following steps could further strengthen existing anti-corruption measures:

- Monitor the application of the bribery provisions to ensure that cases of indirect bribery are equally covered in future cases, in light of the absence of a specific provision addressing indirect bribery.
- Consider the possibility of establishing the criminal liability of legal persons regardless of whether a natural person has been convicted.
- Consider whether existing provisions strike an appropriate balance between immunities and privileges and the effective investigation, prosecution and adjudication of corruption offences.
- Consider whether existing provisions on the protection of victims who are not witnesses are adequate to ensure full protection of such persons in line with UNCAC. Also, consider whether the fact that the witness protection programme is not available to witnesses or experts who are not victims and did not participate in the offence poses restrictions to the effectiveness of such programme.
- Clarify the role of PACA and its competency to receive public complaints and undertake necessary awareness raising of its existence. Ensure that sufficient financial and human resources are provided in particular to PACA.
- Conduct an assessment of Malta’s current bodies involved in the fight against corruption in view of clarifying roles and responsibilities and harmonizing functions, in particular to ensure the existence of one or more bodies equipped with sufficient independence, resources and staff (including investigative skills) to effectively combat corruption. Attention should also be paid to preventive aspects, such as anti-corruption education and awareness raising among public officials and the general public.

## **3. Chapter IV: International cooperation**

### **3.1. Observations on the implementation of the articles under review**

Extradition (art. 44)

54. Extradition is governed by the Extradition Act (EA) and is conditional on the existence of treaties or extradition arrangements (Article 43(1) Constitution). Malta is party to the European Convention on Extradition and four bilateral treaties (the United States of America, Egypt, Libya and Tunisia). Although Malta does not take the Convention as the legal basis for extradition, it would honour a request on its basis due to powers granted to the Minister of Justice to enter into extradition relations on a case by case basis with States that are not Commonwealth or designated countries (Articles 30A and 32 EA).
55. Extradition is subject to dual criminality (Article 8 EA) and a minimum penalty requirement of imprisonment for at least one year, which covers corruption-related offences under Maltese law. In the absence of dual criminality extradition is possible under the European Arrest Warrant and Surrender Procedures, and for Iceland and Norway. In other cases, extradition is limited to the extent that not all offences established under the Convention have been criminalized. Simplified extradition procedures are in place for ten designated Commonwealth countries and under the London Scheme for Extradition within the Commonwealth.
56. No requests for extradition have been refused by Malta to date, except in one case where the request did not satisfy Malta's legal requirements.
57. Political offences are exempted from extradition (Article 10(1)(a) EA). Although the Constitution provides for the extradition of Maltese citizens (Article 43(3)) and there have been relevant cases, nationality is an optional ground for refusal under Malta's extradition treaties. The *aut dedere aut judicare* obligation is not addressed in Malta's domestic legislation and all treaties.
58. The issues of fair treatment or the discriminatory purpose have not been invoked to date in corruption-related cases.
59. Extradition may not be refused on the ground that the offence involves fiscal matters; around 90 per cent of incoming requests relate to financial crimes, and these requests are invariably executed.
60. Malta consults with requesting States as a matter of practice.

Transfer of sentenced persons; transfer of criminal proceedings (arts. 45, 47)

61. Malta is party to the Council of Europe Convention on the Transfer of Sentenced Persons and two bilateral treaties with Libya and Egypt. Malta has participated in prisoner transfer arrangements as a requested and requesting State.
62. The transfer of criminal proceedings is possible once the Courts are vested with jurisdiction, and examples of implementation were provided.

Mutual legal assistance (art. 46)

63. Article 649 CC is normally invoked to grant mutual legal assistance (MLA) requests emanating from foreign judicial, investigative, prosecuting or administrative authorities.

*Malta is party to international treaties on MLA and has signed two bilateral treaties (USA, China). Malta also follows the Harare Scheme Relating to MLA within the Commonwealth.*

- 64. Dual criminality is a general requirement for MLA (see, e.g., Malta's reservation to the European Convention on MLA in Criminal Matters). However, no obstacles exist under Maltese law to granting assistance in the absence of dual criminality for non-coercive measures. Malta has executed requests involving acts that constituted administrative violations rather than criminal offences under Maltese law.*
- 65. Malta is able to provide a wide range of assistance, from the serving of summons and documents to the enforcement of confiscation orders, from the hearing of witnesses to search and seizure, from the production of documents to video conference. Assistance is provided unless contrary to domestic law or public policy (Article 649(1) and (5) CC).*
- 66. Malta has not refused any request for assistance to date.*
- 67. Where the Attorney General, as central competent authority, communicates to a magistrate a request made by a foreign authority for any investigation, search, seizure or examination of witnesses, the magistrate conducts or orders such investigation or examination. Orders for search and seizure are executed by the police. For requests relating to offences punishable by over one year's imprisonment, including money laundering, where dual criminality is satisfied, the Attorney General applies to the Criminal Court for an investigation order or an attachment order, or for both (Article 435B CC; Article 9 PMLA, Article 24B, Dangerous Drugs Ordinance). If granted, the Order will prevail over any obligation of confidentiality or professional secrecy, and the provisions applicable to a domestic investigation order or attachment order apply.*
- 68. Requests which are executed by the police, namely the collection of evidence and the taking of interviews, are completed within an average timeframe of three weeks. Requests executed by the Attorney General through the issue of investigation, attachment or freezing orders are generally executed within two weeks. Requests involving the hearing of witnesses are fully executed within 3-6 months, depending on the workload of the Courts. The direct transmission of MLA requests between judicial authorities is covered by Article 649 CC.*
- 69. There are no obstacles to providing MLA in relation to matters governed by bank secrecy (e.g., Article 6B, Professional Secrecy Act) or involving legal persons, and such requests are routinely granted. Confidentiality requirements are observed on the basis of administrative practice in accordance with article 649(5B) of the Criminal Code.*
- 70. Malta relies on its cooperation through CARIN, INTERPOL, EUROPOL and police-to-police cooperation (see below) to share pre-MLA information.*

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49, 50)*

- 71. Maltese police participate in the Camden Asset Recovery Inter-Agency (CARIN) network, and engage in police-to-police exchange of information and cooperation on the basis of e.g., INTERPOL, EUROPOL and commission rogatoire from foreign judicial and police*

authorities. The Attorney General's Office, as the central judicial authority, also ensures cooperation with other States through Eurojust and the European Judicial Network (EJN). Statistics related to criminal requests (not limited to corruption matters) through INTERPOL, EUROPOL and Malta's Schengen "SIRENE" bureau (Supplementary Information Request at the National Entry) were provided. Malta also uses the SIENA (Secure Information Exchange Network Application) network as a platform for information exchange.

72. The FIAU, though not a law enforcement agency, has concluded information sharing arrangements, including through the Egmont Group and the EU (9 MOUs at the end of 2012). Detailed statistics on the FIAU's international requests for assistance (incoming/outgoing) were provided.
73. The Malta police force has liaison officers posted at Europol, through agreements with other States on a case by case basis, and at foreign embassies.
74. Malta has entered into a number of crime and police cooperation agreements. Malta considers this Convention as the basis for direct law enforcement cooperation, but there has been no experience in its application.
75. Joint investigations are possible under Malta's treaties (e.g., EU Convention on MLA and some bilateral treaties). Maltese authorities directly participated or assisted in joint investigative teams in a few cases, including one corruption-related investigation.
76. Special investigative techniques that are 'non-intrusive' can be conducted upon consent by the Attorney General (Article 435 E (3) CC). Evidence collected under a warrant or investigation order is admissible if the technique was lawfully conducted, though no law addresses the matter.

### **3.2. Successes and good practices**

- The integration of a liaison officer to execute requests requiring police intervention (e.g. search and seizure, service of summons, arrest for purposes of interrogation, court hearings etc.) within the designated unit in the Attorney General's office dealing with international cooperation requests.
- Maltese CC provides for hearings of suspects by video conference and by telephone in certain cases.
- Malta has commendable international law enforcement cooperation, with technical investigative training provided to other countries, in particular through the Malta police force and the FIAU; and there has been a recent increase in dedicated resources to the international relations unit in the police.

### **3.3. Challenges in implementation**

77. The following steps could further strengthen existing anti-corruption measures:

- More clearly specify the *aut dedere aut judicare* obligation in domestic legislation.

- *Consider, in the interest of greater legal certainty and consistency in future cases, adopting guidelines or other formalized procedures to address the duty to consult before refusing extradition.*
- *Adopt relevant provisions to address the notification requirement relating to matters of confidentiality (art. 46(20)).*
- *Consider adopting relevant guidelines or formal procedures in respect of:*
  - *confidentiality undertakings and the disclosure of exculpatory information governing the spontaneous sharing of information (art. 46(5));*
  - *the limitation on use (art. 46(19));*
  - *matters covered in arts. 46(24) and (25);*
  - *the duty to consult before refusing or postponing MLA (art. 46(26) and to provide reasons for refusing assistance (art. 46(23));*
  - *the safe conduct of persons (art. 46(27)).*
- *Consider more clearly specifying matters incidental to the temporary transfer of detained persons (art. 46(11) (b) and (c)) and the issue of costs (art. 46(28)).*

## **IV. Implementation of the Convention**

### **A. Ratification of the Convention**

78. Malta signed the Convention on 12 May 2005 (C.N.369.2005.TREATIES-12) and ratified it on 11 April 2008 (C.N.276.2008.TREATIES-9)<sup>1</sup>.

79. Malta has made the following depositary notifications (C.N.276.2008.TREATIES-9<sup>2</sup>):

“In accordance with, paragraph 13 of Article 46 the central authority designated in pursuance of this article is the Office of the Attorney General, Attorney General’s Chambers, The Palace, Valletta, Malta.

Pursuant to Article 46.14, the Government of Malta declares that requests and annexed documents should be addressed to it accompanied by a translation in English.

Pursuant to Article 44.6, the Government of Malta declares that it does not take this convention as the legal basis for co-operation on extradition with other State Parties.”

<sup>1</sup> [http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-14&chapter=18&lang=en#EndDec](http://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-14&chapter=18&lang=en#EndDec)

<sup>2</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%202002-50%20PM/CN.276.2008-Eng.pdf>

## **B. Legal and institutional system of Malta**

80. Malta is a republic, whose parliamentary system and public administration is closely modelled on the Westminster system. The unicameral House of Representatives (Kamra tad-Deputati) is elected by direct universal suffrage through single transferable vote every five years, unless the House is dissolved earlier by the President on advice of the Prime Minister.
81. The House of Representatives is made up of sixty-nine Members of Parliament. However, where a party wins an absolute majority of votes, but does not have a majority of seats, that party is given additional seats to ensure a parliamentary majority. The Constitution of Malta provides that the President appoint as Prime Minister the member of the House who is best able to command a (governing) majority in the House. The President of Malta is appointed for a five-year term by a resolution of the House of Representatives carried by a simple majority. The role of the President as head of State is largely ceremonial.
82. The Constitution recognizes three distinct spheres which can be regarded as constituting the Maltese public administration:
- the core Public Service (ministries and departments of government);
  - statutory public authorities and other government entities which have a separate legal personality but are owned or controlled by the government; and
  - local councils, which are answerable to local electorates and constitute a separate level of government.
83. The Public Service consists of government ministries and departments and their employees. Some other bodies, including autonomous organizations such as the Public Service Commission and the Electoral Office, are also staffed by Public Service employees (or public officers as they are formally known).
84. The administrative Head of each ministry is a Permanent Secretary, who is responsible to the Minister for supervising and directing the ministry and its component units. Ministries are generally subdivided into divisions (large departments), each headed by a Director General, and departments or directorates, which are headed by Directors.
85. Several Directors General and Directors hold specific titles at law that predate the current senior management structure, which was put in place in 1993. Thus, the Director General (Customs) and the Comptroller of Customs are one and the same person, as are the Director (Treasury) and the Accountant General.
86. The Public Service is part of the public sector, but the two are not the same. The Public Service includes teachers in government schools and police officers, but not university lecturers or the Armed Forces.
87. What distinguishes organizations within the Public Service from other entities in the wider public sector is the following:

- Most organizations within the Public Service are under direct ministerial responsibility, whereas other public sector entities are usually run by a board of directors which reports to the Minister.
- Most organizations within the Public Service are funded directly out of the Government's annual budget, that is to say they do not retain the revenue they generate. Most other public sector entities can retain their revenue and may be partly or fully self-funding.
- Most public officers are recruited through the Public Service Commission or under powers delegated by it, and are classified within a common pay and grading structure. Other public sector entities are usually autonomous in staff management.
- Public Service organizations do not have a legal personality separate from that of the Government as a whole, whereas other public sector entities are distinct bodies in legal terms.

88. There are of course exceptions to this pattern. For example, bodies such as the Public Service Commission and the Electoral Office are part of the Public Service even though by law they are independent from the Government.

### **Legal System of Malta**

89. Malta's legal system is a synthesis of the various legal cultures which exerted influence on it during long years of colonial rule. Though British rule was officialized in 1814, the British refrained from imposing common law in Malta. The Code de Rohan, which had been promulgated in the dying days of the long rule of the Knights of Malta, was substituted by a local version of the Code Napoleon in 1852. Other codes were enacted in the same period, most notably the Code of Organization and Civil Procedure, the Criminal Code and the Code of Criminal Procedure. A Maltese legal luminary, Sir Adrian Dingli, was instrumental in the promulgation of these Codes which, though extensively amended over the years, still form the backbone of Maltese legislation. He drew extensively from continental codes, such as those of the Italian statelets and of the Two Sicilies. However, the Code of Criminal Procedure departed somehow from the continental models and the accused were given rights which were already prevalent in the United Kingdom. Trial by jury was also introduced.

90. Over the long years of British Colonial Rule, British legal influence came increasingly to bear. Fiscal and company legislation follow closely the British model and, since independence in 1964, UK legislation is often mirrored in legislation enacted by the House of Representatives, which is run on rules followed by Westminster. The Maltese Constitution, enacted in 1964, reflects closely British constitutional principles, but it also promulgated a bill of fundamental rights, which was very much influenced by the European Convention on Human Rights and the Indian Constitution. The European Convention on Human Rights was subsequently incorporated in domestic legislation in 1987.

91. Since Malta's accession to the European Union in 2004, the *acquis communautaire* and future EU regulations prevail over domestic legislation, and EU directives have to be incorporated into domestic legislation.

### **Division of the Courts**

92. The Courts are divided into the Superior and Inferior Courts. A bench of nineteen judges sits on the Superior Courts, in the first instance and in the appellate court. In the first instance, there is a constitutional chamber to which are referred applications for a remedy under the Constitution or the European Convention on Human Rights, as well as references from other tribunals where issues of a possible breach of fundamental human rights arise.
93. The First Hall of the Civil Court hears the brunt of civil law cases and there is also a Family Court which deals with family matters. The Criminal Court presides over trials by jury. The appellate courts are the Constitutional Court, the Court of Appeal and the Criminal Court of Appeal.
94. The Inferior Courts are presided by magistrates who have multiple competences: as inquiring magistrates in criminal investigations, in the compilation of evidence in criminal trials, as a court of criminal judicature where criminal sanction does not exceed six months jail (or with the consent of the accused, ten years jail) and as a civil court where the value at issue is currently between Euros 3,500 and 11,650. The “Tribunal for Small Causes” hears monetary causes up to Euros 3,500 in value. Mandatory arbitration also applies in certain instances and an arbitration centre has been set up.
95. The courts in Gozo are presided by magistrates, even in the superior jurisdiction. Otherwise, Gozo courts have the same competence as courts in Malta, except for Constitutional and bankruptcy procedures.

#### **Laws, Policies and Other Measures Relevant to the Implementation of the Convention**

96. The following implementing legislation was cited by Malta.

Laws of Malta

<http://justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono>

Constitution of Malta

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8566&l=1>

Criminal Code

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8574&l=1>

Criminal Injuries Compensation Scheme Regulations

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8983&l=1>

Code of Organization and Civil Procedure

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8577&l=1>

Civil Code

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8580&l=1>

Police Act



<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8686&l=1>

Prevention of Money Laundering Act

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8842&l=1>

Permanent Commission Against Corruption Act

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8800&l=1>

Extradition Act

<http://justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8765>

Extradition Treaties

<http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=276>

97. Draft bills relevant to the implementation of the Convention include the following.

Apart from minor amendments to existing provisions on corruption mentioned below, at present there is a bill pending before Parliament which seeks to amend the Permanent Commission Against Corruption Act.

This is Bill No. 57 entitled the Permanent Commission Against Corruption (Amendment) Act, 2010:

<http://www.doi-archived.gov.mt/en/bills/2010/Bill%2057.pdf>.

98. The following Government websites were referred to by Malta.

Ministry of Justice, Dialogue and the Family

<http://www.mjdf.gov.mt/en/Pages/MJDF%20EN%20homepage.aspx>

Public Service Commission

<https://secure2.gov.mt/PSC/home?l=1>

Permanent Commission Against Corruption

<http://mhas.gov.mt/en/MHAS-Departments/Justice/Pages/Permanent-Commission-Against-Corruption.aspx>

99. Other mutual evaluations of Malta include the following.

Malta joined the Council of Europe's Group of States against Corruption (GRECO) in 2001 and has been evaluated on three occasions.

- GRECO adopted the First Round Evaluation Report (Greco Eval I Rep (2002) 8E) in respect of Malta at its 12th Plenary Meeting (9-13 December 2002) and the Second Round Evaluation Report (Greco Eval II Rep (2004) 14E) at its 24th Plenary Meeting (27 June - 1 July 2005).
- The Third Evaluation Report on Malta on Incriminations (ETS 173 and 191, GPC 2) was adopted by GRECO at its 44th Plenary Meeting (Strasbourg, 6-8 October 2009). The aforementioned evaluation reports, as well as their corresponding compliance reports, are available on GRECO's homepage <http://www.coe.int/greco>.

## C. Implementation of selected articles

### Chapter III. Criminalization and law enforcement

#### Article 15 Bribery of national public officials

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving, to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;*

*(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

100. Malta cited the following measure, which was deemed relevant to the offence of passive bribery of domestic public officials.

##### **Criminal Code**

115. Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

- (a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;
- (b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;
- (c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

101. The following measure was deemed to be relevant to the offence of active bribery of domestic public officials.

##### **Criminal Code**

120. (1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years:

Provided that when the crime is that referred to in article 117(c), the punishment shall not exceed eighteen months imprisonment.

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years.

102. Malta provided statistics on investigations and prosecutions related to offences of corruption and bribery for the last four years (Annex 1).

**(b) Observations on the implementation of the article**

103. It is noted that the corruption offence that is regulated in article 115 of the Criminal Code refers to passive bribery, as it focuses on a public officer who “requests, receives or accepts ... any reward or promise or offer”. However, article 120 of the Criminal Code refers to active bribery and deems the briber as an accomplice.

104. Specifically, regarding the “promise, offering or giving” (active bribery), it is noted that article 120 (active bribery) mirrors the content of article 115 (passive bribery), which covers the person who “accepts ... any reward or promise or offer”, and makes the passive bribery provisions applicable also to active bribery.

105. Regarding the solicitation or acceptance of bribes (passive bribery), article 115 includes the words “requests, receives or accepts ... any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage”.

106. Attempts are punishable as per article 120(2) and (3) of the Criminal Code.

107. The reviewers note the different set of punishment for bribery involving public officers, public servants or members of the House of Representatives. Officials of Malta explained that, because there is more gravity when the offence is committed by a member of Parliament, the law foresees an increase in punishment in these circumstances. The same is true for police officers, who face higher penalties than other persons due to the heightened responsibility of their office. It was further explained that the briber-accomplice is liable to the same punishment as the principal.

108. The reviewers further note that paragraph (a) of article 115 states the punishment of imprisonment for a term from six months to three years just for the fact of inducing the public officer or servant to do what he is bound to do, while a more severe set of imprisonment is set in paragraph (b) of article 115 for inducing the officer or servant to forbear from doing what he is in duty bound to do, just for the mere acceptance of the reward, promise or offer. Moreover, if the public officer or servant fails to do what he is in duty bound to do, he is bound for a more severe punishment (1 to 8 years imprisonment). The provisions address the situation where the officer is induced to do, or to refrain from doing, what he or she is duty bound to do, and therefore this aspect of the UNCAC obligation is satisfied. However, article 115(c), on the other hand, contemplates a different sanction where – besides accepting the offer – the officer actually fails to do his or her

duty, and the same is true for active bribery under article 120. This failure to do an official duty carries the highest sanction.

109. It is further noted that persons committing active bribery are covered through the application of article 120 of the Criminal Code as accomplices, but it was explained that the effective outcome is the same since the briber-accomplice is liable to the same punishment as the principal.
110. In terms of the “undue” advantage, the reviewers note that the article refers to any “reward in money or other valuable consideration or ... any other advantage to which he is not entitled”. Officials from Malta explained that a public’s officer only legitimate remuneration is his salary and anything besides that is considered undue. Anything which is of material benefit to the offender or advantage of negligible amount can fall within the scope of this provision, including facilitation payments, but also small advantages to which the public officer is not entitled by virtue of his position. It was explained that gifts given in order to “induce the officer or servant” to act or refrain from acting, are equally captured by article 115. Thus, a case example was mentioned during the country visit where an official had received a gift after having performed the function of her position, which was thus considered not to have been given for the illegitimate purpose of inducing the official to alter her conduct. Provisions on gifts are also contained in the ethical rules applicable to public officials through the respective Codes of Conduct. It was also explained during the country visit that there is no threshold in the Maltese legislation that would limit the value of the undue advantage. A case example was cited where the unjustified award of a boat license (valued at 24 euros) was prosecuted as an undue advantage.
111. The Criminal law does not distinguish between acts of bribery committed “directly or indirectly”. In this regard, the reviewers note that the Maltese offence of trading in influence (Section 121A, Criminal Code, which is cited under UNCAC article 18 below) includes the term “directly or indirectly”. Although Maltese officials explained that acts of indirect bribery are equally covered under its legislation, Malta may wish to monitor the application of the bribery provisions (in particular articles 155 and 120) to ensure that cases of indirect bribery are equally covered in future cases, especially in light of the corresponding explicit reference to indirect acts of trading in influence.
112. Regarding the mens rea of the offence, which is not explicitly mentioned, officials explained that mens rea is a necessary element of all offences, including bribery. The offender must act knowingly.
113. Malta explained that the term “public officer” is defined in article 92 of the Criminal Code. The addition of the word “servant” emphasizes the generality of the expression, which includes all persons who, in any way, are called upon to discharge any public service, whether in a permanent post or temporarily, whether on payment or otherwise. Maltese officials explained that article 92 of the Criminal Code covers members of parliament, ministers and judges, and that parliamentarians are also specifically covered in article 120 of the Criminal Code.

## **Criminal Code**

92. The general expression “public officer” includes not only the constituted authorities,

civil and military, but also all such persons that are lawfully appointed to administer any part of the executive power of the Government, or to perform any other public service imposed by law, whether it be judicial, administrative or mixed.”

114. Furthermore, it was explained that the offences related to corruption extend to legal persons, as provided under article 121D of the Criminal Code, read together with article 124 of the Constitution. Maltese officials explained during the country visit that there is no distinction in the Maltese legislation between legal and natural persons, and that therefore the provisions on third party benefits (“for himself or for any other person” in article 115 of the Criminal Code) also covers third party entities, in accordance with UNCAC article 15.

### **Criminal Code**

121D. Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

### **Article 124(1) of the Constitution**

"public office" means an office of emolument in the public service;

"public officer" means the holder of any public office or of a person appointed to act in any such office;

"the public service" means, subject to the provisions of subarticles (2) and (3) of this article, the service of the Government of Malta in a civil capacity;

(2) In this Constitution, unless the context otherwise requires, "the public service" includes service in the office of judge of the Superior Courts, service in the office of Auditor General and Deputy Auditor General, service in the office of magistrate of the Inferior Courts and service in the office of a member of the Malta Police Force.

(3) In this Constitution "the public service" does not include service in the office of -

(i) Prime Minister or other Minister, a Parliamentary Secretary, Speaker, Deputy Speaker, a member of the House of Representatives, a member of a Commission established by this Constitution;

(ii) save where the holder of the office is selected from the public service, an Ambassador, High Commissioner or other principal representative of Malta in any other country; or

(iii) save in so far as may be prescribed by

Parliament, a member of any council, board, panel, committee or other similar body established by or under any law.

### **(c) Successes and good practices**

115. The reviewers observe that the aggravated punishment structure for passive bribery is conducive to regulating sanctions in a manner that takes into account the gravity of the offence.

**(d) Challenges, where applicable**

116. Malta may wish to monitor the application of the bribery provisions to ensure that cases of indirect bribery are equally covered in future cases, in light of the absence of a specific provision addressing indirect bribery.

**Article 16. Bribery of foreign public officials and officials of public international organizations**

*1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the promise, offering or giving to a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties, in order to obtain or retain business or other undue advantage in relation to the conduct of international business.*

*2. Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the solicitation or acceptance by a foreign public official or an official of a public international organization, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties.*

**(a) Summary of information relevant to reviewing the implementation of the article**

117. The offence is reflected in article 121(4) read together with articles 115-120 of the Criminal Code (hereinafter often referred to as the Code).

**Criminal Code**

121...(4) The provisions of this sub-title shall also apply to any conduct falling within the descriptions set out in the provisions of this sub-title and in which is involved:

(a) a public officer or servant of any foreign State including any member of a domestic public assembly of any foreign State which exercises legislative or administrative powers; or

(b) any officer or servant, or any other contracted employee, of any international or supranational organization or body or of any of its institutions or bodies, or any other person carrying out functions corresponding to those performed by any said officer, servant or contracted employee; or

(c) any member of a parliamentary assembly of any international or supranational organisation; or

(d) any holder of judicial office or any official of any international court; or (e) any member, officer or servant of a Local Council; or

(f) any person mentioned in the preceding paragraphs and the offence was committed outside Malta by a Maltese citizen or by a permanent resident in Malta;

For the purposes of this paragraph, the phrase "permanent resident" shall have the same meaning assigned to it by article 5(1)(d); or

- (g) as the person who committed the offence, any person mentioned in paragraph (b) and the organisation, institution or body in question has its headquarters in Malta;
- (h) any person:
- (i) called upon to act as arbitrator in accordance with the provisions of the Arbitration Act, whether such arbitration is domestic or international;
- (ii) who by virtue of an arbitration agreement is called upon to render a legally binding decision in a dispute submitted to such person by the parties to the agreement; and
- (iii) who is an arbitrator exercising his functions under the national legislation of any state other than Malta:

Provided that:

- (i) where the person involved is any person mentioned in paragraphs (a), (b), (d) or (e) the provisions of articles 115, 116, 117 and 120 shall apply; and
- (ii) where the person involved is any person mentioned in paragraph (c) the provisions of articles 118 and 120 shall apply.

115. Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

- (a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years;
- (b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years;
- (c) where besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years.

116. (1) Where the crime referred to in paragraph (c) of the last preceding article consists in sentencing a defendant or person accused, the punishment shall be imprisonment for a term from eighteen months to ten years:

Provided that in no case shall the punishment be lower than that to which the defendant or person accused has been sentenced.

(2) Where the punishment to which the defendant or person accused is sentenced is higher than the punishment of imprisonment for ten years, such higher punishment shall be applied.

117. Where the crime referred to in article 115(c) consists in the release of a person charged with an offence, or in the discharge of a defendant or person accused, the punishment shall be as follows:

- (a) where the charge, complaint, or indictment be in respect of a crime liable to a punishment higher than that of imprisonment for a term of two years, the punishment shall be imprisonment for a term from eighteen months to five years;
- (b) where it be in respect of an offence liable to a punishment not higher than that of imprisonment for a term of two years, but not falling in the class of contraventions, the punishment shall be imprisonment for a term from nine months to three years;
- (c) where it be in respect of a contravention, the punishment shall be imprisonment for a term from four to twelve months.

118. Any member of the House of Representatives who requests, receives or accepts, for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage given or made with the object of influencing him in his conduct as a member of the House shall, on conviction, be liable to imprisonment for a term from one year to eight years.

119. The punishment of perpetual general interdiction or perpetual special interdiction, or both, as the case may be, shall be added to the punishments established in the preceding articles of this sub-title when the maximum of such punishments exceeds two years' imprisonment; when the maximum of the said punishments does not exceed two years' imprisonment, then the punishment of temporary general interdiction or temporary special interdiction, or both, as the case may be, shall be added.

120. (1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years.

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years.

**(b) Observations on the implementation of the article**

118. The reviewers note the application of article 121(4) read together with articles 115-120, which criminalize active and passive foreign bribery and specifically cover, notably, public officers or servants of foreign States, members of foreign public assemblies with legislative or administrative powers, officers, servants or contracted employees of international organizations and persons carrying out functions for them, as well as members of parliamentary assemblies of international organizations, and holders of judicial office or officials of international courts.

119. All other elements described under domestic bribery (above) are equally applicable in respect of bribery of foreign public officials, including the criminal sanctions.

120. The reviewers note that there is no link in the Maltese offence to "the conduct of international business" as provided in UNCAC article 16.

121. Officials further explained that the provision does not detract from the immunity foreign public officials enjoy, since this can be removed by the State or organization the official represents.

**(c) Successes and good practices**

122. It is positively noted that there is no requirement in the Maltese legislation for the offence to be linked to "the conduct of international business" as provided in the



Convention.

## **Article 17. Embezzlement, misappropriation or other diversion of property by a public official**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the embezzlement, misappropriation or other diversion by a public official for his or her benefit or for the benefit of another person or entity, of any property, public or private funds or securities or any other thing of value entrusted to the public official by virtue of his or her position.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

123. Malta cited the following implementation measure.

#### **Criminal Code**

127. Any public officer or servant who for his own private gain or for the benefit of another person or entity, misapplies or purloins any money, whether belonging to the Government or to private parties, credit securities or documents, bonds, instruments, or movable property, entrusted to him by virtue of his office or employment, shall, on conviction, be liable to imprisonment for a term from two to six years, and to perpetual general interdiction.

124. According to Maltese officials, the provisions on fraud in the Criminal Code also cover immovable property (article 308).

#### **Criminal Code**

308. Whosoever, by means of any unlawful practice, or by the use of any fictitious name, or the assumption of any false designation, or by means of any other deceit, device or pretence calculated to lead to the belief in the existence of any fictitious enterprise or of any imaginary power, influence or credit, or to create the expectation or apprehension of any chimerical event, shall make any gain to the prejudice of another person, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

125. Moreover, the general provisions relating to misappropriation and fraud are aggravated by an increase in punishment when committed by a public officer.

#### **Criminal Code**

293. Whosoever misapplies, converting to his own benefit or to the benefit of any other person, anything which has been entrusted or delivered to him under a title which implies an obligation to return such thing or to make use thereof for a specific purpose, shall be liable, on conviction, to imprisonment for a term from three to eighteen months:  
Provided that no criminal proceedings shall be instituted for such offence, except on the complaint of the injured party.

294. Nevertheless, where the offence referred to in the last preceding article is committed on things entrusted or delivered to the offender by reason of his profession, trade, business, management, office or service or in consequence of a necessary deposit, criminal proceedings shall be instituted ex officio and the

punishment shall be of imprisonment for a term from seven months to two years.

141. Saving the cases where the law specifically prescribes the punishment to which offences committed by public officers or servants are subject, any public officer or servant who shall be guilty of any other offence over which it was his duty to watch or which by virtue of his office he was bound to repress, shall, on conviction, be liable to the punishment laid down for such offence, increased by one degree.

**(b) Observations on the implementation of the article**

126. Embezzlement by public officials is criminalized in article 127 of the Criminal Code (entitled, “Embezzlement”). This offence consists in the embezzlement committed by a public officer/servant of money or property of which they have the administration or custody or which they are responsible to collect. Conversely, articles 293 and 294 (“Misappropriation”) refer to the misapplication and conversion by any person of anything which has been entrusted or delivered to them by title.

127. Regarding the offence of embezzlement in article 127, Malta explained that what is essential is that the offender should have the capacity of a public officer or servant, in that he should have in his possession or at his disposal the things misapplied or purloined by virtue of his office or employment. That which especially characterizes the crime of embezzlement is not the public ownership of the things misapplied or purloined, but the breach and abuse of a public trust.

128. Furthermore, it was explained that the element of “public officer or servant” in article 127 serves to distinguish this crime from that of theft or purloining (used interchangeably, since the latter derives from the *Codice delle Due Sicile* on which the Maltese Criminal Code was modelled).

129. Therefore, the reviewers’ observations made under UNCAC article 15 above regarding the definition of the term “public officer” and “public servant” are repeated here.

130. It was further explained regarding the offence in article 127 that the material element of the crime consists in “misapplying” or “purloining” the money or things a person has been entrusted with or received by title. The old Italian text spoke of “distrarre o sottrarre”. The first of these two words would connote the idea of misappropriation, the second, the idea of theft. The text uses the word “misapplies” purposely since the public officer or servant already has the detention or general possession of the thing; he only betrays the trust reposed in him by diverting it from its destination, by using it unlawfully for his private advantage.

131. Thus, it was explained, the Maltese translation expresses embezzlement as theft by a public officer or servant who makes unlawful use of property entrusted to him by virtue of his office.

132. It is noted that the concepts of embezzlement, misappropriation and other diversion would seem to be adequately captured by the cited acts of embezzlement, that is misapplying or purloining entrusted property, as well as misapplication and conversion, which could also be committed by public officials.

133. It was further explained during the country visit that there is no applicable threshold for embezzlement below which cases are not investigated or prosecuted.

## Article 18. Trading in influence

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The promise, offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person;*

*(b) The solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for another person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

134. Active and passive trading in influence is criminalized in article 121A of the Criminal Code.

#### **Criminal Code**

121A. (1) Any person who promises, gives or offers, directly or indirectly, any undue advantage to any other person who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in the preceding articles of this sub-title, in order to induce such other person to exercise such influence, whether such undue advantage is for such other person or anyone else, shall on conviction be liable to the punishment of imprisonment for a term from three months to eighteen months.

(2) Any person who requests, receives or accepts any offer or promise of any undue advantage for himself or for anyone else with the object of exercising any improper influence as is referred to in subarticle (1) shall on conviction be liable to the punishment laid down in that subarticle.

(3) The offences referred to in subarticles (1) and (2) shall be complete whether or not the alleged ability to exert an improper influence existed, whether or not the influence is exerted and whether or not the supposed influence leads to the intended result.

### **(b) Observations on the implementation of the article**

135. The active trading in influence is stated in article 121A (1) of the Criminal Code. The reviewers note that the provision in general addresses any person who asserts or confirms that he or she is able to exert an improper influence..., implying that the public officer is included.

136. Malta clarified the meaning of the term “asserts or confirms”, to clarify that it covers persons with both real and supposed influence as expressed by an intermediary. In this context it is noted that article 121A(3) of the Criminal Code provides that active and passive trading in influence is established regardless of whether the activity is (or could be) exerted, or whether it leads to the intended result or not.

137. Furthermore, the observations under article 15 in relation to bribery are also applicable to the article under review.

## Article 19. Abuse of functions

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, the abuse of functions or position, that is, the performance or failure to perform an act, in violation of laws, by a public official in the discharge of his or her functions, for the purpose of obtaining an undue advantage for himself or herself or for another person or entity.*

### (a) Summary of information relevant to reviewing the implementation of the article

138. In addition to the bribery and embezzlement provisions referred to above, Malta cited the following articles.

#### **Criminal Code**

112. Any officer or person employed in any public administration, or any person employed by or under the Government, whether authorized or not to receive moneys or effects, either by way of salary for his own services, or on account of the Government, or of any public establishment, who shall, under colour of his office, exact that which is not allowed by law, or more than is allowed by law, or before it is due according to law, shall, on conviction, be liable to imprisonment for a term from three months to one year.

113. Where the unlawful exaction referred to in the last preceding article, is committed by means of threats or abuse of authority, it shall be deemed to be an extortion, and the offender shall, on conviction, be liable to imprisonment for a term from thirteen months to three years.

114. Where the crimes referred to in the last two preceding articles are accompanied with circumstances which render such crimes liable also to other punishments, the higher punishment shall be applied with an increase of one degree.

122. Any advocate or legal procurator who, having already commenced to act on behalf of one party, shall, in the same lawsuit, or in any other involving the same matter and interest, in opposition to such party or to any person claiming under him, change over, without the consent of such party or person, and act on behalf of the opposite party, shall, on conviction, be liable to a fine (multa), and to temporary interdiction from the exercise of his profession for a term from four months to one year.

123. Any advocate or legal procurator who shall betray the interests of his client in such a manner that, in consequence of his betrayal or deceitful omission, the client shall lose the cause, or any right whatsoever shall be barred to his prejudice, shall, on conviction, be liable to imprisonment for a term from seven to eighteen months, and to perpetual interdiction from the exercise of his profession.

128. Any turnkey or gaoler who shall take any prisoner in custody without a lawful warrant or order from a person authorized by law to issue such warrant or order, shall, on conviction, be liable to imprisonment for a term from one to three months.

129. (1) Any turnkey or gaoler who shall subject any person under his custody to any arbitrary act or restriction not allowed by the prison regulations, shall, on conviction, be liable to the punishment established in the last preceding article.

(2) Where the restriction or arbitrary act aforesaid of itself constitutes a crime liable to an equal or a higher punishment, such punishment shall be applied with an increase of one degree.

130. Any public officer or servant who, without authority or necessity, detains or causes to be detained, any person under arrest, in any place other than a place appointed as a public prison, shall, on conviction, be liable to imprisonment for a term from one to three months or to a fine (multa).

131. Any public officer or servant who has under his orders the civil police force and who, on a lawful request made by any competent authority, fails to afford the assistance of such force, shall, on conviction, be liable to imprisonment for a term from four to six months.

132. Any juror, witness or referee who, with the object of not affording assistance to the competent authority lawfully requiring such assistance, or of explaining his non-appearance before such authority, alleges an excuse which is shown to be false, shall, in addition to the punishment established for his non-appearance, be liable, on conviction, to imprisonment for a term from one to three months.

133. Any public officer or servant who communicates or publishes any document or fact, entrusted or known to him by reason of his office, and which is to be kept secret, or who in any manner facilitates the knowledge thereof, shall, where the act does not constitute a more serious offence, be liable, on conviction, to imprisonment for a term not exceeding one year or to a fine (multa).

134. Any public officer or servant who, having been dismissed, interdicted, or suspended, and having had due notice thereof, continues in the exercise of his office or employment, shall, on conviction, be liable to imprisonment for a term from one to six months.

135. Any person vested with public authority who, by any unlawful measures devised with other persons, hinders the execution of the law, shall, on conviction, be liable to imprisonment for a term from eighteen months to three years.

136. (1) Any public officer or servant who, under colour of his office, shall, in cases other than those allowed by law, or without the formalities prescribed by law, enter any house, or other building or enclosure belonging to any person, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (multa or ammenda).

(2) Where it is proved that the entry has taken place for an unlawful purpose or for a private advantage, the offender shall, on conviction, be liable to imprisonment for a term from one to twelve months.

137. Any magistrate who, in a matter within his powers, fails or refuses to attend to a lawful complaint touching an unlawful detention, and any officer of the Executive Police, who, on a similar complaint made to him, fails to prove that he reported the same to his superior authorities within twenty-four hours, shall, on conviction, be liable to imprisonment for a term from one to six months.

138. Any public officer or servant who shall maliciously, in violation of his duty, do or omit to do any act not provided for in the preceding articles of this Title, to the oppression or injury of any other person, shall, on conviction, be liable to imprisonment for a term not exceeding three months or to a fine (multa):

Provided that the court may, in minor offences, award any of the punishments established for contraventions.

139. Where the injurious or oppressive act is one of those mentioned in articles 86, 87, 88 and 89, the offender shall, on conviction, be liable to the punishment laid down in those articles respectively, increased by one degree.

139A. Any public officer or servant or any other person acting in an official capacity who intentionally inflicts on a person severe pain or suffering, whether physical or mental -

(a) for the purpose of obtaining from him or a third person information or a confession; or  
(b) for the purpose of punishing him for an act he or a third person has committed or is suspected of having committed; or

(c) for the purpose of intimidating him or a third person or of coercing him or a third person to do, or to omit to do, any act; or

(d) for any reason based on discrimination of any kind, shall, on conviction, be liable to imprisonment for a term from five to nine years:

Provided that no offence is committed where pain or suffering arises only from, or is inherent in or incidental to, lawful sanctions or measures:

Provided further that nothing in this article shall affect the applicability of other provisions of this Code or of any other law providing for a higher punishment.

140. In the cases referred to in articles 133 to 139 inclusively, the court may, in addition to the punishment therein laid down, award the punishment of temporary or perpetual general interdiction.

141. Saving the cases where the law specifically prescribes the punishment to which offences committed by public officers or servants are subject, any public officer or servant who shall be guilty of any other offence over which it was his duty to watch or which by virtue of his office he was bound to repress, shall, on conviction, be liable to the punishment laid down for such offence, increased by one degree.

#### **(b) Observations on the implementation of the article**

139. The Maltese authorities cited a number of provisions of its law which deal, in particular, with the abuse of public position for personal gain by an officer or person employed in the public administration or under the Government. The reviewers note that the breach of these provisions bring about both disciplinary professional and criminal sanctions.

140. It was explained that the offences starting with article 112 fall under the heading of “The Abuse of Public Authority”, which relates to offences against the due exercise of official powers and consists in acts of arbitrary and illegal oppression committed by public functionaries for the purpose of extortion and of their corruption of others by means of bribes.

141. Thus, article 113 speaks of the offence of extortion, which materializes when the

unlawful exaction (article 112) is committed by means of threats or abuse of power. This crime is the same crime as unlawful exaction, except that the means of perpetration differ: the means used here are more aggravated. For the crime in article 112, it is not necessary that the offender should have used any means of compulsion; the mere exaction suffices. This aggravation (article 113) arises where the offender used threats and abuse of power. As to the abuse of power, the unlawful exaction is in itself an abuse, but it is not of such abuse that the law makes the unlawful exaction degenerate into extortion. This crime (article 113) presupposes a further abuse of power intended to facilitate the unlawful exaction.

142. While the reviewers note that the cited articles do not mention the performance or failure to perform an act for the purpose of obtaining an undue advantage for the official himself or herself or for another person or entity, it was explained that article 112 (which makes no mention of benefits) requires that a person, under colour of his office, exacts that which is not allowed by law, or more than what is allowed by law, or before it is due. Malta also referred to bribery provisions (article 115 and 120), which apply throughout, including where the person is a public officer or servant.

143. Maltese officials explained that the abuse of power also includes acts of intentionally exposing discreet and confidential information, which could also be an offence under other laws such as those relating to the Official Secrets Act and Professional Secrecy Act.

## **Article 20. Illicit enrichment**

*Subject to its constitution and the fundamental principles of its legal system, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally, illicit enrichment, that is, a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

144. Malta cited the following provision, which applies not only to public officials but to any person convicted of a crime carrying a punishment of one year imprisonment or more.

#### **Criminal Code**

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply mutatis mutandis in the circumstances mentioned in those paragraphs.

### **(b) Observations on the implementation of the article**

145. The reviewers note that the cited provision refers to the forfeiture of illicit property from guilty persons, but does not refer to the criminalization of illicit enrichment per se. It is thus a provision addressing the legal consequences of disproportionate wealth (i.e., forfeiture), rather than an illicit enrichment offence. It was confirmed by Maltese officials during the country visit that Malta has not criminalized illicit enrichment per

se. Malta explained, in this regard, that any illicit enrichment can only be forfeited if a person is convicted of the crime from which the enrichment derives.

146. The reviewers also note that, regarding the forfeiture of the illicit property, only when the court is fully convinced that the property in question has been derived from the criminal activity the property can be subject to forfeiture. Non-conviction based forfeiture is not provided for and this was confirmed by Maltese authorities, who explained that discussions are underway at the European Union level in this regard.

147. The UNCAC obligation is satisfied as Malta has considered the criminalization of illicit enrichment.

## **Article 21. Bribery in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally in the course of economic, financial or commercial activities:*

- (a) The promise, offering or giving, directly or indirectly, of an undue advantage to any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting;*
- (b) The solicitation or acceptance, directly or indirectly, of an undue advantage by any person who directs or works, in any capacity, for a private sector entity, for the person himself or herself or for another person, in order that he or she, in breach of his or her duties, act or refrain from acting.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

148. Bribery in the private sector is regulated in article 121(3) of the Criminal Code.

#### **Criminal Code**

121. ... (3) The provisions of this sub-title in relation to an officer or person referred to in article 112 or a public officer or servant referred to in article 115 shall also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in those articles:

Provided that for the purposes of this subarticle the expression "breach of duty" includes any disloyal behaviour constituting a breach of a statutory duty, or, as the case may be, a breach of professional regulations or instructions, which apply within the business in question.

120. (1) In the cases referred to in articles 115, 116, 117 and 118 ... the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice.

### **(b) Observations on the implementation of the article**

149. Active and passive bribery in the private sector are criminalized. Article 121(3) of



the Criminal Code makes the provisions relating to passive bribery of domestic public officials (article 115) also applicable to any employee or other person directing or working in the private sector who conducts himself in any manner provided for in the article, in the course of his business activities and in breach of his duties, including disloyal behavior or a breach of professional obligations. Active bribery in the private sector, in turn, is covered by the application of the active bribery provision in article 120(1) to the private sector.

150. Also covered by the private sector bribery offence are persons working for other natural persons, not just those working for corporate entities or companies.
151. All other elements of the domestic bribery offence described above, including the penal sanctions, are equally applicable in respect of this offence.
152. As noted under UNCAC article 15 above concerning the “undue advantage”, anything which is of material benefit to the offender can fall within the scope of this provision, including facilitation payments.
153. During the country visit, it was explained that few private sector bribery cases were reported. It was also clarified that while at present there was no awareness raising done to enhance the understanding of bribery in the private sector, cooperation with the private sector could be useful to this end and to strengthen the fight against corruption in this area.

**(c) Successes and good practices and challenges, where applicable**

154. The observations made above under UNCAC article 15 are repeated, in particular as regards cases of indirect bribery.

**Article 22. Embezzlement of property in the private sector**

*Each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally in the course of economic, financial or commercial activities, embezzlement by a person who directs or works, in any capacity, in a private sector entity of any property, private funds or securities or any other thing of value entrusted to him or her by virtue of his or her position.*

**(a) Summary of information relevant to reviewing the implementation of the article**

155. Malta cited Article 127(2) of the Criminal Code concerning embezzlement in the private sector.

127. (1) Any public officer or servant who for his own private gain or for the benefit of another person or entity, misapplies or purloins any money, whether belonging to the Government or to private parties, credit securities or documents, bonds, instruments, or movable property, entrusted to him by virtue of his office or employment, shall, on conviction, be liable to imprisonment for a term from two to six years, and to perpetual general interdiction.

(2) The provisions of sub-article (1) shall, *mutatis mutandis*, also apply to and in relation to any employee or other person when directing or working in any capacity for or on behalf of a natural or legal person operating in the private sector who knowingly, in the course of his business activities, directly or through an intermediary and in breach of his duties, conducts himself in any manner provided for in the said sub-article.

156. Maltese officials also referred to the provisions on fraud and theft in the Criminal Code (articles 308 and 261 CC), which are quoted under UNCAC article 17 above.

**(b) Observations on the implementation of the article**

157. Article 127(2) of the Criminal Code extends the embezzlement offence to the private sector.

158. The reviewers consider the article legislatively implemented.

**Article 23. Laundering of proceeds of crime**

**Subparagraph 1 (a) and 1 (b) (i) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*

*(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*

*(b) Subject to the basic concepts of its legal system:*

*(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*

**(a) Summary of information relevant to reviewing the implementation of the article**

159. The following provisions are found in the Prevention of Money Laundering Act, Chapter 373.

**Prevention of Money Laundering Act**

2. (1) In this Act, unless the context otherwise requires -  
“criminal activity” means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: ...

(b) one of the offences listed in the Second Schedule to this Act;

**SECOND SCHEDULE**

(Article 2)

Any criminal offence.

2. (1) ... “money laundering” means -

(i) the conversion or transfer of property knowing or suspecting that such property is

derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

(ii) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing or suspecting that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

(iii) the acquisition, possession or use of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

160. Malta provided statistics on prosecutions for money laundering (Annex 2).

161. Malta cited the following implementation examples.

#### **Case Law:**

##### **Republic of Malta vs. Maria Abela – 29<sup>th</sup> March 2007 – Criminal Court**

Maria Abela was accused of money laundering, forgery, use of false documents, forgery. Accused filed a guilty plea and was condemned to a period of six years imprisonment and to the payment of 1304.71 Maltese Lira (3000 Euro) representing expenses incurred during the proceedings. Furthermore, the Court ordered the confiscation of all objects subject of the crime as well as of all the money, movable and immovable property pertaining to the accused.

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##### **Police (Insp. Paul Vassallo) vs. Ariam Edilberto Lore – 27<sup>th</sup> November 2008 – Court of Magistrates (Malta) as a court of Criminal Judicature**

Ariam Edilberto Lore was charged before the Court of Magistrates (Malta) with having on October 2006 and in the subsequent months, by means of various acts, committed the act of money laundering. The accused registered a guilty plea. The amount of the money laundered was 4000 Maltese Lira (9,600 Euro). Court condemned accused to a sentence of 2 years and 9 months imprisonment.

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##### **Republic of Malta versus Carmen Butler and Stephanie Butler - 15<sup>th</sup> February 2008 Criminal Court**

Carmen and Stephanie Butler were accused of committing the crime of money laundering. From investigations conducted by the Malta Police, it resulted that in the period of January 2002 and in the months prior, Stephanie Butler with the help of her mother Carmen, was helping and assisting her father Charles Butler in giving a legal and legitimate look to a quantity of money that the same Charles Butler was receiving from his various criminal activities.

The Jury's verdict found Carmen Butler guilty with 6 votes in favour and 3 against whilst Stephanie Butler was found not guilty with 8 votes in favour and one vote against.

The Court thus acquitted Stephanie Butler and found Carmen Butler guilty of the crime of money laundering. The court in its judgment noted the seriousness and grievousness of

the offence and the fact that the mother used her daughter who was only fifteen at the time for the commission of the offence. The Court therefore condemned the accused to 2 years imprisonment suspended for four years, ordered the confiscation of the *corpus delicti* and the payment of 5, 679.34 Euro which were the expenses incurred by the appointment of the court expert.

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**Police vs Emmanuel Bajada 21<sup>st</sup> May 2009 – Court of Magistrates (Malta) as a court of Criminal Judicature**

Emanuel Bajada was charged before the Court of Magistrates for committing the crime of money laundering on 13<sup>th</sup> May 2005 and in the preceding months. The court considered the guilty plea registered by the accused in the early stages of the proceedings. The accused involved himself in the management of two guest houses which were used for prostitution. This activity lasted for less than two months as police had intervened. The proceeds of the activity was of around thousand and eight hundred Maltese Lira (4320 Euro). Bajada was condemned to two years imprisonment suspended for four years and to a fine of 50, 000 Euro.

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**Republic of Malta vs Noor Faizura Azura Binti MD Lias – Criminal Court – 12<sup>th</sup> October 2009**

Case related to drug trafficking and money laundering. Accused filed registered an admission and was condemned to a term of 15 years imprisonment. Judgement attached.

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**Republic of Malta vs Vincenzo Stivala – 16<sup>th</sup> December, 2009 – Criminal Court**

Vincenzo Stivala was accused by means of a bill of indictment of committing the act of money laundering when on the 16<sup>th</sup> June and the subsequent months he received a cheque from a friend of his of 22, 000 Maltese Lira (52,800 Euro) issued by the Water Services Corporation when he knew that it was derived from a crime. He deposited it in a bank account belonging to his daughter and which was operated by him. This was not the first time that he worked illegally as a banker and deposited cheques with profit for himself.

In the second count of the bill of indictment he was also charged with conducting business of a financial institution in Malta or from Malta without a licence issued by the competent authority. He was also accused in the third count of depositing cheques which he knew were taken fraudulently and therefore of receiving stolen property. The amount involved was of more than a thousand Maltese Pounds. The Court declared accused not guilty of the three counts of the bill of indictment after the jury found him not guilty of the same. He was thus acquitted.

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**The Police (Supt. Paul Vassallo) Vs Dayang Sakienah Binti Mat Lazin – 16<sup>th</sup> July 2010 – Court of Magistrates**

Case related to drug trafficking and accused was condemned to a term of 6 years imprisonment and a fine of 42, 000 Euros. Judgement attached.

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**Police (Superintendent Norbert Ciappara) vs Elton Brincat 5<sup>th</sup> November 2010  
Court of Magistrates (Malta) as a Court of Criminal Judicature**

Elton Brincat was charged before the Court of Magistrates for possession of heroin, cannabis and cocaine which was not for his exclusive use. Furthermore he was charged with committing the act of money laundering. The court found him guilty after he admitted to the charges instituted against him.

Accused was condemned to a punishment of four years imprisonment and a fine of 3000 Euros.

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**Police (Insp. Angelo Gafa') v. Bujaila Ramadan Ali Benshibban Court of Criminal Appeal - 20<sup>th</sup> May 2011**

This judgment is an appeal from judgment given by the Court of Magistrates (Malta) as a Court of Criminal Judicature which had found the accused guilty of having failed to declare 10, 000 Euros to the Controller of Customs upon entering Malta. The First Court condemned the accused to a fine of 12, 675 Euros and ordered the confiscation of the money in favour of the Government of Malta. The accused appealed only from the part of the judgment where the Court ordered the confiscation. The Court of Appeal stated that the confiscation of money is mandatory and follows the declaration of guilt by the accused. The Court therefore confirmed the appealed judgment.

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**The Republic of Malta Vs Eduardo Navas Rios – Criminal Court 9<sup>th</sup> March 2012**

In October 2006, Money Laundering investigations were being carried out with regards to certain individuals concerning large amounts of money transferred to Panama since December 2005 suspected to have totalled to 150, 000 Maltese Liri equivalent to 349,500 Euros.

The Court, having seen the Jury's verdict, declared Eduardo Navas Rios guilty of only the first two counts in the Bill of indictment, namely of having-

1. On the 5th March 2007, and in the preceding months, rendered himself guilty of carrying out acts of money laundering by:

(i) Converting or transferring property knowing that such property is derived directly or indirectly from, or the proceeds of, criminal activity or from an act or acts of participation in criminal activity, for the purpose of or purposes of concealing or disguising the origin of the property or of assisting any person or persons involved or concerned in criminal activity;

*“(ii) Concealing or disguising the true nature, source, location, disposition, movement, rights with respect of, in or over, or ownership of property, knowing that such property is derived directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;*

*(iii) Acquiring property knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;*

(iv) *Retaining property without reasonable excuse knowing that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;*

(v) *Attempting any of the matters or activities defined in the above foregoing paragraphs (i), (ii), (iii) and (iv) within the meaning of Article 41 of the Criminal Code;*

(vi) *acting as an accomplice within the meaning of Article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v), and this according to the First*

*Count of the Bill of Indictment;*

*2. During the investigations concerning the circumstances indicated in the First Count of this Bill of Indictment rendered himself guilty of aggravated theft by person, place, and amount of the thing stolen.*

*3. The Court is acquitting the accused of the Third Count.”*

The court therefore condemned the accused to a term of imprisonment of (4) years and (6) six months and to pay a fine (multa) of ten thousand Euros (€10,000). The Court furthermore ordered the forfeiture in favour of the Government of Malta of all the property involved in the said crimes of which he had been found guilty and other moveable and immovable property belonging to the said Eduardo Navas Rios.

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**Police (Insp. Angelo Gafa’ vs Carlos Frias Mateo) - Court of Criminal Appeal, 19<sup>th</sup> of January 2012**

Carlos Frias Mateo was accused of having carried out acts of money laundering, and also for not declaring that he was in possession of € 10 000 to the controller of customs at the Malta International Airport whilst he was going to board a flight from Malta to Brussels. Accused was condemned to 3 years imprisonment and a fine of 20, 000 Euros. It also ordered the confiscation in favour of the Government of Malta of all the money involved in the case, as well as movable and immovable property of the appellant.

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**Police (Superintendent Paul Vassallo v. Laurence Seychell – 20<sup>th</sup> January 2012 – Court of Magistrates**

Laurence Seychell was accused before the Court of Magistrates for having rendered himself an accomplice with others in the transaction of business of banking or of issuing of electronic money in Malta or out of Malta, when they were not a licensed company under the act on commercial banking by the competent authorities and in having rendered himself an accomplice with others in the transaction of commerce of a financial institution in Malta or outside Malta by negotiating in instruments of financial markets as well as other financial instruments that can be transferred.

The Court could not find a concrete element of *mens rea* on the part of the accused. It didn’t even result that the accused made a profit. For this reason the court of Magistrates acquitted the accused. Appeal pending.

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**Republic of Malta vs Lorraine Vella - Criminal Court - 13<sup>th</sup> February 2012**

Lorraine Vella had been intercepted by the Police whilst she was in her car in the company of another woman. The Police found various objects related to drug trafficking and usage as well as monies and other valuables. Moreover on further investigations the Police managed to trace other funds which the accused had in a safe deposit box held with a local bank.

On the basis of these facts the Vella was accused of various offences including the laundering of money derived from drugs and prostitution.

With regards to the act of money laundering, the accused had failed to show that the mentioned funds and property were derived from legitimate acts and subsequent to investigations carried out by the Police, it was established that the woman did not have any lawful means of subsistence in Malta or elsewhere which could justify such funds.

The Court found Lorraine Vella guilty of all offences and sentenced her to ten years imprisonment and to the payment of a fine amounting to €23,000 and judicial expenses which totalled €1,953.02. Moreover the Court ordered the forfeiture in favour of the government of the property involved in this case as well as all other movable or immovable property of the accused.

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#### **Republic of Malta vs Domingo Ricardo Duran Navas - Criminal Court - 2<sup>nd</sup> October 2012**

A Panamanian citizen, Domingo Ricardo Duran Navas, was apprehended by the Police after he was intercepted by the Police in a controlled delivery. The Police traced a number of transactions which were effected by the accused himself and through another person, and also established that he had used other funds to buy or rent movable and immovable property whilst in Malta.

When required to justify the origin of such funds, which he transferred or used, the accused failed to provide a reasonable explanation showing that the funds were derived from legitimate origins. The Court condemned Navas to a term of imprisonment of three years and six months and to the payment of a fine of €5,000. Moreover the Court ordered the forfeiture in favour of the Government of Malta of all the property involved in the said crime of which he has been found guilty and other monies or moveable and immovable property belonging to the convicted.

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#### **The Police vs Grace Ngome - Court of Magistrates (Malta) as a Court of Criminal Judicature - 13<sup>th</sup> April 2012**

Grace Ngome was apprehended at the Malta International Airport while about to leave Malta on a flight to Brussels after she failed to declare to the Controller of Customs, before leaving Malta, that she was in possession of a sum equivalent to or exceeding €10,000.

Besides being accused of carrying a substantial amount of undeclared cash in breach of the Cash Control Regulations (Legal Notice 149 of 2007), Grace Ngome was also charged with money laundering.

Following an admission of guilt by the accused, the Court found her guilty of both charges, sentenced her to one year imprisonment and ordered the payment of a €6,151 fine and the expenses involved in the nomination of experts in this case totalling €2,042.96. The Court also ordered the confiscation of the amount found in possession of the accused which exceeded €10,000.

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**The Police vs Miriam Helena Parmanand - Court of Magistrates (Malta) as a Court of Criminal Judicature - 20<sup>th</sup> July 2012**

Miriam Helena Parmanand was arrested at the Malta International Airport after the Police found her in possession of money in cash amounting to €20,835, which she had failed to declare to the Controller of Customs on leaving Malta. When required to substantiate the origin of the funds the accused explained how it was normal for her to be in possession of such amounts of money as she considered herself well off financially given that she and her husband ran several businesses. She also told the Police how she came to Malta in order to spend a five day holiday and intended to shop for expensive clothing and jewellery however, she had to suspend this holiday abruptly due to an unforeseen family matter.

Subsequently the Police arraigned the defendant in court for failure to declare to customs a sum of money in cash equal to or exceeding €10,000 when leaving Malta and for committing money laundering.

The Court found the accused guilty of the first charge and ordered the payment of a fine amounting to €5,208.75 as well as the forfeiture in favour of the Government of Malta of the sum of €10,835 (i.e. the amount exceeding €10,00 which was found in her possession in violation of the Cash Control Regulations).

As regards the offence of money laundering the Court made a reference and based its judgment on the sentence of the Court of Criminal Appeal of the 19<sup>th</sup> January 2012 in *The Police vs Carlos Frias Mateo* wherein the Court examined the element of proof required by the prosecution in order for the burden of proving the legitimate origin of funds, proceeds or property to shift on the accused being in possession of such funds, proceeds or property. In this case the Court held that the prosecution had failed to prove *prima facie* that the money found in possession of the accused could have been linked to some form of criminal activity and also failed to prove that the accused's lifestyle did not justify her being in possession of such monies. Due to this absence of evidence and proof, the onus of showing the legitimate origin of the monies could not be shifted onto the accused, who nonetheless had clearly explained that her lifestyle and social standing justified her being in possession of such funds. The Court hence acquitted the defendant from charges of money laundering.

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**The Republic of Malta vs Morgan Ehi Egbomon - Criminal Court - 24<sup>th</sup> October 2012**

The accused was arrested at the Malta International Airport, seeking to leave Malta with a large amount of money (without declaring it) and with other suspicious possessions. The Police sought to establish whether the accused was in a position to furnish a reasonable explanation showing that his possessions were derived from a lawful origin, in order to



have the onus of proofing the lawful origin of the possessions shifted onto him, if he fails to do so.

When questioned by the Police, the defendant said that he was a trader in clothes in Hungary and that he had acquired the money from his uncle who intended buying property in Malta in partnership with an Italian person. According to the defendant, after the Italian person did not show up for a meeting with him, he decided to leave Malta and go back. The defendant also had failed to provide evidence as to any employment or business he had in Malta or elsewhere which would justify the lawful origin of the possession he was apprehended with. In the light of these circumstances the Police held that it wasn't given a reasonable explanation showing that the funds or property of the accused were derived from licit origins and hence the burden to prove this licit origin subsequently lied with the accused, who was being charged of the acts of money laundering and of carrying money in cash exceeding Lm5, 000 (in 2007) without declaring it on entering or leaving Malta.

In the note of pleas filed, the accused, amongst other things, pleaded that the bill of indictment (as regards the charges of money laundering) should be considered null and void due to the fact that the Attorney General made no reference to the underlying criminal activity which allegedly gave rise to money laundering and hence there was no antecedent *actus reus* on which money laundering could be based. The accused inferred an analogy between the crime of receiving stolen goods and money laundering in that for both offences to subsist the criminal origin of the goods or funds must be established and mere suspicion was not enough.

Moreover the defence pleaded that the accused was being charged for money laundering on the basis of his failure to provide a reasonable indication that the funds found in his possession were derived from lawful origins, which presumption according to the defendant violated his fundamental human rights and had lodged a constitutional case requesting that Article 3(3)<sup>3</sup> of the PMLA and Article 22(1C)(b)<sup>4</sup> of the Dangerous Drug Ordinance (DDO) be declared in violation of Article 6 (right to a fair trial) of the European Convention on Human Rights.

In its decision, determining the pleas raised by the defence, the Court made reference to the Court of Criminal Appeal's judgement of the 19<sup>th</sup> January 2012 in the Police vs Carlos Frias Mateo, wherein that Court had examined the level of proof required by the prosecution in order to shift the burden of proof onto the defendant which would be required to prove the legitimate origin of funds, proceeds or property in his possession. In the cited case, examined in further detail earlier on, the Court of Criminal Appeal held that for the burden of proof to shift, the prosecution only needs to prove on a *prima facie* basis that there exists no logical or plausible explanation as to the origin of the funds held by the accused and it need not prove the origin of the funds or moreover that they were illicit funds. The Court, citing the Court of Criminal Appeal's determination, established that the Attorney General had given a description of the facts in the bill of indictment

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<sup>3</sup> Cross refers to Article 22(1C)(b) of the DDO rendering it applicable to proceedings of money laundering under the PMLA.

<sup>4</sup> *In proceedings of money laundering under the DDO, where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds derived from drug trafficking offences, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.*

which included also the predicate offence although he was not required to proof any specific offence and as a result the bill of indictment (with regards to the charges of money laundering) was not to be considered null and void.

After hearing all the pleas raised the Court put off the case *sine die* to await its turn to be heard by trial by jury.

**(b) Observations on the implementation of the article**

162. The provisions are addressed in the Prevention of Money Laundering Act, Chapter 373. Article 2 of this Act defines key terms, including “criminal activity” and “money laundering”.

163. The reviewers note that the required mental element for the offence of “money laundering”, as defined in sub-paragraph (i) of the definition, consists of not just knowing but also suspecting that property is derived directly or indirectly from the proceeds of crime. The protection of third party interests is provided in article 7 of the said Act, which allows any person having an interest to bring an action for a declaration that property ordered to be forfeited is not criminal proceeds.

164. The penalties for money laundering are provided in article 3 of the said Act.

165. A copy of the judgment in the case of *Republic of Malta vs Noor Faizura Azura Binti MD Lias, Criminal Court (12 October 2009)* was also provided to the reviewers.

166. It was confirmed by Maltese officials that no cases have been reported where a company or legal person was convicted of money laundering.

**Subparagraph 1 (b) (ii) of article 23**

*1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*...*

*(b) Subject to the basic concepts of its legal system: ...*

*(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

167. The following provision is found in the Prevention of Money Laundering Act, Chapter 373.

**Prevention of Money Laundering Act**

2. (1) In this Act, unless the context otherwise requires - ...

“money laundering” means - ...

(v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;

(vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v);

## **Criminal Code (Conspiracy)**

48A. (1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act, shall be guilty of the offence of conspiracy to commit that offence.

(2) The conspiracy referred to in subarticle (1) shall subsist from the moment in which any mode of action whatsoever is planned or agreed upon between such persons.

(3) Any person found guilty of conspiracy under this article shall be liable to the punishment for the completed offence object of the conspiracy with a decrease of two or three degrees.

(4) For the purposes of subarticle (3), in the determination of the punishment for the completed offence object of the conspiracy account shall be had of any circumstances aggravating that offence.

### **(b) Observations on the implementation of the article**

168. The referenced provisions, i.e. subparagraphs (v) and (vi) of article 2(1), which define money laundering, criminalize the attempt (within the meaning of article 41 of the Criminal Code) and the act of being an accomplice (within the meaning of article 42 of the Criminal Code) to money laundering.

169. Malta further clarified that the words “instigate; give instruction; incite or strengthen determination” used in article 42 correspond to acts of “counseling” as per the provision under review, insofar as counseling implies giving an instruction.

170. It is noted that the conspiracy to commit money laundering is not specifically addressed in the Prevention of Money Laundering Act, but that article 48A of the Criminal Code could be applied to acts of conspiracy to commit money laundering. The reviewers note that the provision under review is legislatively implemented.

### **Subparagraphs 2 (a) and 2 (b) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article:*

*(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*

*(b) Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

171. Under Chapter 373 entitled the Prevention of Money Laundering Act, any criminal offence can be a predicate offence to money laundering. Thus all offences cited above are predicate offences.

## **Prevention of Money Laundering Act**

2. (1) In this Act, unless the context otherwise requires -

“criminal activity” means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: ...

(b) one of the offences listed in the Second Schedule to this Act;

## SECOND SCHEDULE

(Article 2)

Any criminal offence.

### (b) Observations on the implementation of the article

172. The Prevention of Money Laundering Act provides that any criminal offence can be a predicate offence to money laundering (Second Schedule to article 2(1)). The provision under review is legislatively implemented.

### Subparagraph 2 (c) of article 23

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(c) For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*

### (a) Summary of information relevant to reviewing the implementation of the article

173. The Prevention of Money Laundering Act provides in article 2 (emphasis added):

2. (1) In this Act, unless the context otherwise requires -

“criminal activity” means any activity, whenever or **wherever carried out, which, under the law of Malta or any other law**, amounts to: ...

(b) one of the offences listed in the Second Schedule to this Act;

## SECOND SCHEDULE

(Article 2)

Any criminal offence.

### (b) Observations on the implementation of the article

174. It was explained by Malta that the key term is “or”; hence double criminality is not required and hence Maltese law goes further than the provision under review.

175. The reviewers further note that, as per the cited terms “wherever carried out”, a criminal offence committed outside Malta would qualify as a predicate offence for purposes of money laundering.

### Subparagraph 2 (d) of article 23

*2. For purposes of implementing or applying paragraph 1 of this article: ...*

*(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*

### (a) Summary of information relevant to reviewing the implementation of the article

176. On 12 May 2014, Malta submitted its relevant legislation, the Prevention of Money Laundering Act and laws of Malta, to the United Nations.

**(b) Observations on the implementation of the article**

177. Malta has implemented the provision.

**Subparagraph 2 (e) of article 23**

*2. For purposes of implementing or applying paragraph 1 of this article: ...  
(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

178. Self-laundering is criminalized equally under the Prevention of Money Laundering Act (article 2(b)).

**Prevention of Money Laundering Act**

(2) (a) A person may be convicted of a money laundering offence under this Act even in the absence of a judicial finding of guilt in respect of the underlying criminal activity, the existence of which 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.

(b) A person can be separately charged and convicted of both a money laundering offence under this Act and of an underlying criminal activity from which the property or the proceeds, in respect of which he is charged with money laundering, derived.

**(b) Observations on the implementation of the article**

179. The reviewers note that under the Money Laundering Act a person can be separately charged and convicted of both a money laundering offence and its predicate crimes, and this was confirmed by the Maltese officials. The provision is legislatively implemented.

**Article 24. Concealment**

*Without prejudice to the provisions of article 23 of this Convention, each State Party shall consider adopting such legislative and other measures as may be necessary to establish as a criminal offence, when committed intentionally after the commission of any of the offences established in accordance with this Convention without having participated in such offences, the concealment or continued retention of property when the person involved knows that such property is the result of any of the offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

180. The following provision is referred to.

## **Prevention of Money Laundering Act**

2. (1) In this Act, unless the context otherwise requires - ...

“money laundering” means - ...

(iv) retention without reasonable excuse of property knowing or suspecting that the same was derived or originated directly or indirectly from criminal activity or from an act or acts of participation in criminal activity;

### **(b) Observations on the implementation of the article**

181. The reviewers note that Malta has criminalized concealment as part of the money laundering offence.

182. Maltese officials confirmed that the cited provision would also encompass persons who conceal criminal proceeds without having participated in the predicate offence, as it is irrelevant under the cited law who the person is concealing the criminal proceeds.

183. The article is legislatively implemented

## **Article 25. Obstruction of justice**

### **Subparagraph (a) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

*(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences established in accordance with this Convention;*

### **(a) Summary of information relevant to reviewing the implementation of the article**

184. Article 111 coupled with article 121(2) are relevant in this context.

## **Criminal Code**

111. (1) Whosoever shall hinder any person from giving the necessary information or evidence in any civil or criminal proceedings, or to or before any competent authority, shall, on conviction, be liable to imprisonment for a term from four months to one year or to a fine (multa).

(2) Whosoever, in any case not otherwise provided for in this Code, shall knowingly suppress, or in any other manner destroy or alter the traces of, or any circumstantial evidence relating to an offence, shall, on conviction, be liable –

(a) if the offence is a crime liable to a punishment not less than that of imprisonment for a term of one year, to the punishment laid down in subarticle (1);

(b) in the case of any other offence, to imprisonment for a term not exceeding three months or to detention or to a fine (ammenda) of not less than two euro and thirty- three cents (2.33).

121(2). Articles 115 to 117, article 119 and article 120(1) and (2) shall apply to and in relation to jurors as they apply to or in relation to a public officer or servant referred to in article 115: Provided that the term "juror" shall in any case include a lay person acting as a member of a collegial body which has the responsibility of deciding on the guilt of an accused person in the framework of a trial within the judicial system of a state other than Malta.

185. Moreover Sub-Title III of Title III of Part II of the Criminal Code is relevant (emphasis added):

### **Criminal Code**

100. In this sub-title "criminal proceedings" includes the inquiry referred to in Sub-title II of Title II of Part I of Book Second of this Code and any proceedings under the Malta Armed Forces Act.

101. (1) Whosoever, with intent to harm any person, shall accuse such person before a competent authority with an offence of which he knows such person to be innocent, shall, for the mere fact of having made the accusation, on conviction, be liable -

(a) to imprisonment for a term from thirteen to eighteen months, if the false accusation be in respect of a crime liable to a punishment higher than the punishment of imprisonment for a term of two years;

(b) to imprisonment for a term from six to nine months, if the false accusation be in respect of a crime liable to a punishment not higher than the punishment of imprisonment for a term of two years, but not liable to the punishments established for contraventions;

(c) to imprisonment for a term from three days to three months, if the false accusation be in respect of any other offence.

(2) Where the crime is committed with intent to extort money or other effects, the punishment shall be increased by one degree.

102. Whosoever, in any civil or criminal proceedings, suborns a witness, a referee, or an interpreter, to give false evidence or to make a false report or a false interpretation, shall, on conviction, be liable -

(a) where the false evidence, report or interpretation has been given or made, to the punishment to which a person giving false evidence would be liable;

(b) where there has only been an attempt of subornation of a witness, a referee, or an interpreter, to the same punishment decreased by one or two degrees;

(c) where the subornation has been committed by the use of **force, threats, intimidation or by promising, offering or giving of an undue advantage to induce false testimony**, to the punishment mentioned in paragraph (a) increased by one or two degrees.

103. Whosoever, in any civil or criminal proceedings, shall cause a false document to be prepared or shall knowingly produce a false document, shall be liable to the same punishment as the forger thereof.

104. (1) Whosoever shall give false evidence in any criminal proceedings for a crime liable to a punishment higher than the punishment of imprisonment for a term of two

years, either against or in favour of the person charged or accused, shall, on conviction, be liable to imprisonment for a term from two to five years.

(2) Where, however, the person accused shall have been sentenced to a punishment higher than that of imprisonment for a term of five years, the witness who shall have given false evidence against such person in the trial, or of whose evidence use shall have been made against such person in the trial, shall be liable to such higher punishment.

105. Whosoever shall give false evidence in any criminal proceedings for an offence not referred to in the last preceding article, either against or in favour of the person charged or accused, shall, on conviction, be liable to imprisonment for a term from nine months to two years.

106. (1) Whosoever shall give false evidence in civil matters, shall, on conviction, be liable to imprisonment for a term from seven months to two years.

(2) The provisions of subarticle (1) shall apply to any person who, being a party to a civil action, shall make a false oath.

(3) Whosoever shall make a false affidavit, whether in Malta or outside Malta, knowing that such affidavit is required or intended for any civil proceedings in Malta, shall, on conviction, be liable to the punishment mentioned in subarticle (1).

107. (1) Any referee who, in any civil or criminal proceedings, shall knowingly certify false facts, or maliciously give a false opinion, shall, on conviction, be liable to the punishment to which a false witness is liable under the preceding articles of this sub-title.

(2) The same punishment shall apply to any person who, when acting as interpreter in any judicial proceedings and upon oath, shall knowingly make a false interpretation.

108. (1) Whosoever, in any other case not referred to in the preceding articles of this sub-title, shall make a false oath before a judge, magistrate or any other officer authorized by law to administer oaths, shall, on conviction, be liable -

(a) to imprisonment for a term from four months to one year, if the oath be required by law, or ordered by a judgment or decree of any court in Malta;

(b) to imprisonment for a term not exceeding three months, if the oath be not so required or ordered.

(2) The provisions of this article shall not apply to promissory oaths.

109. (1) The court shall, in passing sentence against the offender for any crime referred to in this sub-title, expressly award the punishment of general interdiction, as well as interdiction from acting as witness, except in a court of law, or from acting as referee in any case whatsoever.

(2) Such interdiction shall be for a term from five to ten years in the cases referred to in the last preceding article, and for a term from ten to twenty years in any other case referred to in the other preceding articles of this sub-title.

110. (1) Whosoever shall fraudulently cause any fact or circumstance to exist, or to appear to exist, in order that such fact or circumstance may afterwards be proved in evidence against another person, with intent to procure such other person to be unjustly charged with, or convicted of, any offence, shall, on conviction, be liable to the punishment established for a false witness, in terms of the preceding articles of



this sub-title.

(2) Whosoever shall lay before the Executive Police an information regarding an offence knowing that such offence has not been committed, or shall falsely devise the traces of an offence in such a manner that criminal proceedings may be instituted for the ascertainment of such offence, shall, on conviction, be liable to imprisonment for a term not exceeding one year.

**(b) Observations on the implementation of the article**

186. The reviewers are of the view that the provision under review is sporadically implemented, in particular in articles 102 through 108, and 110 of the Criminal Code. Article 111 refers to the act of hindrance and suppression of testimony, while article 102 and the following articles refer to the act of subornation of a witness to give false evidence, the act of producing false evidence or fact, oath and so on.

187. The reviewers note that the specified means, “the use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage” are addressed in article 102(c) (subornation to give false evidence). According to this provision, subornation committed by use of specified means (force, threats, intimidation, bribery or other inducement) is subject to an increased level of punishment. Moreover, subornation to give false evidence (article 102(c)) is equally covered as inducing someone to give a false statement (subornation to make a false report (article 102 introductory part), and article 103). Maltese officials further explained that a person who instigates false testimony of the nature described in articles 104 to 108 could also be liable as an accomplice.

188. The provision is legislatively implemented, although no examples of implementation were provided.

**Subparagraph (b) of article 25**

*Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:*

...

*(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences established in accordance with this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public official.*

**(a) Summary of information relevant to reviewing the implementation of the article**

189. The following articles of the Criminal Code address this requirement.

**Criminal Code**

93. (1) Whosoever reviles or threatens a judge, or the Attorney General, or a magistrate or a juror, while in the exercise of his functions or because of his having exercised his functions, or with intent to intimidate or unlawfully influence him in the exercise of his functions, shall, on conviction, be liable to imprisonment for a term from one to three months and to a fine (multa).

(2) If the object of the vilification is that of damaging or diminishing the reputation of the person against whom it is directed, the punishment shall be imprisonment for a term from three months to one year.

(3) Where the threat is of a crime, the punishment shall be imprisonment for a term from seven to eighteen months, and if the threat be made by means of any writing, whether anonymous or signed in one's own name or in a fictitious name, the punishment shall be increased by one degree, and in either case, the offender may be required to enter into a recognizance as provided in articles 383, 384 and 385, with or without surety, according to circumstances.

94. (1) Whosoever shall cause a bodily harm to any of the persons mentioned in the last preceding article, while in the exercise of his functions or because of his having exercised his functions, or with intent to intimidate or unduly influence him in the exercise of his functions, shall, on conviction, be liable to imprisonment for a term from two to five years.

(2) Where the bodily harm is of such a nature that, if caused to any person other than those mentioned in the last preceding article, it would render the offender liable to a higher punishment, such higher punishment shall be awarded, with an increase of one degree.

95. (1) Whosoever, in any other case not included in the last preceding two articles, shall revile, or threaten, or cause a bodily harm to any person lawfully charged with a public duty, while in the act of discharging his duty or because of his having discharged such duty, or with intent to intimidate or unduly influence him in the discharge of such duty, shall, on conviction, be liable to the punishment established for the vilification, threat, or bodily harm, when not accompanied with the circumstances mentioned in this article, increased by one degree.

(2) No increase, however, shall be made when the punishment is that established for contraventions.

(3) Nor shall an increase be made when the punishment is that of imprisonment for a term not exceeding three months: in such case, however, the court may, in addition, award a fine (multa).

96. Whosoever shall assault or resist by violence or active force not amounting to public violence, any person lawfully charged with a public duty when in the execution of the law or of a lawful order issued by a competent authority, shall, on conviction, be liable -

(a) where the assault or resistance is committed by one or two persons, to imprisonment for a term from four months to one year;

(b) where the assault or resistance is committed by three or more persons, to imprisonment for a term from seven months to two years.

97. If any of the offenders mentioned in the last preceding article shall use any arm proper in the act of the assault or resistance, or shall have previously provided himself with any such arm with the design of aiding such assault or resistance, and shall, on apprehension, be found in possession of any such arm, he shall be liable to imprisonment for a term from nine months to three years.

98. Where any of the crimes referred to in article 96 be accompanied with public violence, the punishment shall be imprisonment for a term from two to five years.

**(b) Observations on the implementation of the article**

190. It was explained that articles 95 and 96 apply to persons exercising a public authority (i.e., judicial or law enforcement officials), and are not hinged to any criminal proceedings.
191. The provision appears to be legislatively implemented in articles 93 through 98 of the Criminal Code.

**Article 26. Liability of legal persons**

- 1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.*
- 2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.*
- 3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.*
- 4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions*

**(a) Summary of information relevant to reviewing the implementation of the article**

192. Malta referred to the following articles of the Criminal Code as well as article 3 of the Prevention of Money Laundering Act.

**Criminal Code**

121D. Where the person found guilty of an offence under this title is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to take decisions on behalf of that body or having authority to exercise control within that body and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this title be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

121E. The provisions of article 248E(4) shall apply mutatis mutandis to any person found guilty of any of the offences under this sub-title.

248E ... (4). Where the person found guilty of any of the offences under this sub-title -  
(a) was at the time of the commission of the offence an employee or otherwise in the service of a body corporate, and

- (b) the commission of the offence was for the benefit, in part or in whole, of that body corporate, and
- (c) the commission of the offence was rendered possible because of the lack of supervision or control by a person referred to in article 121D, the person found guilty as aforesaid shall be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than four thousand and six hundred and fifty-eight euro and seventy-five cents (4,658.75) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

193. Maltese officials informed that this is in addition to fines liable for violations of other resulting offences, as well as any administrative penalties which may be imposed on the body corporate.

### **Prevention of Money Laundering Act**

#### **Article 3**

- (1) Any person committing any act of money laundering shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding two million and three hundred and twenty-nine thousand and three hundred and seventy-three euro and forty cents (2,329,373.40), or to imprisonment for a period not exceeding fourteen years, or to both such fine and imprisonment.
- (2) Where an offence against the provisions of this Act is committed by a body of persons, whether corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that 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.
- (3) In proceedings for an offence of money laundering under this Act the provisions of article 22(1C)(b) of the Dangerous Drugs Ordinance shall *mutatis mutandis* apply.
- (4) Where the person found guilty of an offence of money laundering under this Act is an officer of a body corporate as is referred to in article 121D of the Criminal Code or is a person having a power of representation or having such authority as is referred to in that article and the offence of which that person was found guilty was committed for the benefit, in part or in whole, of that body corporate, the said person shall for the purposes of this Act be deemed to be vested with the legal representation of the same body corporate which shall be liable to the payment of a fine (multa) of not less than one thousand and one hundred and sixty-four euro and sixty-nine cents (1,164.69) and not more than one million and one hundred and sixty-four thousand and six hundred and eighty-six euro and seventy cents (1,164,686.70).

194. Maltese officials further explained during the country visit that the following measures can be imposed administratively:

- (a) the suspension or cancellation of any licence, permit or other authority to engage in any trade, business or other commercial activity;
- (b) the temporary or permanent closure of any establishment which may have been used for the commission of the offence;
- (c) the compulsory winding up of the body corporate.

### **(b) Observations on the implementation of the article**

195. The provisions under review are implemented in the form of articles 121D and 248E of the Criminal Code. **It is noted that if the person representing the body corporate is found guilty, the company is liable to a fine as stated in article 121D.** The body corporate itself is also liable to administrative punishment, including suspension or cancellation of license, permit, etc.
196. Maltese officials confirmed during the country visit that it is necessary to have at least one physical person liable for the legal person to be convicted. Maltese officials further explained that, for a legal person to be convicted, it requires that the liability be attached to a physical person. As such, Malta seeks to include as many persons as possible of the legal persons from e.g. its board of directors in the charge, in order to seek out the physical person to whom the liability can be traced and attributed in the name of the legal person. Hence, when a physical person is found guilty of having committed an offence he is prosecuted separately from the legal entity. However, although the physical person is prosecuted separately, according to the provision, the company cannot be liable if a physical person is not found guilty. This can also be deduced from the very wording of article 121D (“Where the person found guilty of an offence ... [the company] shall be liable.”).
197. A number of potential punishments for the person representing a body corporate and the body corporate themselves are mentioned in articles 121D and 248 E of the Criminal Code (quoted above). It was explained that sanctions against legal persons are determined taking into consideration the profit generated, the gravity of the offence and all other relevant factors. Although no statistics on sanctions imposed against legal persons for corruption were provided, it appears that subparagraph 4 is legislatively implemented. No further case examples were provided in the country visit on the punishment for legal persons.
198. Malta may wish to consider the possibility of establishing the criminal liability of legal persons regardless of whether a natural person has been convicted, although it is noted that legal measures on the administrative responsibility of legal persons are in place that do not have this limitation. In this context, Maltese officials explained that it is inconceivable that a body corporate would have acted without human intervention, and this is what the provision implies.

## **Article 27. Participation and attempt**

### **Paragraphs 1 and 2 of article 27**

- 1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, participation in any capacity such as an accomplice, assistant or instigator in an offence established in accordance with this Convention.*
- 2. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, any attempt to commit an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

199. Further to articles 120(2) and (3) of the Criminal Code (cited above in respect of bribery of domestic public officials), both complicity as well as an attempt to commit any of the foregoing offence constitutes an offence in itself. Articles 41 and 42 further provide for sanctioning of attempts and complicity, respectively.

**Criminal Code**

41. (1) Whosoever with intent to commit a crime shall have manifested such intent by overt acts which are followed by a commencement of the execution of the crime, shall, save as otherwise expressly provided, be liable on conviction -

(a) if the crime was not completed in consequence of some accidental cause independent of the will of the offender, to the punishment established for the completed crime with a decrease of one or two degrees;

(b) if the crime was not completed in consequence of the voluntary determination of the offender not to complete the crime, to the punishment established for the acts committed, if such acts constitute a crime according to law.

(2) An attempt to commit a contravention is not liable to punishment, except in the cases expressly provided for by law.

42. A person shall be deemed to be an accomplice in a crime if he -

(a) commands another to commit the crime; or

(b) instigates the commission of the crime by means of bribes, promises, threats, machinations, or culpable devices, or by abuse of authority or power, or gives instructions for the commission of the crime; or

(c) procures the weapons, instruments or other means used in the commission of the crime, knowing that they are to be so used; or

(d) not being one of the persons mentioned in paragraphs (a), (b) and (c), in any way whatsoever knowingly aids or abets the perpetrator or perpetrators of the crime in the acts by means of which the crime is prepared or completed; or

(e) incites or strengthens the determination of another to commit the crime, or promises to give assistance, aid or reward after the fact.

43. Unless otherwise provided by law, an accomplice in a crime shall be liable to the punishment established for the principal.

**(b) Observations on the implementation of the article**

200. The provisions under review are legislatively implemented in articles 120(2) and (3), 41 and 42 of the Criminal Code.

**Paragraph 3 of article 27**

*3. Each State Party may adopt such legislative and other measures as may be necessary to establish as a criminal offence, in accordance with its domestic law, the preparation for an offence established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

201. Malta indicated that it has partially implemented this provision.
202. The law requires that an overt act should constitute or be followed by a commencement of the execution of the intended crime to make someone guilty of a criminal attempt. Some acts done with the intent to commit a crime therefore do not necessarily give rise to criminal liability.
203. Maltese law states that the mere preparation of a crime does not constitute a punishable attempt. There are some preparatory acts which can lead to crime but do not actually initiate the criminal venture. Therefore, certain preparatory acts cannot be punished unless they constitute any danger or are simply illegal to execute. In other words so long as an overt act does not show that it is directed to a criminal purpose, to decide whether such acts corresponds to commencement of the execution of the crime, it must be seen whether it forms part of those series of acts which constitute the actual commission of the crime.
204. Finally, some preparatory acts cannot be punished as an attempt of the commission of a crime, but certain preparatory acts may comprise an offence in themselves, such as manufacturing or keeping of explosives.

**(b) Observations on the implementation of the article**

205. While the provision under review is optional, it is still noted that there is no existing provision implementing this paragraph. However, with the explanation provided by Malta, it appears that the distinction between attempting and preparing to commit a crime is that acts which are in themselves innocent are of preparatory nature and cannot be considered as execution (and thus not punishable as attempt), as long as do not constitute any danger. Nevertheless, acts which in themselves constitute an offence naturally remain punishable.

**Article 29. Statute of limitations**

*Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence established in accordance with this Convention and establish a longer statute of limitations period or provide for the suspension of the statute of limitations where the alleged offender has evaded the administration of justice.*

**(a) Summary of information relevant to reviewing the implementation of the article**

206. Prescription varies according to the punishment to which the offence is liable. The period of prescription in respect of crimes does not start to run when the offender is unknown. This means that if, through the malicious practices used by the person committing the crime, the offender remains unknown, then the period of prescription starts to run only when the offender becomes known to the investigating or prosecuting authorities. On the other hand if the investigating or prosecuting authorities know that a crime would have been committed and do not act timely to discover the perpetrator thereof, then prescription runs nonetheless.

207. Maltese case law has given this rule a strict interpretation, and so it does not apply where the commission of the crime itself is not known to the complainant or the Prosecuting Authorities.

208. An overview to the more salient corruption-related offences described in this report is given below, together with their corresponding prescriptive period. However, if the conduct is deemed tantamount to a continuous offence, there is an increase in the punishment of up to two degrees and hence longer prescriptive periods apply.

## **Criminal Code**

Art. 115. Any public officer or servant who, in connection with his office or employment, requests, receives or accepts for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage to which he is not entitled, shall, on conviction, be liable to punishment as follows:

(a) where the object of the reward, promise or offer, be to induce the officer or servant to do what he is in duty bound to do, the punishment shall be imprisonment for a term from six months to three years; **PRESCRIPTION OF 5 YEARS**

(b) where the object be to induce the officer or servant to forbear from doing what he is in duty bound to do, the punishment shall, for the mere acceptance of the reward, promise or offer, be imprisonment for a term from nine months to five years; **PRESCRIPTION OF 10 YEARS**

(c) where, besides accepting the reward, promise, or offer, the officer or servant actually fails to do what he is in duty bound to do, the punishment shall be imprisonment for a term from one year to eight years. **PRESCRIPTION OF 10 YEARS**

Art. 116 Where failure of duty consists in passing sentence on defendant or person accused: **PRESCRIPTION OF 15 YEARS**

Art. 118. Any member of the House of Representatives who requests, receives or accepts, for himself or for any other person, any reward or promise or offer of any reward in money or other valuable consideration or of any other advantage given or made with the object of influencing him in his conduct as a member of the House shall, on conviction, be liable to imprisonment for a term from one year to eight years. **PRESCRIPTION OF 10 YEARS**

Art. 120: Punishment for persons bribing public officers or servants.

120. (1) In the cases referred to in articles 115, 116, 117 and 118, the person who bribes the public officer or servant or the member of the House of Representatives, or the person to whom any of the said articles applies in accordance with any provision under this Code or under any other law, as the case may be, shall be deemed to be an accomplice. **PRESCRIPTION OF 5 YEARS**

(2) Where the public officer or servant or other person does not commit the crime, the person who attempts to induce such officer or servant or other person to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to three years. **PRESCRIPTION OF 5 YEARS**

(3) Where the member of the House of Representatives does not commit the crime, the person who attempts to induce such member to commit the crime shall, on conviction, be liable to imprisonment for a term from six months to four years. **PRESCRIPTION OF 5 YEARS**



209. Prescription does not commence to run when the crime is not yet known to the authorities or where the offender has absconded. The following are the provisions of the Criminal Code regulating prescription.

### **Criminal Code**

687. (1) Sentences awarding punishment shall not be barred by prescription notwithstanding the lapse of any time.

(2) The period of prescription in respect of all criminal offences shall be suspended from the moment a charge and, or bill of indictment is served on the person charged or accused until such time as a final and definitive judgment is delivered in the proceedings which commenced as a result of such charge or bill of indictment.

688. Save as otherwise provided by law, criminal action is barred-

(a) by the lapse of twenty years in respect of crimes liable to the punishment of imprisonment for a term of not less than twenty years;

(b) by the lapse of fifteen years in respect of crimes liable to imprisonment for a term of less than twenty but not less than nine years;

(c) by the lapse of ten years in respect of crimes liable to imprisonment for a term of less than nine but not less than four years;

(d) by the lapse of five years in respect of crimes liable to imprisonment for a term of less than four years but not less than one year;

(e) by the lapse of two years in respect of crimes liable to imprisonment for a term of less than one year, or to a fine (multa) or to the punishments established for contraventions;

(f) by the lapse of three months in respect of contraventions, or of verbal insults liable to the punishments established for contraventions.

689. For the purposes of prescription, regard shall be had to the punishment to which the offence is ordinarily liable, independently of any excuse or other particular circumstance by reason of which the offence is, according to law, liable to a lesser punishment; nor shall any regard be had to any increase of punishment by reason of any previous conviction.

690. In computing the period established for prescription, the months and years shall be reckoned according to the ordinary calendar.

691. (1) With regard to a completed offence, the period of prescription shall run from the day on which the offence was completed; with regard to an attempted offence, from the day on which the last act of execution was committed; with regard to a continuous offence, from the day on which the last violation took place; and with regard to a continuing offence from the day on which the continuance ceased.

(2) Where the criminal action cannot be instituted or proceeded with except on a special authorization, or after the determination of any issue upon separate proceedings, the period of prescription shall be suspended, and shall continue from the day on which the authorization is granted or the issue is determined.

692. The period of prescription in respect of crimes shall not commence to run when the offender is unknown.

693. (1) The period of prescription is interrupted by any act of the proceedings served on the party charged or accused in respect of the fact with which he is charged.

(2) The period of prescription is also interrupted by the warrant of arrest or, where there are no grounds for the arrest, by the summons, although the warrant of arrest or the summons shall have had no effect on account of the fact that the party charged or accused had absconded or left Malta.

(3) Where the period of prescription has been interrupted, it shall recommence to run from the day of the interruption.

(4) The interruption of prescription shall operate in regard to all persons who took part in the offence, even though the act of interruption takes place against one person only.

694. Prescription shall be applied ex officio, and it shall not be lawful for the party charged or accused to waive prescription.

**(b) Observations on the implementation of the article**

210. As explained in the Maltese reply, the period of prescription starts to run only when the offender becomes known, regardless of the acts of investigating or prosecuting authorities, to such authorities.

**Article 30. Prosecution, adjudication and sanctions**

**Paragraph 1 of article 30**

*1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

211. The punishments to which the various offences are liable have been described above.

212. Disciplinary proceedings are normally dealt with by the Heads of Department in line with the 1999 Disciplinary Regulations<sup>5</sup>, as described further below.

**(b) Observations on the implementation of the article**

213. It is noted that corruption-related offences are generally punishable by at least one year. Moreover, the established sanctions, as described above, are graded depending on the severity or the gravity of the offence. Public officials with heightened obligations like the police also face potentially higher penalties.

214. Article 21 of the Criminal Code further allows for mitigation of punishment in “special and exceptional” cases. In explaining the discretion of the court and the mitigation measures that can be taken, Maltese officials explained the following:

A court, after hearing police testify as to whether the person charged before it actively cooperated with the police and perhaps also revealed other acts of corruption (or other offences), or taking into account the filing of a guilty plea at an early stage of the

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<sup>5</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8971&l=1r>

proceedings, the character of the person charged, and all other factors which may have a bearing on specific cases (these can be various and not subject to definition, e.g. age, motivation, repentance, etc), is empowered to take this into consideration when delivering sentence. It can either go below the minimum threshold or give a punishment which is closer to the minimum.

215. It was explained during the country visit that judges enjoy fairly broad discretion in determining aggravating and mitigating circumstances at sentencing, and that they could impose sentences in “special and exceptional” circumstances that go beyond the statutory minimum. Members of the judiciary explained that in these cases generally more than one such circumstance would need to be present. There are no sentencing guidelines in Malta, but guidance can be sought from the Court of Criminal Appeals, as precedent is persuasive but non-binding. In this regard, some officials the reviewers met with during the country visit expressed the view that guidelines or common criteria beyond the “special and exceptional” limitation could be useful.

### **Paragraph 2 of article 30**

*2. Each State Party shall take such measures as may be necessary to establish or maintain, in accordance with its legal system and constitutional principles, an appropriate balance between any immunities or jurisdictional privileges accorded to its public officials for the performance of their functions and the possibility, when necessary, of effectively investigating, prosecuting and adjudicating offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

216. Malta provided the following information.

217. As regards Maltese high ranking officials, the following are instances where immunities and/or jurisdictional privileges are granted to Maltese public officials:

President of Malta:

- Immune from criminal prosecution in respect of acts done in the exercise of the functions of his office (article 5(1) of the Criminal Code).
- Immune from civil proceedings for actions done in the performance of his functions (article 742A Code of Organization and Civil Procedure, Cap. 12)
- Can be removed from office through a vote of two thirds majority for misbehaviour (amongst other reasons), as per article 48 (3) of the Maltese Constitution.

Members of the House of Representatives:

- Article 65 (3) and (4) of the Constitution: immunity from institution of civil and criminal proceedings on words spoken or written before the House, as further expounded in the House of Representatives (Privileges and Powers) Act, Cap. 113, and freedom from arrest for any civil debt.

218. Furthermore, there are specific legislative acts that cater specifically for particular agencies, commissions, entities, etc., such as the Public Service Commission Regulations (Subsidiary Legislation Constitution 01), which provide in article 9 that every member of the Commission shall have such protection and privilege in case of any action or suit

brought against him for any act done or omitted to be done in the bona fide execution of his duties as is by law given to the acts done or words spoken by one of the judges in Malta in the exercise of his judicial office. It was explained by Maltese officials that judges enjoy similar inviolability for acts done or words spoken in the exercise of judicial office as Members of Parliament (MPs). It was clarified, however, that there is no exculpation from criminal liability generally for MPs and judges for criminal acts committed by them.

219. As regards shields against any corrupt practices by officials within the public service, the below provisions of law are applicable to public officers:

- The Permanent Commission against Corruption Act, Cap. 326, in article 4 (b) and (c) empowers the Commission to investigate public officials up to the post of Minister and Parliamentary Secretary on corrupt practices. Although the Commission may request the assistance of the Police in the investigations, it does not have further executive powers on its findings, because according to the Act the information gathered is sent to the Minister responsible for Justice.
- Disciplinary Procedure in the Public Service Commission Regulations (Subsidiary Legislation Constitution 03): Article 3(2) empowers the Public Service Commission to take action, request or make directions as it deems necessary against any public officer, apart from the Prime Minister.

220. With regard to high ranking officials falling within the Ministry of Foreign Affairs remit and responsibility (generally Ambassadors), the Ministry would generally adopt the procedures falling within the Public Administration Act, Chapter 497, and Public Service Management Code. Although such officers would enjoy privileges and immunities in the country they are serving, they would still be liable for criminal or civil proceedings in Malta. Ambassadors would be liable for corrupt practices and other misconduct as per the Disciplinary Procedure in the Public Service Commission Regulations and the Permanent Commission against Corruption Act.

**(b) Observations on the implementation of the article**

221. During the country visit officials referred to cases where judges had been convicted of corruption. Officials further confirmed that prosecutors do not enjoy immunities.

222. One remaining concern is that the results of investigations conducted by the Permanent Commission against Corruption are referred only to the Minister of Justice, who determines whether to make the report public in Parliament or refer the matter to the police for further investigation. With such a discretionary power, in any investigations involving the Minister himself he could technically refuse to make matters available to the public or chose not to refer them to the police for any further investigation. As observed under UNCAC article 36, it should be noted that it is only the police who can initiate a prosecution in relation to a matter that has been referred to the Permanent Commission Against Corruption. However, Malta has noted that nothing impedes a complainant from referring the matter to a magistrate, in accordance with the Criminal Code, art. 546 (4A).

## **Criminal Code**

546. “(4A) Where a report, information or complaint is made to a Magistrate under this article by a person other than the Attorney General or a police officer the report, information or complaint shall contain a clear designation of the person suspected to have committed the offence (hereinafter in this article referred to as "the suspect"). The Magistrate shall order the report, information or complaint, as the case may be, to be served upon the suspect allowing him time to reply and upon the lapse of such time shall decide whether to hold the inquest. The Magistrate shall decide to hold the inquest only after having established that the necessary pre-requisites for the holding of such an inquest exist.”

223. The reviewers are of the view that provisions striking an appropriate balance between such immunities or privileges and the effective investigation, prosecution and adjudication of corruption offences are essential in effectively implementing anti-corruption strategies.

## **Paragraph 3 of article 30**

*3. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences established in accordance with this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

224. Once a crime has been committed, although *strictu sensu* prosecution is discretionary in the hands of the Commissioner of Police, the Police investigate and prosecute all offences. Moreover any person can challenge the Police Commissioner for failure to take action, in accordance with article 541(1) of the Criminal Code.

## **Criminal Code**

541. (1) If, in cases where the exercise of the criminal action is vested in the Executive Police, the Executive Police shall, upon any information, report or complaint in regard to the commission of a crime, refuse to institute proceedings, it shall be lawful for the person who laid the information, or made the report or complaint, to make an application to the Court of Magistrates for an order to the Police to institute proceedings; and if, after hearing, where necessary, the evidence tendered by the applicant, and the Commissioner of Police, the court is satisfied that the information, report or complaint is *prima facie* justified, it shall allow the application and shall, through the registrar, not if y the Commissioner of Police of the order given thereon:

225. Article 2 of the Attorney General Ordinance, Cap. 90, is also referred to.

## **Attorney General Ordinance**

2. (1) The Attorney General shall be the chief legal advisor to the Government and shall have the judicial representation of the Government in judicial acts and actions where the law

does not provide that such representation shall vest in some other person or authority.

(2) The Attorney General shall be the Chief Prosecuting Officer in Malta having such powers in connection with criminal proceedings and as may from time to time be by law provided. In the exercise of his powers to institute, undertake or discontinue criminal proceedings the Attorney General is to exercise such powers in his individual judgement.

(3) Where under any law the Attorney General is to act or exercise any power in his individual judgment he shall not be subject to the direction or control of any other person or authority.

(4) The Officers of the Attorney General when acting under the direction of the Attorney General in anything in which the Attorney General is to act in his own individual judgment, shall have the same protection at law as if the action done or omitted to be done were an act done or omitted to be done by the Attorney General.

226. As noted under UNCAC article 36 below, the Attorney General also has the power, in his individual judgment and if he is satisfied of the advisability so to do, to issue a certificate in writing exempting any person mentioned in the certificate from any criminal proceedings on condition that such person gives evidence according to law of all the facts known to him relating to any corrupt practice or any offence connected therewith before the Commission and, or, any court of criminal jurisdiction. On the issue of such a certificate and the giving of evidence in accordance therewith by the person to whom it refers, no proceedings before a court of criminal jurisdiction may be taken or continued against him in connection with such corrupt practice or any offence connected therewith. Such a certificate may be granted upon the request of the Commission, or without such a request whenever the necessity so to do is otherwise brought to the notice of the Attorney General

227. According to Sub-Article (5) of Article 91, read together with Sub-article (2) of article 97 of the Constitution the Attorney General:

... shall not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour.

228. Further to what is said under UNCAC article 36 below describing the role and functions of the Attorney General and the Courts, Malta provided an overview of law enforcement and criminal proceedings. This also addresses law enforcement cooperation and the implementation of UNCAC article 38.

229. The law enforcement agency vested with general law enforcement authority is the Police. The Customs authorities and the Armed Forces of Malta are vested with limited law enforcement powers in certain circumstances and with limited scope.

230. The norm is that offences liable to pecuniary punishments or to the punishment of imprisonment not exceeding six months are dealt with, at first instance, exclusively by the Police who investigate and institute criminal proceedings before the Court of Magistrates as court of criminal judicature which after summarily hearing the evidence passes sentence. Should the Police desire to appeal they file a note requesting that the record be referred to the Attorney General (in this context acting as the Public Prosecutor) for

consideration. The Attorney General (AG) will then decide whether to appeal the sentence or not. The possible grounds of appeal are usually limited and concern points of law.

231. In respect of offences liable to the punishment of imprisonment exceeding six months a different procedure usually applies. The Police carry out preliminary enquiries and if there are material traces to be secured or preserved a Magistrate on duty is informed who opens an investigation. The advice of the Attorney General may be sought both by the Police and the investigating Magistrate as to the best method to conduct the investigation and to preserve the evidence. At the end of his investigation the Magistrate draws up a proces verbal with his findings. The proces verbal is referred to the AG who may refer it back to the Magistrate should he require any further investigation.
232. If a suspect is identified he is charged before the Court of Magistrates as court of criminal inquiry. In respect of offences liable to a punishment not exceeding four years the AG may give his consent for summary proceedings before the same court but as court of criminal judicature in which case the consent of the person charged is also required.
233. As court of criminal inquiry the Court of Magistrates has the function to collect all the evidence in support of the charges in the presence of the person charged who has the right to be assisted by legal counsel. The Court must then decide whether or not there are sufficient grounds (on a prima facie basis) for the person charged to be committed to stand trial on indictment. If the Court so decides the record is transmitted to the Attorney General to file the indictment but before filing the indictment the AG may require the Court to collect further evidence. Where the offence is liable to a punishment not exceeding ten years imprisonment the Attorney General may also refer back the case to the Court of Magistrates as court of criminal judicature to decide the case summarily if the person charged agrees. The Attorney General may also issue a nolle prosequi.
234. If the Court decides that there do not exist sufficient grounds to commit the person charged to trial on indictment the Court will give its decision discharging the person charged and transmit the record to the AG. The AG may, with the agreement of a Judge who does not normally sit in the Criminal Court, order the re-arrest of the person discharged and continue with the proceedings and file an indictment.
235. The indictment is filed in the Criminal Court. Before this court it is the AG who is the prosecutor. The AG has limited grounds of appeal in respect of preliminary pleas. He has no right of appeal from a decision (usually by the Court sitting with a jury) of acquittal or from sentence in the case of a conviction.
236. The Police is always the authority which institutes at first instance the criminal action whether the offence is one which is triable summarily before the Court of Magistrates or one triable on indictment before the Criminal Court. The Police may seek the AG's advice before deciding whether to take criminal proceedings with respect to any offence. The Police are not legally obliged to abide by the AG's advice but do so as a matter of course because of the evident weight which the advice of the AG carries.
237. Under the Maltese Criminal Code criminal offences are classified as crimes, being the more serious criminal offences, and as contraventions, being the less serious offences. There is no rule of law which obliges the Police to prosecute every criminal offence and in this sense the Maltese national criminal system can be said to be in principle

discretionary. However, with respect to crimes, the Criminal Code lays down a procedure whereby if the Police refuse to institute criminal proceedings upon a report, information or complaint the person who laid the information, or made the report or complaint may make an application to the Court of Magistrates for an order to the Police to institute proceedings. If, after hearing, where necessary, the evidence tendered by the applicant, and the Commissioner of Police, the court is satisfied that the information, report or complaint is *prima facie* justified, it allows the application and through the registrar, notifies the Commissioner of Police of the order given.

238. Following the institution of criminal proceedings the Attorney General may, before an indictment issue a *nolle prosequi* whereupon the proceedings are brought to an end. The Attorney General may also withdraw an indictment already filed. In all cases the Attorney General is bound by law to make a report to the President of Malta stating the reasons for his action. Where a person charged has been discharged for want of presentation of an indictment that person shall remain liable to fresh proceedings whenever fresh evidence becomes available.

239. Notwithstanding the lack of filing of an indictment or the withdrawal thereof any interested person may file civil suit against the person discharged to have him declared responsible for the commission of a criminal offence and to have him ordered to pay damages arising there from because every criminal offence gives rise to a civil action besides the criminal action.

**(b) Observations on the implementation of the article**

240. Under Maltese law, the Attorney General, who exercises the functions of Prosecutor General, is the prosecutor before the Superior Courts. The Police conduct prosecutions before the lower courts in cases carrying a punishment of not more than 4 years imprisonment. In cases not carrying more than 10 years imprisonment, if both the Attorney General and accused agree, the case can remain before the lower courts and hence prosecution is carried out by the Police.

241. It was explained that there are no guidelines regarding the use of the discretionary powers of prosecution. Once sufficient evidence exists to warrant a conviction, the Police prosecute. The right to challenge the Police's decision not to prosecute is a right not simply given to the complainant but to any person who would have laid the information or made a report on facts which in his opinion would warrant an investigation and prosecution.

242. It was also confirmed that while the police can prosecute before a magistrate, only the Attorney General has prosecutorial powers before the Criminal Court (presided by a judge and/or jury) and before the Courts of Criminal Appeals.

243. The reviewers positively noted that independence of the prosecution is granted in the Constitution and that aspects of the removal of the Attorney General are addressed. Malta regulates prosecutorial discretion in line with the Convention.

**Paragraph 4 of article 30**



4. *In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

244. Malta cited the following provision.

**Criminal Code**

575. (1) Saving the provisions of article 574(2), in the case of -

(i) a person accused of any crime against the safety of the Government, or  
(ii) a person accused of any crime liable to the punishment of imprisonment for life, the court may grant bail, only if, after taking into consideration all the circumstances of the case, the nature and seriousness of the offence, the character, antecedents, associations and community ties of the accused, as well as any other matter which appears to be relevant, it is satisfied that there is no danger that the accused if released on bail -

(a) will not appear when ordered by the authority specified in the bail bond; or  
(b) will abscond or leave Malta; or  
(c) will not observe any of the conditions which the court would consider proper to impose in its decree granting bail; or  
(d) will interfere or attempt to interfere with witnesses or otherwise obstruct or attempt to obstruct the course of justice in relation to himself or to any other person; or  
(e) will commit any other offence.

(2) At any stage other than that referred to in article 574A, the demand for bail or any demand for the variation of the conditions of bail after bail has been granted, shall be made by an application, a copy whereof shall be communicated to the Attorney General on the same day, whenever it is made by -

(a) persons accused of fraudulent bankruptcy;  
(b) persons accused of any crime under Sub-title III of Title III of Part II of Book First of this Code, if such crime is punishable with more than one year's imprisonment;  
(c) persons accused of any crime punishable with more than three years' imprisonment.

(3) The Attorney General may, within the next working day, by a note, oppose the application, stating the reasons for his opposition.

(4) Bail shall always be granted in the case referred to in the proviso to article 432(1).

(4A) Where the Court of Magistrates, whether as a court of criminal judicature or as a court of criminal inquiry, grants bail to the person in custody or subsequently amends the bail conditions, the decision of the court to that effect shall be served on the Attorney General by not later than the next working day and the Attorney General may apply to the Criminal Court to obtain the rearrest and continued detention of the person so released or to amend the conditions, including the amount of bail, that may have been determined by the Court of Magistrates.

**(b) Observations on the implementation of the article**

245. Bail and its conditions are stated in article 575 of the Criminal Code. No strict conditions are provided for corruption offences. It was explained that the legal provisions on bail applies to all offences. The need to ensure the offender's presence at trial and the risk of absconding are but two of the factors a court takes into consideration when deciding whether to grant bail (article 575(1)(ii)(a) and (b).

### **Paragraph 5 of article 30**

*5. Each State Party shall take into account the gravity of the offences concerned when considering the eventuality of early release or parole of persons convicted of such offences.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

246. The issue is regulated by the Restorative Justice Act, Chapter 516.

#### **Restorative Justice Act**

10. (1) Subject to the provisions of this Act, parole may only be granted to prisoners serving a sentence of imprisonment of a term of one year or more, irrespective of whether such term results from a single sentence or from a number of sentences that amount to an aggregate of at least one year.

(2) Parole shall also apply with respect to prisoners who have previously served and concluded a prison sentence.

(3) Notwithstanding the provisions of sub-articles (1) and (2) prisoners falling under the following categories shall not be eligible for parole:

(a) prisoners sentenced to a term of imprisonment of less than one year;

(b) detainees under the provisions of the Immigration Act;

(c) prisoners subject to extradition proceedings;

(d) third-country nationals who are to be deported at the end of their sentence;

(e) prisoners who are being detained for subverting or attempting to subvert the Government of Malta, or conspiring against the State as stipulated in article 56(1) and (2), and in article 57(1) and (2) of the Criminal Code;

(f) prisoners sentenced for acts of terrorism, funding terrorism, and ancillary offences as stipulated in article 328A to article 328M of the Criminal Code; and

(g) prisoners sentenced to life imprisonment.

11. (1) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of one year and not exceeding two years shall be calculated at thirty-three per cent of his term of imprisonment.

(2) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of more than two years and not exceeding seven years of imprisonment shall be calculated at fifty per cent of his term of imprisonment.

(3) Subject to the provisions of this Act, the parole eligibility date of a prisoner serving a sentence of imprisonment for a term of more than seven years of imprisonment shall be calculated at fifty eight per cent of his term of imprisonment.

(4) Notwithstanding the provisions of sub-articles (1), (2) and (3), the Court may include in its judgment an earlier parole eligibility date in the case of offenders who have not yet attained the age of sixteen years at the time of the commission of the offence, or the Court may, taking into consideration the particular circumstances of the

case, deem it to be justifiable that a different date be established in order for the offender to reform himself better.

(5) Notwithstanding the provisions of sub-article (1), the parole eligibility date of a person sentenced to more than one sentence of imprisonment, following the coming into force of this Act, shall be calculated at fifty per cent of his total term of imprisonment.

(6) Notwithstanding the provisions of sub-articles (1), (2), (3) and (4) in cases of breach of prison regulations, the parole eligibility date may be pushed back accordingly as a disciplinary measure taken by the Remission Board.

(7) The computation of the terms referred to in sub-articles (1), (2) and (3) shall be made in accordance with article 22 of the Criminal Code.

(8) Notwithstanding the provisions of sub-articles (1) to (5), prisoners eligible for parole may, on the grounds of terminal illness, apply to the Parole Board to be considered for parole before reaching the parole eligibility date:

Provided that the Parole Board shall first acquire the prisoner's authorisation in writing to interview the medical specialist responsible for the prisoner's care, regarding the prisoner's health condition before the Parole Board may take a decision to grant parole to the prisoner.

(9) The parole eligibility date shall be calculated exclusively on the basis of the prison term or aggregate of prison terms of any relevant court sentences.

(10) The payment or otherwise of court fines shall be taken into consideration by the Offender Assessment Board, the Parole Board and the Remission Board in their deliberations.

247. The process leading to a prison inmate's release or otherwise on parole is dependent on various factors, namely:

(a) Whether the inmate has followed (on a voluntary basis) the care plan prepared for him/her by the prison Care & Reintegration Unit following consultations with the various professional service providers (e.g., psychologists, education coordinators, social workers, etc.);

(b) When an application for parole is made by an eligible prison inmate, there are three separate assessments and reports carried out that are then forwarded to the Parole Board in order to assist it to reach a decision whether to grant parole or not and, if in the affirmative, under what conditions. These are the recommendations of the Offender Assessment Board (OAB), the report of the Parole Unit (PU) within the Department of Probation & Parole (DPP) and the report of the Victim Support Unit (VSU) also within the DPP.

248. The Parole Board, therefore, is guided by:

(a) the inmate's activity within prison, i.e. whether he had followed the Care Plan prepared for him/her, whether he had undertaken further initiatives on his own steam, such as educational or vocational training, as well as his overall behaviour during his prison term. These are reflected in the report of the OAB that should also include any recommended rehabilitative measures should he be granted Parole;

(b) the possibility of the prisoner's reintegration into society should he be granted parole, the prisoner's social condition and any problem areas (such as housing problems) that the

inmate might face should he be granted parole. These are reflected in the report drawn up the Parole Unit; and

(c) the perspective of the victim, including the victim's interests, and that the victim is informed that his/her offender had applied for parole.

249. The above measures provide a holistic picture to the Parole Board for it to be able to reach a decision whether to grant parole or not. If the Parole Board deems fit, it can also hear submissions by way of clarification or further information before reaching a decision.

**(b) Observations on the implementation of the article**

250. Parole is regulated by the Restorative Justice Act. According to the Act, parole may only be granted to prisoners serving a sentence of imprisonment of a term of one year or more (article 10, paragraph 1). This provision, the exclusions from eligibility for parole (paragraph 3) and the manner in which parole is calculated (article 11), are based on considerations that take into account the gravity of the offence. The reviewers are of the view that the provision is legislatively implemented.

**Paragraph 6 of article 30**

*6. Each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures through which a public official accused of an offence established in accordance with this Convention may, where appropriate, be removed, suspended or reassigned by the appropriate authority, bearing in mind respect for the principle of the presumption of innocence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

251. Disciplinary proceedings are normally dealt with by the Heads of Department in line with the 1999 Disciplinary Regulations. The Public Service Commission has the duty to ensure that disciplinary action against public officers is fair, prompt and effective; it remains directly responsible for proceedings in cases which could lead to dismissal of the public official. Disciplinary enquiries are conducted by the Head of Department.

252. Where a Head of Department becomes aware that a public official may have committed a crime, he/she is obliged to refer the matter to the police for investigation. A public official who is charged with a criminal offence may then be suspended on half pay, but no further disciplinary proceedings may be taken against him/her until the criminal case has been terminated.

253. However, if the public official is held criminally liable, the Public Service Commission may recommend to the Prime Minister that disciplinary sanctions, including dismissal, apply.

**(b) Observations on the implementation of the article**

254. Procedures are in place in Malta to deal with public officials accused of criminal offences. The Heads of Department are charged with referring such cases for criminal

investigation and the process is also overseen by the Public Service Commission.

255. The reviewers note that, while suspension (with half pay pending investigation and proceedings) of public officials charged with a criminal offence is provided for in the 1999 Disciplinary Regulations (article 14), their removal or reassignment pending a conviction is not addressed. Dismissal is provided only for convicted officials. Nonetheless, the provision under review is legislatively implemented.

### **Subparagraph 7 of article 30**

*7. Where warranted by the gravity of the offence, each State Party, to the extent consistent with the fundamental principles of its legal system, shall consider establishing procedures for the disqualification, by court order or any other appropriate means, for a period of time determined by its domestic law, of persons convicted of offences established in accordance with this Convention from:*

*(a) Holding public office;*

*(b) Holding office in an enterprise owned in whole or in part by the State.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

256. Malta cited the following provisions.

#### **Criminal Code**

109. (1) The court shall, in passing sentence against the offender for any crime referred to in this sub-title, expressly award the punishment of general interdiction, as well as interdiction from acting as witness, except in a court of law, or from acting as referee in any case whatsoever.

(2) Such interdiction shall be for a term from five to ten years in the cases referred to in the last preceding article, and for a term from ten to twenty years in any other case referred to in the other preceding articles of this sub-title.

119. The punishment of perpetual general interdiction or perpetual special interdiction, or both, as the case may be, shall be added to the punishments established in the preceding articles of this sub-title when the maximum of such punishments exceeds two years' imprisonment; when the maximum of the said punishments does not exceed two years' imprisonment, then the punishment of temporary general interdiction or temporary special interdiction, or both, as the case may be, shall be added.

124. Any public officer or servant who shall overtly or covertly or through another person take any private interest in any adjudication, contract, or administration, whether he holds wholly or in part the direction or superintendence thereof, or held such direction or superintendence at the time when such adjudication, contract, or administration commenced, shall, on conviction, be liable to imprisonment for a term from one to six months and to perpetual interdiction from his public office or employment.

125. Any public officer or servant who takes any private interest in any matter in respect of which he is entrusted with the issuing of orders, the winding up of accounts, the

making of arrangements or payments of any sort, shall, on conviction, be liable to the punishments laid down in the last preceding article.

126. Whenever, in the cases referred to in the last two preceding articles, any loss is fraudulently caused to the administration to which the matter belongs, the punishment shall be imprisonment for a term from eighteen months to three years, with interdiction as provided in those articles.

127. Any public officer or servant who for his own private gain or for the benefit of another person or entity, misapplies or purloins any money, whether belonging to the Government or to private parties, credit securities or documents, bonds, instruments, or movable property, entrusted to him by virtue of his office or employment, shall, on conviction, be liable to imprisonment for a term from two to six years, and to perpetual general interdiction.

150. Saving the cases of negligence referred to in articles 142 and 144, any public officer or servant who shall, in the execution of his office, commits or connives at any of the crimes mentioned in the preceding articles of this sub-title, shall, on conviction, be liable to the punishment established for the crime, increased by one degree, and to the punishment of perpetual general interdiction.

190. In all crimes of forgery when committed by public officers or servants, the punishment of perpetual general interdiction shall always be added to the punishment laid down for the crime.

257. Regarding the implications of a punishment of general and special interdiction, article 10 of the Criminal Code provides:

### **Criminal Code**

10. (1) Interdiction is either general or special.

(2) General interdiction disqualifies the person sentenced for any public office or employment, generally.

(3) Special interdiction disqualifies the person sentenced from holding some particular public office or employment, or from the exercise of a particular profession, art, trade, or right, according to the law in each particular case.

(4) Either kind of interdiction may be for life or for a stated time.

(5) Temporary interdiction shall be for a time not exceeding five years, except where the law especially prescribes a longer time.

(6) Interdiction, whether for life or for a stated time, may, upon the application of the person sentenced to such punishment and on good grounds being shown to the satisfaction of the court by which the sentence was awarded, be discontinued at any time by order of the said court.

### **(b) Observations on the implementation of the article**

258. The provision is legislatively implemented in articles 119, 124 through 127, 150 and 190 of the Criminal Code.

259. It was also noted that Sub-Article 2 includes the disqualification of holding office in

a State-owned enterprise.

### **Paragraph 8 of article 30**

*8. Paragraph 1 of this article shall be without prejudice to the exercise of disciplinary powers by the competent authorities against civil servants.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

260. The information provided in the preceding paragraphs of the article is referred to.

261. Disciplinary proceedings and criminal proceedings are separate and distinct. An administrative penalty rarely applies in criminal proceedings except in cases where damages have been caused to third parties or in the case of legal persons. This would not be in lieu of the criminal punishment, which would still apply. More detail is provided in the Disciplinary Procedure in the Public Service Commission Regulations (cited above).

#### **(b) Observations on the implementation of the article**

262. Disciplinary proceedings are dealt by the heads of department and it is also overseen by the Public Service Commission.

263. As for the disciplinary proceedings, as provided for in the 1999 Disciplinary Regulations, the reviewers note with compliment that Malta has designated a body, namely the Public Service Commission, to ensure that disciplinary enquiries, conducted by Head of Department, against public officers are fair, prompt and effective. It is also noted that for public officials, when criminally liable, sanctions, including dismissal, may be decided by the Prime Minister upon recommendation by the Public Service Commission.

264. No examples of the implementation of the provision under review were available, as it was explained that Government disciplinary proceedings are not public and are only accessible to the parties.

### **Paragraph 10 of article 30**

*10. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

265. There is no law which specifically regulates this aspect, apart from the Restorative Justice Act referenced earlier.

266. Maltese officials explained that current practice is oriented towards the reintegration of persons convicted of criminal offences into society. It is for this purpose that prisoners are given a number of opportunities to follow courses and training whilst availing themselves of special prison leave once their sentence is nearing its end.

**(b) Observations on the implementation of the article**

267. The reviewers note with compliment that convicted persons are given a number of opportunities to provide for their future reintegration into the society.
268. Malta's explanations related to the practice, and the reviewers note that there is no legislation related to the matter.

**Article 31. Freezing, seizure and confiscation**

**Subparagraph 1 (a) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

*(a) Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*

**(a) Summary of information relevant to reviewing the implementation of the article**

269. The confiscation of proceeds of crime is catered for under articles 23B and 23C of the Criminal Code and articles 3(5) and 7 of the Prevention of Money Laundering Act (quoted below). Similar provisions exist in the Dangerous Drugs Ordinance.
270. Forfeiture of the proceeds of a relevant offence, or of such property the value of which corresponds to the value of the proceeds, is mandatory under article 23B of the Criminal Code. Furthermore, where the proceeds of the offence have been dissipated or where it is not possible to identify and forfeit those proceeds or to order the forfeiture of property the value of which corresponds to the value of the proceeds, then the court shall impose a fine equivalent to the amount of the proceeds of the offence. If such fine is not paid it is converted to a term of imprisonment according to law.
271. Article 3(5) of the Prevention of Money Laundering Act, similarly, provides for the forfeiture of the proceeds or such property corresponding to the value of the proceeds. The confiscation order is again mandatory upon the court.
272. When the property ordered to be confiscated is movable property exhibited before the court, the Registrar is the custodian and, as such, confiscates same through judicial sale by auction. In cases where the movable property is not exhibited before the court as part of the judicial proceedings, an officer acting in representation of the Government will claim and obtain possession of the property forfeited. Otherwise the court judgment is executed by court marshals, the said property is deposited with the Registrar, and the provisions of the Criminal Code applicable to property in the custody of the Registrar will apply. In the case of immovable property, the Court judgment vests Government with a title of ownership over that property, and thus Government may take possession of same by occupying the property.
273. Confiscation is not an alternative to the applicable sanction but is imposed in



addition thereto as a means to deprive the offender of the benefit of the crime. Forfeiture in favour of the government takes effect on the proceeds of or of such property the value of which corresponds to the value of such proceeds.

274. In terms of the Criminal Code, forfeiture of the instrumentalities of a crime is catered for under article 23 whilst in terms of article 23B provision is made for the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by a body corporate for whose benefit the offence may have been committed in terms of article 121D of the Criminal Code.
275. No provision is made for the deduction of expenses in the production of the proceeds. Under articles 12-13 of the Prevention of Money Laundering Act, the Minister for Finance (if necessary also acting in consultation with the Minister responsible for Justice) has the power to make rules and regulations for the better carrying out of provisions of the said Act, whilst under article 628A of the Criminal Code, the Minister of Justice has a similar power with regards to arrangements, treaties and conventions having as their goal the Mutual Assistance in Criminal Matters.
276. A decision by the court ordering the enforcement of a foreign confiscation order shall have the effect of forfeiting in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which had been ordered in the foreign confiscation order subject to any directions which the Government of Malta may give providing for the further disposal of the same things and property so forfeited. This provision is used in order to allow for the sharing of confiscated assets between States.
277. Article 435D of the Criminal Code, which renders applicable article 24D of the Dangerous Drugs Ordinance, regulates the issue. When Malta receives a request for the enforcement of a confiscation order made by a court outside Malta the Attorney General submits the confiscation order to the competent court demanding the enforcement of the order. For this purpose a “confiscation order” is widely defined as including any judgment, decision, declaration, or other order made by a court whether of criminal or civil jurisdiction providing or purporting to provide for the confiscation or forfeiture of property. A copy of the relevant foreign confiscation order is attached to the application. The application is served on the person whose property the foreign confiscation order purports to confiscate and who is allowed to respond. The court is enjoined to set down the application for hearing at an early date not being later than thirty days from the date of filing of the application. The court shall not order the enforcement of the foreign confiscation order if certain circumstances are verified viz. if the respondent had not been notified of the proceedings which led to the making of the order, if the order was obtained by fraud, if the order contains dispositions contrary to the public policy or internal public law of Malta, if the order contains contradictory dispositions. The decision ordering the enforcement of the foreign confiscation order vests the title to the confiscated property in the Government of Malta subject to any directions which the Government may give providing for the further disposal of the property forfeited. Provisional injunctions may be obtained by the Attorney General pending the final outcome of the proceedings.

## **Criminal Code**

Article 23B (This article deals with *forfeiture*).

23B. (1) Without prejudice to the provisions of article 23 the court shall, in addition to any punishment to which the person convicted of a relevant offence may be sentenced and in addition to any penalty to which a body corporate may become liable under the provisions of article 121D, order the forfeiture in favour of the Government of the proceeds of the offence or of such property the value of which corresponds to the value of such proceeds whether such proceeds have been received by the person found guilty or by the body corporate referred to in the said article 121D.

(1A) Any property, whether in Malta or outside Malta, of or in the possession or under the control of any person convicted of a relevant offence or in the possession or under the control of a body corporate as may become liable under the provisions of article 121D shall, unless proved to the contrary, be deemed to be derived from the relevant offence and be liable to confiscation or forfeiture by the court.

(1B) The provisions of article 7 of the Act<sup>6</sup> shall mutatis mutandis apply so however that any reference in that article to "article 3(3)" shall be construed as a reference to subarticle (1A) of this article and any reference in the said article 7 to "an offence under article 3" shall be construed as a reference to a relevant offence.

(2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, to the payment of a fine (multa) which is the equivalent of the amount of the proceeds of the offence. The said fine may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

(3) For the purposes of this article:

"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;

"property" means assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in, such assets;

"relevant offence" and "the Act" have the same meaning assigned to them by article 23A(1).

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply mutatis mutandis in the circumstances mentioned in those paragraphs.

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<sup>6</sup> [Art 7 of Chap 373 provides for the court proceedings to challenge an order of forfeiture: It provides the applicable procedure when an action is instituted with the aim of obtaining a declaration that any or part of the property forfeited is not proceeds of the offence]

23D. (1) Where the court makes any order as is mentioned in articles 23A to 23C, both articles inclusive, it shall order the Registrar to conduct inquiries to trace and ascertain the whereabouts of any moneys or other property, due or pertaining to or under the control of the person charged or accused or convicted, as the case may be:

Provided that for the purposes of this subarticle "property" and "proceeds" shall have the meaning assigned to them respectively by article 23B(3).

(2) Whosoever is required by the Registrar to provide information for the purpose of subarticle (1) shall comply with the demand within thirty days from the day of receipt of the demand by registered post.

**(b) Observations on the implementation of the article**

278. Concerning the measures and processes for confiscating property corresponding to the value of the proceeds of crime (article 23B), Malta explained that this would be done by the Court after taking into account the value of the illicit proceeds. It is a decision given upon a finding of guilt and forms an integral part of the judgment on conviction. Confiscation is ordered by the Court and property devolves in favour of Government. The Court Registrar issues notifications to relevant entities informing them that the property/monies in question are now owned by Government. Immovable property is registered in the Government's name in the Public Registry.

**Subparagraph 1 (b) of article 31**

*1. Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*

...

*(b) Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

279. Malta cited the following measure.

**Criminal Code**

23. (1) The forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.

(2) In case of contraventions, such forfeiture shall only take place in cases in which it is expressly stated in the law.

(3) In the case of things the manufacture, use, carrying, keeping or sale whereof constitutes an offence, the forfeiture thereof may be ordered by the court even though there has not been a conviction and although such things do not belong to the accused.

(4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking

into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

**(b) Observations on the implementation of the article**

280. Article 23 of the Criminal Code provides for the forfeiture of instruments used or intended to be used in the commission of any crime and of any property obtained by such crime, as a consequence of the punishment for the crime established by law.

281. The article also states the possibility of extending MLA to a foreign authority for the return of an article obtained by criminal means to its rightful owner.

282. It was explained that confiscation is ordered by the Court and the Registrar gives effect to that court order.

**Paragraph 2 of article 31**

*2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

283. The interim measures which find application in Maltese law are the Investigation Order, the Attachment Order (which is the term used for the measure having as its ultimate goal the freezing or seizure of proceeds of crime) and the Freezing Order. These measures are available under three main legislative enactments, namely:

- The Prevention of Money Laundering Act, Chapter 373.
- The Dangerous Drugs Ordinance, Chapter 101.
- The Criminal Code, Chapter 9 (following Act III of 2002 these measures apply with regard to offences carrying over a maximum of 1 year imprisonment, hereafter referred to as “relevant offences”).

**A. The Investigation Order**

The investigation order enables access to material which is likely to be of substantial value to an investigation. This order enables the police to override all confidentiality and professional secrecy provisions (barring privileged communications covered by lawyer-client confidentiality and those between a penitent and his confessor). The order is issued by the Criminal Court upon an application by the Attorney General, who upon a request to that effect by the police (although it is often the case that the Attorney General himself will initiate an investigation) deems that the issuance of such an order is warranted. The Criminal Court will issue such orders if it concurs with the Attorney General that there is reasonable cause to suspect money laundering and that the material to which the application applies is likely to be of substantial value to the investigation for the purpose for which the application is made. This order will not be served on the suspects for obvious reasons (Article 435A, Criminal Code; Article 4 Prevention of

Money Laundering Act; Article 24A Dangerous Drugs Ordinance).

### B. The Attachment Order

An attachment order may be issued upon an application of the Attorney General to that effect. Upon being issued, the order attaches in the hands of third parties (garnishees) property of every kind, nature and description, whether movable or immovable, tangible or intangible including negotiable instruments, cash or currency deposits or accounts with any bank, credit or other institution, land or any interest therein. This order is served on both garnishees and the suspect and is valid for a period of 30 days, which can be extended further for another 30 days if new evidence comes to light. Once the suspect is away from Malta, the period is held in abeyance.

When an investigation or an attachment order has been made or applied for, whosoever knowing or suspecting that such an order has been made or applied for makes a disclosure likely to prejudice the effectiveness of the said order or any investigation connected with it, shall be guilty of an offence which carries a punishment of imprisonment of up to 12 months and/or a fine of 12,000 Euros (Article 435A, Criminal Code; Article 4 Prevention of Money Laundering Act).

### C. The Freezing Order

Once a suspect is arraigned upon the prosecution's request all property owned or under the suspect's control and possession is frozen and this freezing order will remain in force until final judgement is pronounced. A finding of guilt may lead to the forfeiture of the property (Article 23B, Criminal Code; Article 3(5) Prevention of Money Laundering Act).

284. In terms of article 6 of the Prevention of Money Laundering Act, if any person acts in contravention of a freezing order (i.e. issued once a person/s is/are arraigned under that Act) he shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment for a period not exceeding twelve months, or to both such fine and imprisonment, and any act so made in contravention of such court order shall be null and without effect at law. Any property transferred as a result of such act would then be liable to confiscation. The same provision applies to persons charged with a relevant offence under the Criminal Code. Moreover if the said transfer was used to conceal or disguise the origin of that property in such a manner that the transfer qualifies as a money laundering act, then the transferees if proven to have acted knowingly, may also be found guilty of money laundering.

285. The Prevention of Money Laundering Act as well as the Criminal Code, provide for the application of Monitoring Orders. Article 435AA provides that where the Attorney General has reasonable cause to suspect that a person is guilty of a relevant offence (hereinafter referred to as "the suspect") he may apply to the Criminal Court for an order (hereinafter referred to as a "monitoring order") requiring a bank to monitor for a specified period the banking operations being carried out through one or more accounts of the suspect. The bank shall, on the demand of the Attorney General, communicate to the person or authority indicated by the Attorney General the information resulting from the monitoring. Where the request is one made by a foreign judicial administrative or

prosecuting authority, for the purpose of monitoring the banking operations being carried out through one or more accounts of a suspect, the Attorney General may apply to the Criminal Court for a monitoring order and the provisions of article 435AA shall apply *mutatis mutandis*.

286. Moreover the Financial Intelligence Analysis Unit has an important function when the crime involved is one of financing of terrorism or money laundering. Article 28 of the Prevention of Money Laundering Act states that where any subject person is aware or suspects that a transaction which is to be executed may be linked to money laundering or funding of terrorism that subject person shall inform the Unit before executing the transaction giving all the information concerning the transaction including the period within which it is to be executed. Such information may be given by telephone but shall be forthwith confirmed by fax or by any other written means and the Unit shall promptly acknowledge the receipt of the information. Where the matter is serious or urgent and it considers such action necessary, the Unit may oppose the execution of a transaction before the expiration of the period referred to above and notice of such opposition shall be immediately notified by fax or by any other written means. The opposition by the Unit shall halt the execution of the transaction for twenty-four hours from the time of the notification referred to above unless the Unit shall authorise earlier, by fax or otherwise in writing, the execution of the transaction. Where within the said period no opposition has been made by the Unit the subject person concerned may proceed to the execution of the transaction in question and where opposition has been made as provided aforesaid the subject person concerned may proceed to the execution of the transaction in question upon the lapse of the said period unless in the meantime an attachment order has been served on the subject person.
287. The following articles of the Criminal Code deal with freezing and confiscation. A freezing order has the effect of attaching/seizing in the hands of garnishees all assets and property pertaining to the accused.

### **Criminal Code**

Article 23A (This article deals exclusively with the *freezing* of property when a person is charged or accused of a relevant offence).

23A. (1) In this article, unless the context otherwise requires:

"relevant offence" means any offence not being one of an involuntary nature other than a crime under the Ordinances or under the Act, liable to the punishment of imprisonment or of detention for a term of more than one year;

"the Act" means the Prevention of Money Laundering Act;

"the Ordinances" means the Dangerous Drugs Ordinance and the Medical and Kindred Professions Ordinance.

(2) Where a person is charged with a relevant offence the provisions of article 5 of the Act shall apply *mutatis mutandis* and the same provisions shall apply to any order made by the Court by virtue of this article as if it were an order made by the Court under the said article 5 of the Act<sup>7</sup>.

(3) Where the court does not proceed forthwith to make an order as required under

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<sup>7</sup> [which deals with *Freezing* Orders]

subarticle (2) the court shall forthwith make a temporary freezing order having the same effect as an order made under article 5 of the Act which temporary order shall remain in force until such time as the court makes the order required by the said subarticle.

(4) Where for any reason whatsoever the court denies a request made by the prosecution for an order under subarticle (2) the Attorney General may, within three working days from the date of the court's decision, apply to the Criminal Court to make the required order and the provisions of article 5 of the Act shall apply mutatis mutandis to the order made by the Criminal Court under this subarticle as if were an order made by the court under the same article 5. The temporary freezing order made under subarticle (3) shall remain in force until the Criminal Court determines the application.

(5) The person charged may within three working days from the date of the making of the order under subarticle (2) apply to the Criminal Court for the revocation of the order provided that the order made under subarticle (2) shall remain in force unless revoked by the Criminal Court.

**(b) Observations on the implementation of the article**

288. Officials reported that law enforcement agencies are sufficiently resourced and investigators are adequately trained to pursue asset tracing, freezing and seizing.

**Paragraph 3 of article 31**

*3. Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

289. Where any money is or becomes due to the accused from any person while such order is in force such money will, unless otherwise directed in that order, be deposited in a bank to the credit of the accused. In terms of Title IV of Part III of Book Second of the Criminal Code (Cap. 9) entitled "Of Property Belonging to the Person Charged or accused or to other Persons and Connected with Criminal Proceedings", all property connected with criminal proceedings will be delivered by the court to the registrar and will, subject to the provisions of that Title, remain in the custody of the registrar except when required by the court for the hearing of such proceedings. The following are some of the more salient articles dealing with the subject in issue:

Art. 667: The Registrar holds all property connected with criminal proceedings.

Art 673: The Court may on the application of the Attorney General order the Registrar to dispose of the property for reasons of space, deterioration etc. Article 673(2) provides that an application may also be made by the Registrar himself.

Art 676: Any property forfeited in favour of the Government in terms of Article 23B may be disposed of immediately by the registrar unless the property has been exhibited in the course of a criminal prosecution in which case it shall only be disposed of after final judgement and not without the consent of Commissioner of Police or the Attorney

General.

Art 679: Lays down the rules which are to be followed by the Registrar in the disposal of forfeited property.

“679. In disposing of property forfeited in favour of the Government in terms of this Code the registrar shall observe the following rules:

- (a) property which is of no or of little value may be disposed of at the discretion of the registrar provided that proper record of such disposal is kept;
- (b) firearms, ammunition, explosives or other dangerous substances shall be consigned to the proper authorities designated by the Minister responsible for justice for disposal by them;
- (c) other property which is of value shall be sold by auction by the registrar following the publication of at least three advertisements in a daily newspaper and any moneys deriving therefrom shall accrue to the Government.”

**(b) Observations on the implementation of the article**

290. Relevant provisions are also found in Article 5 of the Prevention of Money Laundering Act. Interest will accrue as it becomes due and is added on the frozen amounts. Immovable property is not taken up by the Government even when frozen, but simply the transfer of immovable properties is frozen. The Court remains in charge of frozen property and it is able to vary any order and decree on any plea made with regard to frozen property.

**Paragraphs 4 and 5 of article 31**

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

**(a) Summary of information relevant to reviewing the implementation of the article**

291. If property obtained from crime has been lost or merged with other assets, the Court does not order confiscation of the entire property, since doing so would be confiscating property which is legal in its origins. Instead, the Court, after quantifying the amount of the ill-gotten gain, orders the payment of a fine equivalent to the proceeds from crime. The procedure is outline in article 23B(2) of the Criminal Code.

**Criminal Code**

23B. ... (2) Where the proceeds of the offence have been dissipated or for any other reason whatsoever it is not possible to identify and forfeit those proceeds or to order the forfeiture of such property the value of which corresponds to the value of those proceeds the court shall sentence the person convicted or the body corporate, or the person convicted and the body corporate in solidum, as the case may be, to the payment of a fine (multa) which is the equivalent of the amount of the proceeds of the offence. The said fine



may be recovered as a civil debt and the sentence of the Court shall constitute an executive title for all intents and purposes of the Code of Organization and Civil Procedure.

**(b) Observations on the implementation of the article**

292. It was further explained that if, notwithstanding the conversion the resulting property is still traced to be the proceeds of crime, that property is subject to forfeiture. For example, if after a robbery the thief purchases immovable property and vehicles, these would be subject to confiscation.

**Paragraph 6 of article 31**

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

**(a) Summary of information relevant to reviewing the implementation of the article**

293. Forfeiture is possible not only for primary but also for secondary proceeds. In fact article 23B(3) of the Criminal Code defines “proceeds” as any economic advantage and any property derived or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property. Article 3(5) of the Prevention of Money Laundering Act also defines proceeds in the same way.

**Criminal Code**

23B. ... (3) For the purposes of this article:  
"proceeds" means any economic advantage and any property derived from or obtained, directly or indirectly, through the commission of the offence and includes any income or other benefits derived from such property;

**(b) Observations on the implementation of the article**

294. The provision under review is legislatively implemented.

**Paragraph 7 of article 31**

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

**(a) Summary of information relevant to reviewing the implementation of the article**

295. Malta reported that the seizing of bank, financial or commercial records is the effect of an investigation or attachment order, as described above under paragraph 1 of the article under review.

**(b) Observations on the implementation of the article**

296. As explained above, the investigation order enables the police to override all confidentiality and professional secrecy provisions (barring privileged communications).

**Paragraph 8 of article 31**

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

**(a) Summary of information relevant to reviewing the implementation of the article**

297. This is subject to a presumption juris tantum.

**Criminal Code**

23C. (1) Where it is established that the value of the property of the person found guilty of a relevant offence is disproportionate to his lawful income and the court based on specific facts is fully convinced that the property in question has been derived from the criminal activity of that person, that property shall be liable to forfeiture.

(2) When a person has been found guilty of a relevant offence and in consequence thereof any moneys or other movable property or any immovable property is liable to forfeiture, the provisions of article 22(3A)(b) and (d) of the Dangerous Drugs Ordinance shall apply mutatis mutandis in the circumstances mentioned in those paragraphs.

Article 22(1C)(b) applicable to offences of money laundering provides:

In proceedings for an offence under paragraph (a), where the prosecution produces evidence that no reasonable explanation was given by the person charged or accused showing that such money, property or proceeds was not money, property or proceeds described in the said paragraph, the burden of showing the lawful origin of such money, property or proceeds shall lie with the person charged or accused.

The following measure is also deemed relevant.

**Criminal Code**

23B. ... (1A) Any property, whether in Malta or outside Malta, of or in the possession or under the control of any person convicted of a relevant offence or in the possession or under the control of a body corporate as may become liable under the provisions of article 121D shall, unless proved to the contrary, be deemed to be derived from the relevant offence and be liable to confiscation or forfeiture by the court.

**(b) Observations on the implementation of the article**

298. It appears that the provision under review is legislatively implemented in the form of the cited articles.

## **Paragraph 9 of article 31**

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

299. Malta cited the following provisions.

#### **Criminal Code**

23. (1) The forfeiture of the corpus delicti, of the instruments used or intended to be used in the commission of any crime, and of anything obtained by such crime, is a consequence of the punishment for the crime as established by law, even though such forfeiture be not expressly stated in the law, unless some person who has not participated in the crime, has a claim to such property.

...

(4) Notwithstanding the provisions of subarticles (1) to (3), where the Attorney General communicates to a magistrate a request by a foreign authority for the return of an article obtained by criminal means for purposes of restitution to its rightful owner, the court may after hearing the parties and if it deems it proper so to act after taking into consideration all the circumstances of the case, order that the forfeiture of any such article shall not take place and that the article shall be returned to the requesting foreign authority.

300. Article 7 of the Prevention of Money Laundering Act also assumes relevance in this respect.

#### **Prevention of Money Laundering Act**

7. (1) Where an order of forfeiture is made under article 3(5), the person found guilty and any other person having an interest may bring an action for a declaration that any or all of the movable or immovable property so forfeited is not profits or proceeds from the commission of an offence under article 3 or is otherwise involved in the offence of money laundering, nor property acquired or obtained, directly or indirectly, by or through any such profits or proceeds.

(2) Such action shall be brought not later than three months from the date on which the sentence ordering the forfeiture shall have become definite, by an application in the Civil Court, First Hall.

..

(8) Any decision revoking the forfeiture of immovable property shall be deemed to transfer the title of such property back from the Government to the party in favour of whom it is given, and such party may obtain the registration of such transfer in the Public Registry.

### **(b) Observations on the implementation of the article**

301. The rights of bona fide third parties, who reside in or out of Malta, are recognized in article 23(1) and (4) of the Criminal Code. Article 23(1) specifically provides for the forfeiture of criminal proceeds “unless some person who has not participated in the

crime has a claim to such property”.

## **Article 32. Protection of witnesses, experts and victims**

### **Paragraphs 1 and 2 of article 32**

*1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them.*

*2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:*

*(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;*

*(b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

302. Malta cited the following measure.

#### **Criminal Code**

412C. (1) Where a person (hereinafter in this article and in article 412D referred to as "the accused") has been charged or accused with an offence before the Court of Magistrates whether as a court of inquiry or as a court of criminal judicature, the court may, on reasonable grounds, for the purpose of providing for the safety of the injured person or of other individuals or for the keeping of the public peace or for the purpose of protecting the injured person or other individuals from harassment or other conduct which will cause a fear of violence, issue a protection order against the accused.

(2) A protection order may impose any restrictions or prohibitions on the accused that appear to the court necessary or desirable in the circumstances in order to give effect to any of the purposes mentioned in subarticle (1).

412D. (1) Together with or separately from a protection order under article 412C, and provided the court is satisfied that proper arrangements have been made or can be made for treatment, the court may make an order (hereinafter in this article referred to as a

"treatment order") requiring a person to submit to treatment subject to the conditions which the court may deem appropriate to lay down in the order:

Provided that where any person is convicted with an offence, a treatment order by the court may be made with or without the consent of the convicted person and in the case of a person accused with an offence, a treatment order may only be made with the consent of the accused.

303. Concerning evidentiary rules for witnesses and experts, according to Article 409 of the Criminal Code proceedings may be carried out behind closed doors. Maltese law further provides that in exceptional circumstances, so as to provide for the safety of the witness, the Court may omit from requesting certain personal particulars to the witness upon his deposition, namely the name of the witness's father, place of birth and residence, other than the name and surname of the witness and the language in which he shall have deposed, making a note to that effect in the record of the proceedings: Article 391 of the Criminal Code.

### **Criminal Code**

409. (1) It shall be lawful for the court to order the proceedings to be conducted with closed doors, if it appears to it that the ends of justice would be prejudiced if the inquiry were conducted in open court.

(2) In any such case, the officials attached to the court and taking part in the inquiry shall be bound not to disclose the proceedings thereof under the penalty provided in article 257.

304. When the victim is a minor and when the offence committed is one offending decency and morality and affecting the good order of families, the Court may further order that the name of the victim and of the accused be not published in local newspapers so as to protect the identity of the victim.

305. Of further significant importance is Title IV of the Police Act, introduced by Act XIII of 2002. It must be stated that although this legislative set-up is relatively recent, protection of witnesses and victims has always been afforded in Malta, either under the authority of the Court during its exercise to ensure the best possible administration of justice or under authority of the Minister for Justice acting through the Commissioner of Police.

Police Act:

[http://docs.justice.gov.mt/lom/legislation/english/leg/vol\\_4/chapt164.pdf](http://docs.justice.gov.mt/lom/legislation/english/leg/vol_4/chapt164.pdf)

Title IV of the Police Act provides the following measures for protection:

i. Article 78 (Evidence viva voce) - the Court may allow the witness and / or victim to give evidence viva voce during the trial while being screened from the accused or by contemporaneous television transmission.

ii. Article 83 (Protection under programme) - the Commissioner of Police is the authority responsible to see to the actual physical protection of witnesses and victims. The protection afforded can be extended, depending on the circumstances of the case, also to members of the witness' / victim's family in the ascending, descending or collateral line. Under this programme payment of a subsistence allowance may also be made in particular cases. Physical protection is afforded not only to the life of the witness / victim but also to the property of the same.

iii. Article 84 (Agreement with foreign countries) - for the purpose of enhancing the protection of witnesses, agreements may be entered into by the Minister responsible for Police with foreign governments with the aim of implementing witness protection. As a

result of such agreements, a witness may be transferred to another country.

For an individual to benefit from any of these measures, articles 76, 79 and 80 have to be read jointly.

Article 76 (entitlement to programme) - apart from the victim of a crime the following may benefit under this programme:

- i. a person who has participated in any organisation or group of persons who have committed or are organised to commit any crime;
- ii. or a person who has participated in the commission of a crime liable to the punishment of imprisonment of seven years or more;

Articles 79 and 80 (recommendation of application and decision by the Attorney General):

The Commissioner of Police is to make a recommendation to the Attorney General for an individual to be enrolled in the protection programme. The Commissioner's recommendation, in writing, is to be based on the following criteria and supported by all necessary documentation:

- i. that the individual has declared that he will testify during any trial of any participant in the crime (Article 77 - does not apply with regards to victims of crime)
- ii. that the witness provides reliable and relevant circumstantial, direct or documentary evidence to corroborate his version.

The Attorney General, being the public prosecutor in Malta, is to then decide, in his individual judgement, on this application. Should there be a favorable decision, the witness is enrolled in the programme. In the event that the Attorney General refuses the said decision cannot be questioned. Furthermore a request may also be made by a person to be considered as a protected witness directly to the Attorney General.

In terms of Article 90(1) of the Police Act any minor, any victim of any crime against the peace and honour of families, and against morals, and any other witness who in the opinion of the court needs special treatment or protection, may be allowed to give evidence viva voce during the trial by contemporaneous television transmission.

Article 81 provides for the suspension of criminal proceedings: A protected witness who took part in the fact which constitutes a crime for which others are being or are to be prosecuted, shall not be prosecuted for any crime arising from the same fact before the proceedings in which he is or will be a witness shall have become res judicata.

In terms of Article 82, the period of prescription in respect of the criminal action against the protected witness arising from the fact referred to in article 81 shall be suspended from the date that the Attorney General decides that the witness shall be deemed to be a protected witness, and shall continue from the day on which the last proceedings in which he is a witness for the purposes of the programme become res judicata. Provided that a person is the victim of a crime who is to be produced as a witness in any criminal proceedings against any principal or accomplice in the crime and that person is concerned for his safety, or the individual concerned for his safety is a person who took part in the commission of a crime and whose evidence is indispensably required for the prosecution of any principal or accomplice in the crime where that person agrees to co-operate with the public authorities for the purpose of such prosecution, witness

protection can be applied in terms of this title of law in respect of all crimes.

It is worth noting that protection afforded can be extended, depending on the circumstances of the case, also to members of the witness'/ victim's family in the ascending, descending or collateral line.

In conclusion it can be said that the Commissioner of Police has the authority to order and ensure that the necessary urgent measures are undertaken. Generally physical police protection is given to the witness as is provided for in article 83. Furthermore, the Court may provide for any measure to be taken aimed at ensuring the better administration of justice. Indeed the institution responsible for the protection of witnesses is the Commissioner of Police. Should the need be felt for the witness to be sent abroad to be afforded better protection, then the Minister responsible for Police is to enter into such an agreement with a foreign government. Nevertheless, even upon the actual transfer of the witness from Maltese territory to foreign territory it is still the responsibility of the Commissioner of Police to afford the necessary protection.

Information may be forwarded to the Police by any individual, it is then up to the Police officer responsible for the investigation to investigate and confirm the information that has been passed on to them. For a witness to be enrolled in this programme article 79 provides that in deciding whether to recommend the admission of a witness into the witness protection programme, the Commissioner of Police is to take into account whether the witness provides reliable and relevant circumstantial, direct or documentary evidence to corroborate his version. This is the legislative test to be used by the Commissioner of Police in assessing the witness' credibility.

Title IV of the Police Act does not impose a duration limit of such a programme. In practice such a decision would be taken jointly by the Commissioner of Police and the Attorney General. It has to be noted that the Attorney General may at any time, either ex officio or on an application by the Commissioner of Police, revoke a person's protected witness status under article 76(a) or (b) where it results that that person is not abiding by the conditions of the programme or that his evidence or version of the facts, or any circumstances indicated by him as corroborating evidence, are manifestly false. The protected witness status referred to, may also be revoked as provided, where the person enjoying that status commits during the period of the programme, or is reasonably suspected of having committed during that period, any other crime punishable with imprisonment for more than three years and not being a crime of an involuntary nature (article 85). The Attorney General may also revoke a person's protected witness status, where it results that such person is not abiding by the conditions of the programme or where he is reasonably suspected of having committed any of the crimes referred to in articles 100 to 105 of the Criminal Code, both inclusive, or of the crimes referred to in articles 108 to 110 of the said Code, both inclusive, in relation to the fact in respect of which that status was granted (art.86).

**(b) Observations on the implementation of the article**

306. Article 412C gives power to the court of Magistrates to issue a protection order against the accused. The reviewers note that the cited measure is relevant to the protection of victims and other persons from potential harm by an accused, but does not establish general protections for witnesses and experts who testify in criminal

proceedings. In this context, Malta referred to article 95 (Vilification, threats or bodily harm against other public officer) and article 101 (Calumnious accusations), which are limited, however, to the protection of public officers and false accusations against persons, respectively. A closer reading of the provisions on witnesses (also referred to under UNCAC article 25 above) further does not establish such protections. Maltese officials reported that experts are ipso facto witnesses and thus the provisions applicable to witnesses apply indiscriminately.

307. Maltese officials confirmed that the protection programme has been established and could be resorted to when warranted. Since the country visit took place, Malta has informed that one person has been admitted to the programme. It was further confirmed by Malta that protections would not be available to witnesses or experts who are not victims and did not participate in the offence (article 76, entitlement to programme).
308. Article 409 and 391 of the Criminal Code appear to implement UNCAC article 32(2)(b). It was explained that videoconferencing is allowed when the person testifying is a minor and that audio-recording or video-recording of any evidence required from a witness is permissible (Criminal Code, article 647A). In all other cases a witness is to testify *viva voce*.
309. The reviewers note that provisions on the protection of victims who are not witnesses are relatively limited. Malta may wish to consider whether the existing protections are adequate to ensure full protection of such persons in line with UNCAC. Malta may also wish to consider whether the fact that the witness protection programme is not available to witnesses or experts who are not victims and did not participate in the offence poses restrictions to the effectiveness of such programme. The reviewers welcome the full implementation of the witness protection programme under the Whistleblower Act in the future. Malta referred in particular to Regulation 5(2) of the Disciplinary Regulations, which seems to provide a right of complaint but no corresponding protections for victims who report corruption in the public service.

#### Regulation 5(2) of the Disciplinary Regulations

An officer against whom a serious offence under these regulations has been committed (the victim) shall be entitled to file a formal complaint in writing with his Head of Department not later than six months from the date when the alleged offence is committed. The Head of Department shall decide whether or not to initiate disciplinary proceedings in terms of these regulations against the officer against whom the complaint is made, after carrying out a preliminary investigation which is to be concluded not later than fifteen working days from when the Head of Department receives the written complaint:

Provided that, in cases where the victim and the offender do not fall under the responsibility of the same Head of Department, the two Heads of Department concerned shall consult each other before any further action in terms of the regulations is taken by the Head of Department of the alleged offender.

### **Paragraph 3 of article 32**



*3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

310. Malta referred to Title IV of the Police Act.

Article 84 (Agreement with foreign countries) provides that, for the purpose of enhancing the protection of witnesses, agreements may be entered into by the Minister responsible for Police with foreign governments with the aim of implementing witness protection. As a result of such agreements, a witness may be transferred to another country.

**(b) Observations on the implementation of the article**

311. Title IV of the Police Act, article 84 appears to legislatively implement the provision under review.

312. Maltese officials reported that no agreements have been signed for the relocation of protected persons under article 84.

**Paragraph 4 of article 32**

*4. The provisions of this article shall also apply to victims insofar as they are witnesses.*

**(a) Summary of information relevant to reviewing the implementation of the article**

313. The measures referred to above, in particular article 412C of the Criminal Code, Title IV of the Police Act and measures on the protection of victims who are minors, are referred to.

**(b) Observations on the implementation of the article**

314. Malta has established measures to provide for the protection of victims against retaliation and intimidation, including physical protection and evidentiary rules under Title IV of the Police Act, articles 78 and 83.

**Paragraph 5 of article 32**

*5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

315. Article 410 of the Criminal Code provides that the victim or the complainant (who can also be a victim) is entitled to be present in the criminal proceedings, to engage an

advocate or a legal procurator to assist him or her, to examine or cross-examine witnesses and to produce, in support of the charge, such other evidence as the court may consider admissible.

316. This is in addition to the victim also being a witness for the prosecution.

317. The following additional measures are referred to.

### **Criminal Code**

490. ... (3) An injured party may, by application, request the Criminal Court to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions at the stage referred to in subarticle (1) and before the court asks the accused if he has to say anything in regard to the applicability of the punishment demanded by the Attorney General:

Provided that the failure, for any reason, of the injured party to make submissions on sentence as aforesaid shall not preclude the court from proceeding with any hearing or from pronouncing judgment as provided in article 491.

500A. On any appeal against sentence an injured party may, by application, request the Court of Criminal Appeal to be allowed, personally or through legal counsel, to make submissions on the appropriate sentence to be passed on the accused and if the court allows the application the injured party or his legal counsel shall be given the opportunity to make such submissions after the court has heard the appellant's submissions in support of the appeal; the person convicted and the Attorney General shall be given the opportunity to respond to the submissions by the injured party or his legal counsel:

Provided that the failure, for any reason, of the injured party or his legal counsel to make submissions on sentence as aforesaid on the appointed day shall not preclude the court from proceeding with any hearing or from pronouncing judgement.

373. As regards offences referred to in article 370(1), the prosecution shall lie with the injured party or with the persons mentioned in article 542 on behalf of such party, where proceedings cannot be instituted except on the complaint of the injured party:

Provided that if the offence in respect of which no prosecution may be instituted except on the complaint of the injured party, is aggravated by public violence or is accompanied with any other offence affecting public order, or if, in the absence of any such circumstances, the injured party shall fail to institute proceedings and shall not have expressly waived the right to prosecute within four days from the commission of the offence, it shall be lawful for the Executive Police ex officio to institute proceedings in respect of the offence.

370. (1) The Court of Magistrates shall be competent to try-

(a) all contraventions referred to in this Code;

(b) all crimes referred to in this Code which are liable to the punishments established for contraventions, to a fine (multa) or to imprisonment for a term not exceeding six months with or without the addition of a fine (multa) or interdiction;

(c) all offences referred to in any other law which are liable to the punishments established in the preceding paragraph, unless the law provides otherwise.

**(b) Observations on the implementation of the article**

318. The cited measures from the Criminal Code legislatively implement the provision under review.

**Article 33. Protection of reporting persons**

*Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.*

**(a) Summary of information relevant to reviewing the implementation of the article**

319. The Protection of Whistleblower Act 2013 was approved by Parliament on 16 July 2013 and came into force on 15 September 2013. The Act protects a whistleblower who makes a protected disclosure against "detrimental action", defined to include: (a) action causing injury, loss or damage; and, or (b) victimisation, intimidation or harassment; and, or (c) occupational detriment; and, or (d) prosecution under article 101 of the Criminal Code relating to calumnious accusations and/or; (e) civil or criminal proceedings or disciplinary proceedings (article 2).

320. The law protects against "occupational detriment" in relation to the working environment of an employee, which is defined (article 2) to include:-

- (a) being subjected to any disciplinary action including for breach of ethics or confidentiality;
- (b) being dismissed, suspended or demoted except where administratively or commercially justifiable for organisational reasons;
- (c) being transferred against his will or being refused transfer or promotion except where administratively or commercially justifiable for organisational reasons;
- (d) being subjected to a term or condition of employment or retirement which is altered or kept altered to his disadvantage;
- (e) being refused a reference or being provided with an adverse reference from his employer except where justifiable on the basis of performance;
- (f) being denied appointment to any employment, profession or office; or
- (g) being otherwise adversely affected in respect of his employment, profession or office, including employment opportunities and work security;

321. According to the Act, the Attorney General decides whether a reporting person is given immunity, faces penalties, or is granted an identity change, after consultation with the Commissioner of Police and a judge of the superior courts (article 5(4)). Whistleblowers may also be admitted to the Witness Protection Programme.

322. Large companies and government department are required to establish a whistleblowing unit which, if it receives information related to a crime, will pass this on to an external whistleblowing unit. Small and medium-sized enterprises are not required to set up internal

units.

Protection of Whistleblower Act 2013:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lp&itemid=25151&l=1>

**(b) Observations on the implementation of the article**

323. It is noted that Chapter 527, the “Protection of the Whistleblower Act” entered into force on 15 September 2013. During the country visit, officials at the Public Service Commission further explained that an Ordinance had been promulgated by the Secretary of the Commission addressed to government departments to implement the whistleblower law.

324. Furthermore, it was explained during the country visit that anonymous reporting is possible in Malta, as Maltese Police are prohibited from divulging their sources. To this end, the case of Facchetti vs the Police was cited as an example of implementation.

325. Although yet to be implemented and assessed in practice, reviewers welcomed the recent adoption of the Whistleblower Act. Hence, the article is legislatively implemented.

**Article 34. Consequences of acts of corruption**

*With due regard to the rights of third parties acquired in good faith, each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to address consequences of corruption. In this context, States Parties may consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action.*

**(a) Summary of information relevant to reviewing the implementation of the article**

326. Inasmuch as corruption amounts to fraud in civil law and on the basis of the general civil law principle that *fraus omnia corrumpit*, a contract which is the result of corruption may be annulled on this basis. The procedure would be to file the necessary writ before the competent court against the person/s party to the contract and against the person/s responsible for corruption demanding that the relevant contract be declared null. Any person showing a juridical interest in the matter may file a claim.

327. Victims of corruption may bring a civil action for damages in the courts against the person or persons guilty of corruption in as much as corruption constitutes a criminal offence and every criminal offence, according to law, gives rise to both a criminal and a civil action.

328. By Act XX of 2002, a new article 1051A was introduced in the Civil Code, Chapter 16, providing for civil remedies in cases of corruption, which is defined as the requesting, offering, giving or accepting, directly or indirectly, of a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, by the undue advantage or the prospect thereof (article 1051A).

329. Accordingly, any person who claims to have suffered damage as a result of corruption has been given a right of action to obtain compensation for the damage caused to him by the act

of corruption against the persons who have committed or authorized the act of corruption or who have failed to take reasonable steps to prevent the act of corruption.

330. The persons who have committed or authorized the act of corruption and the persons who have failed to take reasonable steps to prevent the act of corruption shall be jointly and severally liable for the damages sustained.
331. Where the act of corruption has been committed by an officer or employee of the Government or of a body corporate established by law, the Government or, as the case may be, the body corporate established by law shall itself be liable to make payment for the damage caused by the act of corruption in the instances provided for in the same article (article 1051A(4) of the Civil Code).
332. No right of compensation for damages shall lie where the party claiming to have suffered the damages has himself wilfully been a party to the act of corruption. Moreover nothing precludes any person from recovering any payment made or thing given, or the value thereof, where the payment has been made or the thing has been given for an unlawful consideration.
333. In instances where any contract has been entered into by any person (including the Government or any body corporate established by law) and the contract or any clause thereon has been concluded by an employee, officer or agent of such person following an act of corruption in favour of such officer, employee or agent, the person bound by such contract and whose officer, employee or agent has been so corrupted, shall without prejudice to any right of action to recover damages in accordance with this article have a right to take action not later than a year after becoming aware of such corruption or from the time when he should reasonably have become aware, to annul the contract or any clause thereof which has been entered because of such corruption.

**(b) Observations on the implementation of the article**

334. Consequences of corruption, including the annulment of contracts are provided for legislatively. Also, article 1051A of the Civil Code provides civil remedies in cases of corruption for persons who have suffered damage and it also appears that the rights of the third parties are respected. The reviewers note on this basis that the provision under review is legislatively implemented.

**Article 35. Compensation for damage**

*Each State Party shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

335. Victims of corruption may bring a civil action for damages in the courts against the person or persons guilty of corruption, inasmuch as corruption constitutes a criminal offence and

every criminal offence, according to law, gives rise to both a criminal and a civil action.

336. Article 1051A in the Civil Code, Chapter 16, provides for civil remedies in cases of corruption, as defined in above under UNCAC article 34.

337. Where the act of corruption has been committed by an officer or employee of the Government or of a body corporate established by law, the Government or as the case may be the body corporate established by law shall itself be liable to make payment for the damage caused by the act of corruption in the instances provided for in the same article (article 1051A(4) of the Civil Code).

**(b) Observations on the implementation of the article**

338. Article 1051A of the Civil Code provides for civil remedies in case of corruption for victims and the compensation from which shall be decided by the courts. Based on the information provided, the provision under review is legislatively implemented.

**Article 36. Specialized authorities**

*Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.*

**(a) Summary of information relevant to reviewing the implementation of the article**

339. Investigations into corruption offences are led by the Economic Crime Division of the Malta Police. However, the Permanent Commission Against Corruption (whose remit extends to both the central and local government and covers both investigations of possible corrupt practices and the development or recommendations aimed at reducing the possibility or risk of corruption), also have a role in connection with the investigation of corruption.

340. The following are the organisations and entities that have a role or exercise powers in the prevention, detection, and repression of corruption at a national level:

- The Police
- The Security Service
- The Permanent Commission Against Corruption
- The Attorney General
- Magistrates and Courts of Magistrates
- The Public Service Commission
- The Employment Commission
- The Tribunal for the Investigation of Injustices (*now defunct after it heard all cases brought before it*)
- The Ombudsman
- The Director of Contracts and the General and Special Contracts Committees

- The Public Accounts Committee of the House of Representatives
- The National Audit Office
- The Internal Audit and Investigations Board

### The Police

341. The Police is the main law enforcement authority in Malta vested with general law enforcement powers. It is the duty of the police to preserve public order and peace, to prevent and to detect and investigate offences, to collect evidence and to bring the offenders before the judicial authorities. The police exercise their powers *ex officio*, with the exception of those offences which are liable to prosecution only upon complaint of the injured party. Offences of corruption are liable to prosecution *ex officio* by the police. Within the Police, the Economic Crimes Unit is the unit mainly concerned with the investigation and detection of offences of corruption. It was set up in 1987 and investigates a range of offences of fraud, counterfeiting, copyright violations, contraband related offences, offences of corruption and computer crime.
342. It is noted that corruption cases in the police are investigated by a senior superintendent in the police. The police also has an internal affairs unit handling disciplinary matters. There have been cases involving corruption in the police where officers were investigated and dismissed. The Police is subject to a heightened obligation and will face additional penalties on conviction.
343. The reviewers also noted positively that the Police:
- Has an Economic Crime Division which specializes on economic crime and complex matters, and includes anti-money laundering expertise;
  - Has recently and continue to increase their resources, especially in the area of international cooperation; and
  - Has very close cooperation with the prosecutors of the Attorney General's office as well as with other authorities.

### The Security Service

344. The Security Service has the function of protecting national security, in particular against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. It also has the function to act in the interests of public safety, in particular, the prevention or detection of serious crime. Serious crime is crime which involves the use of violence, results in substantial financial gain or is conducted by a large number of persons in pursuit of a common purpose, or is a crime liable to the punishment of imprisonment for a minimum of not less than three years.
345. The operations of service are under the control of the Head of the Service appointed by the Prime Minister. The Security Service may apply to the Minister for the issue of a warrant authorising the entry or interference with property or the interception of or interference with communications in the course of their transmission by post or by means of a wireless telegraphy or telecommunication system or by any other means. It may do so on the grounds that it the action is likely to be of substantial value in assisting the Service

in carrying out any of its functions, is satisfied that what the action seeks to achieve cannot reasonably be achieved by other means, and is satisfied that satisfactory arrangements are in force with respect to the disclosure of information obtained and that any information obtained under the warrant will be subject to those arrangements.

#### The Permanent Commission Against Corruption

346. The Permanent Commission Against Corruption was set up in October 1988 by the Permanent Commission Against Corruption Act, 1988, Chapter 326. It consists of a chairman and two other members appointed by the President of Malta acting in accordance with the advice of the Prime Minister, given after he has consulted the Leader of the Opposition. The Commission may request the Prime Minister to appoint a person or designate a public officer to assist it in a consultative capacity in the conduct of its investigations. It may also request the assistance of the Police in the conduct of investigations into alleged or suspected corrupt practices.
347. The Chairman must be a person who holds, or has held, the office of a judge in Malta; or holds or has held, the office of a magistrate in Malta, and has held that office and practised as an advocate in Malta for a period of not less than twelve years in the aggregate; or has practised as an advocate in Malta for a period of not less than twelve years. A person is disqualified from being a member if he is or was a Minister, Parliamentary Secretary, a member of the House of Representatives, a member of a local government authority, or if he is a public officer other than a public officer who is qualified to be appointed chairman. In the exercise of its functions the Commission is not subject to the direction or control of any other person or authority.
348. The Commission is an investigative specialised body which is exclusively concerned with the investigation of allegations of corruption. It has the function of considering alleged or suspected corrupt practices, and where it determines that there are sufficient grounds for doing so, it investigates any such allegation or suspicion and makes a report thereon to the Minister responsible for justice. In conducting an investigation, the Commission may act on its own initiative or on an allegation made and subscribed on oath by any person. It also has the function to investigate the conduct of any public officer, including any Minister or Parliamentary Secretary, which in the opinion of the Commission may be corrupt or may be connected with or may be conducive to corrupt practices and to report as aforesaid. The same applies to persons who are or have been entrusted with, or have or have had functions relating to the administration of a partnership or other body in which the Government of Malta, or any one or more of any other authority of the Government, a local government authority, a statutory body, or a partnership as aforesaid or any combination thereof, has a controlling interest or over which it has effective control. The Commission has also the function of examining the practices and procedures of government departments, local government authorities, statutory bodies or other bodies referred to above in order to facilitate the discovery of any corrupt practices and to recommend the revision of methods of work or procedures which may be conducive to corrupt practices. Finally, the Commission may instruct, advise and assist any person having ministerial responsibility or who is entrusted with, or has functions relating to, the administration of a government department, local government authority, statutory body or other body referred to above.

349. During the country visit, it emerged that the Commission's role is limited to



investigating certain corruption offences and instituting procedural reviews on its own initiative in accordance with Articles 4 and 6 of the Permanent Commission Against Corruption Act.

#### Article 4

The functions of the Commission shall be:

- (a) to consider alleged or suspected corrupt practices committed by or with the participation of any person mentioned in paragraphs (b) and (c) and, where the Commission determines that there are sufficient grounds for holding an investigation, to investigate any such allegation or suspicion and to make a report thereon in accordance with article 11;
- (b) to investigate the conduct of any public officer, including any Minister or Parliamentary Secretary, which in the opinion of the Commission may be corrupt or may be connected with or may be conducive to corrupt practices and to report thereon in accordance with article 11;
- (c) to investigate the conduct of any person who is or has been entrusted with, or has or has had functions relating to the administration of a partnership or other body in which the Government of Malta, or any one or more of any other authority of the Government, a local government authority, a statutory body, or a partnership as aforesaid or any combination thereof, has a controlling interest or over which it has effective control, where such conduct, in the opinion of the Commission may be corrupt or connected with or conducive to corrupt practices, and to report thereon in accordance with article 11;
- (d) to examine the practices and procedures of government departments, local government authorities, statutory bodies or other bodies referred to in paragraph (c) in order to facilitate the discovery of any corrupt practices and to recommend the revision of methods of work or procedures which may be conducive to corrupt practices, and to report thereon in accordance with article 11; and
- (e) to instruct, advise and assist any person, on his request, on ways in which corrupt practices may be eliminated, provided that such request may only be made by a person who has ministerial responsibility or who is entrusted with, or has functions relating to, the administration of a government department, local government authority, statutory body or other body referred to in paragraph (c).

#### Article 6

(1) The following shall be corrupt practices under this Act:

- (a) the acts or omissions which constitute the offences under articles 112 to 118, 120, 121 when committed by or with the participation of any person mentioned in article 4(b) and (c) of this Act, 124 to 126, and 138 of the Criminal Code;
  - (b) the acts or omissions which constitute an attempt to commit any of the aforesaid offences or which constitute complicity in any of those offences under articles 41 and 42 of the Criminal Code; and
  - (c) conspiracy to commit any acts or omissions which constitute any of the aforesaid offences. A conspiracy shall subsist from the moment in which any mode of two or more persons.
- (2) The provisions of subarticle (1) shall apply to and in connection with every person mentioned in article 4(c), in the same way as they apply to and in connection with public officers.

350. It was further noted that the Commission's resources are limited and have in effect been decreased over the years, as in 1998 it employed a secretary, an assistant secretary and two

clerks. At the time of the country visit, the Commission employed only one secretary and a clerk. The two Chairs (Commissioners) only serve part time. The legally required staffing includes the two Chairs and the Secretary.

351. The concern over the Commission's independence has been outlined above under the implementation of subparagraph 2 of UNCAC article 30, as its unique reporting line goes to the Minister of Justice, which is only channel for the referral of investigations to the police.
352. A potential overlap in the Commission's investigative functions with the police and other investigative authorities was noted.

#### The Attorney General

353. The Attorney General is the principal law officer of the Government. The Attorney General is appointed by the President acting in accordance with the advice of the Prime Minister. The Attorney General may not be removed from his office except by the President upon an address by the House of Representatives supported by the votes of not less than two-thirds of all the members thereof and praying for such removal on the ground of proved inability to perform the functions of his office (whether arising from infirmity of body or mind or any other cause) or proved misbehaviour. Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the inability or misbehaviour. This is the same protection as is afforded to judges and magistrates.
354. The Attorney General acts as Public Prosecutor in the higher courts of criminal jurisdiction. He also exercises functions in connection with pre-trial judicial investigations and gives advice to the police concerning investigations carried out by them. The Attorney General also has the power, in his individual judgment and if he is satisfied of the advisability so to do, to issue a certificate in writing exempting any person mentioned in the certificate from any criminal proceedings on condition that such person gives evidence according to law of all the facts known to him relating to any corrupt practice or any offence connected therewith before the Commission and, or, any court of criminal jurisdiction. On the issue of such a certificate and the giving of evidence in accordance therewith by the person to whom it refers, no proceedings before a court of criminal jurisdiction may be taken or continued against him in connection with such corrupt practice or any offence connected therewith. Such a certificate may be granted upon the request of the Commission, or without such a request whenever the necessity so to do is otherwise brought to the notice of the Attorney General.
355. In terms of the Constitution, in the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law which authorise him to exercise that power in his individual judgment, the Attorney General shall not be subject to the direction or control of any other person or authority.

#### Magistrates and Courts of Magistrates

356. Magistrates are vested with the authority to carry out judicial investigations into the suspected commission of criminal offences where a criminal inquiry is necessary, i.e. in

respect of criminal offences liable to the punishment of imprisonment exceeding six months. The judicial investigation they carry out is referred to as *in genere* and is normally resorted to whenever there are material traces of an offence which need to be preserved for the purpose of any future prosecution. At the end of the investigation, the Magistrate draws up a proces verbal and sends it to the Attorney General, unless criminal proceedings with respect to the offence investigated have already been instituted, in which case the proces verbal is referred directly to the relevant court.

357. The Courts of Magistrates also carry out judicial pre-trial investigations as courts of committal with respect to persons charged with a criminal offence triable on indictment, and they have to determine whether there are sufficient grounds to commit the person charged before them for a trial on indictment.

#### The Public Service Commission

358. The Public Service Commission is a commission established by the Constitution. Its members are appointed by the President acting in accordance with the advice of the Prime Minister given after he has consulted the Leader of the Opposition. Once appointed, members of the Commission may only be removed for inability to discharge the functions of their office or for misbehaviour. The power vested in the Prime Minister to make appointments to public offices or to remove, and to exercise disciplinary control over, persons holding or acting in any such office must be exercised on the recommendation of this Commission. The Prime Minister may, however, again acting on the recommendation of the said Commission, delegate in writing any of the powers mentioned to such public officer or authority specified in the instrument of delegation. The aforesaid does not apply to the Attorney General, Permanent Secretaries, Secretary to Cabinet, judges, magistrates, the Auditor General, Ambassadors, High Commissioners, or other principal representatives of Malta in any other country.

#### The Employment Commission

359. This is in effect a tribunal consisting of a chairman and four other members, all appointed by the President. In appointing the chairman, the President acts in accordance with the advice of the Prime Minister given after consultation with the Leader of the Opposition. In appointing two of the other members, the President acts in accordance with the advice of the Prime Minister, while in appointing the remaining two other members he acts in accordance with the advice of the Leader of the Opposition. Members may only be removed for inability to discharge the function of their office or for misbehaviour. The function of the Commission is to ensure that, in respect of employment, no distinction, exclusion or preference that is not justifiable in a democratic society is made or given in favour or against any person by reason of his political opinions. Persons alleging such distinction, exclusion or preference may apply to the Commission for redress.

#### The Ombudsman

360. The Ombudsman is an officer of Parliament also known as the Commissioner for Administrative Investigations. He is appointed by the President who acts in accordance with a resolution of the House of Representatives which must be supported by a two-thirds majority. He may be removed or suspended from office by the President only upon an

address from the House of Representatives supported by a two-thirds majority on the ground of proved inability to perform the functions of his office or proved misbehaviour.

361. The Ombudsman has the function to investigate any action taken by or on behalf of the Government or other authority, body or person to whom the Ombudsman Act applies. The said Act of Parliament applies to:

- the Government, including any government department or other authority of the Government, any Minister or Parliamentary Secretary, any public officer and any member or servant of an authority as aforesaid;
- any statutory body, and any partnership or other body in which the Government or any one or more of the said bodies aforesaid or any combination thereof has a controlling interest or over which it has effective control, including any director, member, manager or other officer of such body or partnership or of its controlling body; and
- local councils and any committee thereof, mayors, councillors and members of staff of all local councils.

362. The said Act does not apply to the President, the House of Representatives, the Cabinet, the Judiciary, any Tribunal constituted by or under any law, the Commission for the Administration of Justice, the Electoral Commission, the Malta Broadcasting Authority, the Employment Commission, the Permanent Commission against Corruption, the Commission for the Investigation of Injustices, and the Attorney General in the exercise of his powers to institute, undertake and discontinue criminal proceedings and of any other powers conferred on him by any law in terms which authorise him to exercise that power in his individual judgment. The Act also does not apply to any Counsel or Legal Adviser to the Government acting in such a capacity, the Auditor General in the exercise of his auditing functions, and the Armed Forces of Malta except in respect of appointments, promotion, pay and pension rights of officers and men of the Force and the Security Service. With respect to the Public Service Commission and the Armed Forces of Malta, the complainant must first show that all other avenues of redress have been exhausted.

363. The Ombudsman may conduct investigations either on his own initiative or on the written complaint of any person having an interest who claims to have been aggrieved by any administrative action. If, during or after any investigation, the Ombudsman is of the opinion that there is substantial evidence of any significant breach of duty or misconduct on the part of any officer or employee of any department, organisation or local council, he is required to refer the matter to the appropriate authority, including the Police. The Ombudsman reports to the Minister concerned and may also report to the Prime Minister and to the House of Representatives. The Ombudsman also annually or as frequently as he may deem expedient reports to the House of Representatives on the performance of his functions.

#### The Director of Contracts and the General and Special Contracts Committees

364. The Director of Contracts is responsible for the running of the Department of Contracts and generally for the administration of the procurement procedures.

365. The above regulations provide that, unless the regulations provide otherwise, the procurement of all equipment, stores, works and services by Government or any other

body to which the regulations apply, shall be made by contract after a call for tenders in accordance with the regulations. The regulations provide that the call for tender procedure may be dispensed with in certain specified circumstances depending on the value involved, but where the value exceeds 50,000 Euro then a public call for tender is to be issued by the Director.

366. The General Contracts Committee is a committee established under the above regulations, whose members are appointed by the Prime Minister for a period of not more than three years subject to reappointment. Members may be removed by the Prime Minister where he is satisfied that there has been a clear case of misbehaviour or inability to perform his functions or where circumstances exist which would disqualify the member.
367. Special Contracts Committees are appointed by the Prime Minister under the above regulations where he determines that the adjudication of tenders for the award of a particular contract requires special expertise, skills or other input. The members of such committees are appointed for the duration of the adjudication process of the particular call for tenders until a letter of acceptance of tender is issued or the Director of Contracts declares that the award of the contract is not going to be proceeded with, in which case the Director shall, in his declaration, state the reason or reasons why.
368. The Contracts Committees have the function to assist the Director of Contracts in the execution of his duties in accordance with the above regulations. In the discharge of their functions the Contracts Committees are regulated by the provisions of the above regulations generally and, in particular, by the provisions of the Sixth Schedule thereto. The said Schedule provides, inter alia, that the Contracts Committees shall advise on all matters relating to public contracts as well as on public procurement of materials, works and services, evaluate tenders submitted as well as reports and recommendations made by the respective departments and public organisations, ensuring that the best value for money at the lowest possible cost is attained, report any irregularities that may be brought to its notice or that may be detected in the tendering process and make recommendations thereon to the Minister concerned, deal with matters which, according to the contract, have to be referred to the committees and hear and determine disputes arising out of public contracts, formally investigate complaints concerning public contracts and procurements and make recommendations thereon.
369. The Director may, at his discretion, accept or reject the recommendations of the majority of members of the Contracts Committee and may refer the matter for the decision of the Minister responsible for Finance and shall do so when he disagrees with the majority of the members of a Special Contracts Committee. The Director's referral to the Minister shall be in writing and the Minister's decision thereon must also be given in writing.

#### The Public Accounts Committee of the House of Representatives

370. The Public Accounts Committee is a Parliamentary committee of the House of Representatives, which consists of not more than seven members chosen in such a manner as to fairly represent the House in general and the proportion of Government and Opposition members in particular. One of the members nominated by the Leader of the Opposition and so designated by him after consultation with the Leader of the House is

appointed Chairman of the Committee.

371. This Committee has the power to inquire into matters relating to public accounts referred to it by the House, a Minister or the Director of Audit; to inquire into expenditure under supplementary estimates or expenditures before appropriation; to examine the accounts of statutory authorities, including parastatal organisations, whose accounts are presented to Parliament; to request the Director of Audit to submit memoranda on any matter where a request for such submission is made by at least three members of the Committee; to consider memoranda submitted by the Director at its request or on his own initiative; to examine reports and related documents made by the Director of Audit; to report to the House on any accounts, reports or documents referred to above; and to report to the House on any change that it considers desirable in the form of the accounts, on the manner in which they are kept, on revenue or expenditure or the control of money.

#### The National Audit Office

372. The National Audit Office consists of the Auditor General, who is the head of the office, the Deputy Auditor General and other officers appointed by the Auditor General as he may deem necessary to assist him in the proper discharge of his office. The Auditor General is an officer of the House of Representatives and is appointed for a period of five years, subject to being re-appointed for a further five years by the President acting in accordance with a resolution of the House supported by a majority of at least two-thirds. The Auditor General may only be removed in the same circumstances and in the same manner as the Ombudsman.
373. The Auditor General is an office under the Constitution and has the function of auditing the accounts of all departments and offices of the Government of Malta, including the office of the Public Service Commission, the office of the Clerk of the House of Representatives and of all Superior and Inferior Courts of Malta and such other public authorities or other bodies administering, holding, or using funds belonging directly or indirectly to the Government of Malta as may be prescribed by or under any law. The Auditor General reports annually to the House of Representatives and, for that purpose the Auditor General or any person authorised by him shall have access to all books, records, returns and other documents relating to those accounts. The Auditor General is assisted by the Deputy Auditor General, which is also an office under the Constitution.

#### The Internal Audit and Investigations Board

374. The Internal Audit and Investigations Board (IAIB) is appointed on the authority of the Prime Minister and is authorised to direct and regulate the Government Internal Audit and Financial Investigative Function. Its purpose is to establish policies, procedures and practices that enable an effective internal audit and financial investigation within Government, while ensuring continuing communication with internal and external auditors, Permanent Secretaries and other senior officials within the public service. It is responsible, inter alia, for monitoring the Government's financial and other reporting processes and internal control systems, requesting the Internal Audit and Investigations Directorate to carry out specific audits and investigations as it deems necessary, and considering and approving major changes to Government internal audit policies, practices and procedures.

## The Internal Audit and Investigations Directorate

375. This directorate is established under the responsibility of the Director Internal Audit and Investigations and derives its authority from the IAIB. It is assigned responsibility for the conduct of the Government internal audit and financial investigations function. As such, its task is to examine and evaluate Government activities, including the conduct of financial investigations into suspected cases of mismanagement and fraud. The Directorate is independent of the activities it audits. The Directorate reports upon the results of its work to the Permanent Secretary in question and, if required, to the IAIB. It also reports to the IAIB throughout the year.

### **(b) Observations on the implementation of the article**

376. Investigating corruption offences are led by the Economic Crime Division of the Police. Other bodies also have a role to play with the investigation of corruption and these include, inter alia, the Permanent Commission Against Corruption, the Attorney General, Magistrates and Courts of Magistrates, and the Ombudsman.

377. It was explained that, whilst the police remain the main player in the investigation of corruption offences, as noted above, other bodies are dedicated to the fight against corruption in Malta, and proceedings can be conducted by any other entities even when police investigations or prosecutions are ongoing. However, it is only the Police which can initiate a prosecution, and thus other entities may impose disciplinary/administrative sanctions only.

378. The reviewers note with compliment that various agencies are provided with preventive, detective and repressive powers so as to ensure corruption is not tolerated. However, with the information provided during the country visit, the reviewers query whether sufficient financial and human resources are provided in particular to the Permanent Commission Against Corruption and would like to suggest that Malta continue to dedicate resources to the investigation and prosecution services.

379. The reviewing experts would like to recommend that Malta clarify the role of the Permanent Commission Against Corruption and its competency to receive public complaints and necessary awareness raising of its existence. In this regard, civil society confirmed that the existence of the Commission is not well known including their ability to receive complaints, and that there is a cause of concern over delay in their investigations.

380. In this context, Malta should conduct an assessment of its current bodies involved in the fight against corruption in view of clarifying roles and responsibilities and harmonizing functions, in particular to ensure the existence of one or more bodies equipped with sufficient independence, resources and staff (including investigative skills) to effectively combat corruption. Attention should also be paid to preventive aspects such as anti-corruption education and awareness raising among public officials and the general public.

## **Article 37. Cooperation with law enforcement authorities**

### **Paragraph 1 of article 37**

*1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of an offence established in accordance with this Convention to supply information useful to competent authorities for investigative and evidentiary purposes and to provide factual, specific help to competent authorities that may contribute to depriving offenders of the proceeds of crime and to recovering such proceeds.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

381. Not simply relating to corruption but to all offences in general, the procedural provisions ensure that evidence is preserved and all means necessary are employed to investigate, combat and prosecute crime.

382. Whilst the Police may retain anonymity of an informer, in any eventual prosecution, the Police may inform the Court that the person accused helped other investigations and thus, this may be reflected in the sentence should the said person file a guilty plea. In general, officers in other authorities are eager to assist in any investigation conducted by the Police. It is envisaged that the Whistleblower Act will further strengthen investigations and prosecutions and the Act contains measures also applicable to cooperating offenders in article 5, subarticle 3 (i-ii):

(i) the prosecution declares in the records of the proceedings that the accused has disclosed an improper practice which constitutes a criminal offence liable to a punishment of imprisonment of more than one year which has helped the police to apprehend the person or persons who committed the said criminal offence; or

(ii) the whistleblower proves to the satisfaction of the court that his whistleblowing report has so helped the police, the punishment for such crime shall be diminished as regards imprisonment by one or two degrees and as regards any pecuniary penalty by one-third or one-half:

Provided that the court may, if it considers that the circumstances of the case so merit, after hearing all the evidence and after convicting the whistleblower either further reduce the punishment or exempt the whistleblower from punishment completely:

Provided further that when it applies the above proviso to exempt the whistleblower from punishment completely the court shall make a report to the President of the Republic stating the reasons for its action and shall expressly refer to the provisions of this article in its report.

383. Malta does not have a system of plea bargaining. However, sentence bargaining applies to all offences before the Superior Courts, but not before the Magistrates' Courts.

#### **(b) Observations on the implementation of the article**

384. Malta has taken steps to encourage the cooperation of participating offenders, as described further in the next two provisions under review.



## Paragraph 2 of article 37

*2. Each State Party shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

385. Malta referred to Article 21 of the Criminal Code.

#### Criminal Code

21. Saving the provisions of article 492, the court may, for special and exceptional reasons to be expressly stated in detail in the decision, apply in its discretion any lesser punishment which it deems adequate, notwithstanding that a minimum punishment is prescribed in the article contemplating the particular offence or under the provisions of article 20, saving the provisions of article 7.

### (b) Observations on the implementation of the article

386. Article 21 of the Criminal Code allows for mitigated punishment in “special and exceptional” cases. In explaining the discretion of the court and the mitigation measures that can be taken, Maltese officials explained the following.

A court, after hearing police testify as to whether the person charged before it actively cooperated with the police and perhaps also revealed other acts of corruption (or other offences), or taking into account the filing of a guilty plea at an early stage of the proceedings, the character of the person charged, and all other factors which may have a bearing on specific cases (these can be various and not subject to definition, e.g. age, motivation, repentance, etc), is empowered to take this into consideration when delivering sentence. It can either go below the minimum threshold or give a punishment which is closer to the minimum.

387. The reviewers note that while the discretion of the court is fully recognized, the provision allowing the possibility of mitigating punishment needs to be exercised in a cautious manner so as to avoid potential abuse or corruption.

388. Article 21 of the Criminal Code further allows for mitigation of punishment in “special and exceptional” cases. It was explained during the country visit that judges enjoy fairly broad discretion in determining aggravating and mitigating circumstance at sentencing, and that they could impose sentences in “special and exceptional” circumstances that go beyond the statutory minimum. Members of the judiciary explained that in these cases generally more than one such circumstance would need to be present. There are no sentencing guidelines in Malta, but guidance can be sought from the Court of Criminal Appeals, as precedent is persuasive but non-binding. In this regard, some officials the reviewers met with during the country visit expressed the view that guidelines or common criteria beyond the “special and exceptional” limitation could be useful.

389. The observations under paragraph 1 of UNCAC article 30, particularly on the aspects of

prevention and deterrence, are reiterated in this context.

### **Paragraph 3 of article 37**

*3. Each State Party shall consider providing for the possibility, in accordance with the fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

390. A Presidential pardon may be granted in terms of Article 93 of the Constitution.

391. In February 2013, a Presidential Pardon was granted to George Farrugia in relation to bribery in the acquisition of oil purchases. As a result, whilst investigations are still ongoing, seven persons have already been arraigned.

#### **(b) Observations on the implementation of the article**

392. Officials explained that normally the conditions for a Presidential pardon are that a person testifies in particular cases and assists other investigations. It is also possible that the pardon is granted subject to the person returning all illicit proceeds and property derived from crime as well as making compensation to injured parties or the State, depending on the nature of the crimes in which he had been involved. The pardon may be in relation to some or all crimes. It is generally the case that in the event of a breach of any of the conditions upon which pardon was granted, the pardon is forfeited and the person would be subject to prosecution on all crimes to which the pardon refers.

### **Paragraph 4 of article 37**

*4. Protection of such persons shall be, mutatis mutandis, as provided for in article 32 of this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

393. The protections for witnesses and experts described under UNCAC article 32 apply equally to cooperating offenders.

#### **(b) Observations on the implementation of the article**

394. It was explained that protections are normally available to cooperating defendants only if they are formally witnesses during the trial. Maltese officials reported that it is difficult to envisage a pardon being given to a person who will not be a witness in a trial, since the testimony of such person is normally so pivotal that it is the determining factor accounting for the issue of a pardon.

## **Paragraph 5 of article 37**

*5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

395. Malta has not yet entered into such agreements but would consider them on a case by case basis, unless existing treaties and arrangements already make provision for this.

### **(b) Observations on the implementation of the article**

396. The reviewers note with compliment that Malta will consider entering into such agreements if existing treaties and arrangements are not available.

## **Article 38. Cooperation between national authorities**

*Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between, on the one hand, its public authorities, as well as its public officials, and, on the other hand, its authorities responsible for investigating and prosecuting criminal offences. Such cooperation may include:*

*(a) Informing the latter authorities, on their own initiative, where there are reasonable grounds to believe that any of the offences established in accordance with articles 15, 21 and 23 of this Convention has been committed; or*

*(b) Providing, upon request, to the latter authorities all necessary information.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

397. Malta explained that, given the small size of Malta and the close relationship between the investigative authorities, cooperation takes place as a matter of course. Although some memoranda of understanding (MOUs) between relevant authorities do exist, this is not a requirement for cooperation, unless confidential information is being divulged. Since the Police can obtain information by law as part of its police powers (e.g., requests for information) or following warrants issued by a Court or Magistrate, there is no difficulty in obtaining such information.

398. Further, as mentioned above, when a Head of Department suspects that conduct tantamount to an offence has occurred, the matter is referred to the Attorney General so a decision is taken as to whether the person should face disciplinary or criminal proceedings.

399. There are numerous examples of such referrals which, however, are not in relation to offences covered by the Convention. Invariably, in such instances where evidence clearly shows that a crime has been committed, the Police are immediately brought in or the matter referred to one of the specialised institutions cited above.

400. Regarding the exchange of personnel among agencies and Government departments, Malta explained that IAID, Customs and VAT personnel regularly communicate with the Police on matters within their remit or seek advice from the Attorney General's Office. Thus, there is constant cooperation, which is aided by the small size of Malta and the fact that the personnel engaged in this line of work know each other on a personal basis, which facilitates matters greatly.

401. The Financial Intelligence Analysis Unit of Malta (FIAU), pursuant to article 14 of the Prevention of Money Laundering Act, is further responsible for the collection, processing, analysis and dissemination of information with a view to combating money laundering and funding of terrorism and is tasked, in particular, to send suspicious transaction reports (STRs) to the Commissioner of Police for further investigation "if having considered the suspicious transaction report, the Unit also has reasonable grounds to suspect that the transaction is suspicious and could involve money laundering or funding of terrorism".

402. Article 24(4) of the Prevention of Money Laundering Act further provides that "(4) The police liaison officer shall assist the Unit in the analysis and processing of suspicious transaction reports and of information and intelligence data collected by the Unit in the exercise of its functions and shall advise the Unit on investigative techniques and on all law enforcement issues."

**(b) Observations on the implementation of the article**

403. The authorities of Malta provided examples of cooperation between heads of departments and the Attorney General on suspicions of corruption.

404. The reviewers note that some agreements or procedural arrangements are also in place between various agencies, in the form of MOUs. Moreover, the police can obtain information from public officials by law upon request.

405. Reference is also made to the information included in the observations under UNCAC article 36 above regarding parallel investigations or prosecutions.

406. During the country visit it was also clarified that while failing to report corruption it is not an offence as such, the more senior the official the higher the expectation and obligation to report. Also, failure to report corruption can be ground for disciplinary actions. According to the Disciplinary Procedures of the Public Service Commission Regulations' Article 5 (1) and (2):

(1) An officer shall report to the Head of Department any misconduct or breach of discipline committed by an officer of whom he is in charge immediately the offence becomes known to him, and in no case later than five working days after he becomes aware of the offence...

(2) An officer against whom a serious offence under these regulations has been committed (the victim) shall be entitled to file a formal complaint in writing with his Head of Department not later than six months from the date when the alleged offence is committed. The Head of Department shall decide whether or not to initiate disciplinary proceedings in terms of these regulations against the officer against whom the complaint is made, after carrying out a preliminary investigation which is

to be concluded not later than fifteen working days from when the Head of Department receives the written complaint...

407. While the above-cited regulations concern one public official reporting on another public official, there is not as yet any provision regarding members of the public reporting on public officials. Although nothing prevents a member of public from filing a complaint before the Permanent Commission Against Corruption, there is no specific provision outlining steps to be taken to this end. It was explained that this was under consideration.

## **Article 39. Cooperation between national authorities and the private sector**

### **Paragraph 1 of article 39**

*1. Each State Party shall take such measures as may be necessary to encourage, in accordance with its domestic law, cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

408. Entities in the private sector, in particular financial institutions, cooperate regularly with the Police. There is no specific legislation obliging this cooperation, although the Malta Financial Services Authority Act provides that investigative measures may be taken when offences are suspected (articles 17A-B).

Malta Financial Services Authority Act:

<http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8804&l=1>

409. Subject persons in covered private sector entities, including banks and financial institutions, are also required to send suspicious transaction reports to the FIAU, pursuant to the Prevention of Money Laundering Act and the Prevention of Money Laundering and Funding of Terrorism Regulations.

#### **(b) Observations on the implementation of the article**

410. Malta has taken steps to encourage private sector entities to cooperate with law enforcement authorities and explained that private sector entities do, in fact, regularly cooperate with the Police. It is also noted that under the Malta Financial Services Authority Act, investigative measures may be taken when offences are suspected.
411. Apart from the FIAU, there were few examples provided during the country visit of specific cooperation or outreach to the private sector, although the Permanent Commission Against Corruption noted that it would be useful to enhance such awareness raising.
412. During 2012, the FIAU provided general training on the fundamentals of AML/CFT measures and the contents of the FIAU Implementing Procedures in four separate training sessions spread over six afternoon sessions over a three-month period. In total, the FIAU trained over 300 participants. Furthermore, presentations were made by the FIAU during a number of other events organized by other entities, including the private sector.

## Paragraph 2 of article 39

*2. Each State Party shall consider encouraging its nationals and other persons with a habitual residence in its territory to report to the national investigating and prosecuting authorities the commission of an offence established in accordance with this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

413. Malta imposes no obligation on citizens or residents to report corruption, unless one is dealing with subject persons under the Prevention of Money Laundering Regulations.

### (b) Observations on the implementation of the article

414. It is noted that the Whistleblower Protection Act is likely to provide additional incentives to encourage the public reporting of corruption.

## Article 40. Bank secrecy

*Each State Party shall ensure that, in the case of domestic criminal investigations of offences established in accordance with this Convention, there are appropriate mechanisms available within its domestic legal system to overcome obstacles that may arise out of the application of bank secrecy laws.*

### (a) Summary of information relevant to reviewing the implementation of the article

415. The Investigation Order, which is aimed to trace assets of all kinds pertaining to a person suspected of a criminal offence or of money laundering, overrides all bank secrecy, as described above under UNCAC article 31(1)(a).

416. Article 4 of the Prevention of Money Laundering Act, which is applicable to all criminal offences carrying a punishment of over one year imprisonment, further provides as follows (emphasis added):

### Prevention of Money Laundering Act

4. (1) Where, upon information received, the Attorney General has reasonable cause to suspect that a person (hereinafter referred to as "the suspect") is guilty of the offence mentioned in article 3, he may apply to the Criminal Court for an order (hereinafter referred to as an "investigation order") that a person (including a body or association of persons, whether corporate or unincorporate) named in the order who appears to be in possession of particular material or material of a particular description which is likely to be of substantial value (whether by itself or together with other material) to the investigation of, or in connection with, the suspect, shall produce or grant access to such material to the person or persons indicated in the order; and the person or persons so indicated shall, by virtue of the investigation order, have the power to enter any house, building or other enclosure for the purpose of searching for such material.

...

(3) An investigation order -

(a) shall not confer any right to production of, access to, or search for communications

between an advocate or legal procurator and his client, and between a clergyman and a person making a confession to him, which would in legal proceedings be protected from disclosure by article 642(1) of the Criminal Code or by article 588(1) of the Code of Organization and Civil Procedure;

(b) shall, without prejudice to the provisions of the foregoing paragraph, have effect notwithstanding any obligation as to secrecy or other restriction upon the disclosure of information imposed by any law or otherwise; and

(c) may be made in relation to material in the possession of any government department.

(4) Where the material to which an application under subarticle (1) relates consists of information contained in a computer, the investigation order shall have effect as an order to produce the material or give access to such material in a form in which it can be taken away and in which it is visible and legible.

(5) Any person who, having been ordered to produce or grant access to material as provided in subarticle (1) shall, without lawful excuse (the proof whereof shall lie on him) wilfully fail or refuse to comply with such investigation order, or who shall wilfully hinder or obstruct any search for such material, shall be guilty of an offence and shall, on conviction, be liable to a fine (multa) not exceeding eleven thousand and six hundred and forty-six euro and eighty-seven cents (11,646.87) or to imprisonment not exceeding twelve months, or to both such fine and imprisonment.

417. Moreover article 257 of the Criminal Code provides:

### **Criminal Code**

257. If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (multa) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that, notwithstanding the provisions of any other law, it shall be a defence to show that the disclosure was made to a competent public authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute -

(a) any of the offences referred to in article 22(2)(a)(1) of the Dangerous Drugs Ordinance; or

(b) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or

(c) any offence of money laundering within the meaning of the Prevention of Money Laundering Act:

Provided further that the provisions of the first proviso of this article shall not apply to a person who is a member of the legal or the medical profession.

### **(b) Observations on the implementation of the article**

418. The reviewers note that investigation orders, issued by the criminal court, for asset tracing in cases of suspected criminal or money laundering offences override all bank secrecy restrictions.

419. Malta appears to address bank secrecy restrictions in line with the Convention. Case

examples were provided during the country visit where bank and financial records were routinely obtained by the Maltese investigative authorities.

#### **Article 41. Criminal record**

*Each State Party may adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence established in accordance with this Convention.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**

420. This is addressed through article 49 of the Criminal Code.

##### **Criminal Code**

49. A person is deemed to be a recidivist, if, after being sentenced for any offence by a judgment which has become absolute, he commits another offence:  
Provided that the court may, in determining the punishment, take into account a judgment delivered by a foreign court which has become absolute.

421. A recidivist is a person who has been previously found guilty of an offence. Art 50 of the Criminal Code provides:

##### **Criminal Code**

50. Where a person sentenced for a crime shall, within ten years from the date of the expiration or remission of the punishment, if the term of such punishment be over five years, or within five years, in all other cases, commit another crime, he may be sentenced to a punishment higher by one degree than the punishment established for such other crime.

##### **(b) Observations on the implementation of the article**

422. The article under review is legislatively implemented in article 49 of the Criminal Code, which empowers a court to take into account a final judgment delivered by a foreign court.

#### **Article 42. Jurisdiction**

##### **Paragraph 1 of article 42**

*1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:*

*(a) The offence is committed in the territory of that State Party; or*

*(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.*

##### **(a) Summary of information relevant to reviewing the implementation of the article**



423. Malta referred to the following measures.

### **Criminal Code**

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

(a) only part of the action giving execution to the offence took place in Malta; ...

5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta -

(a) against any person who commits an offence in Malta, or on the sea in any place within the territorial jurisdiction of Malta;

(b) against any person who commits an offence on the sea beyond such limits on board any ship or vessel belonging to Malta;

(c) against any person who commits an offence on board any aircraft while it is within the air space of Malta or on board any aircraft belonging to Malta wherever it may be; For the purposes of this paragraph the expression "air space" means the air space above the land areas and territorial waters of Malta; ...

(2) For the purposes of subarticle (1)(b) and (c), a ship or vessel or an aircraft shall be deemed to belong to Malta if it is registered in Malta or, if it is not registered anywhere, is owned wholly by persons habitually resident in Malta or by bodies corporate established under and subject to the laws of Malta and having their principal place of business in Malta.

### **(b) Observations on the implementation of the article**

424. Article 121C of the criminal code provides for territorial jurisdiction and jurisdiction on Maltese ships or vessels, as well as aboard Maltese planes. The paragraph under review is legislatively implemented.

### **Subparagraph 2 (a) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*(a) The offence is committed against a national of that State Party; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

425. Malta indicated that this provision has not been implemented. Since this is a facultative provision, the issue is under consideration.

### **(b) Observations on the implementation of the article**

426. The passive nationality principle has not been established, although the provision is under consideration.

## **Subparagraph 2 (b) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*...*

*(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

427. Malta referred to the following measure.

#### **Criminal Code**

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where: ...

(b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or

### **(b) Observations on the implementation of the article**

428. The active nationality principle is legislatively established. However, it was explained that Stateless persons are not permanent residents in terms of Article 7 of the Immigration Act and hence do not fall under this category. However, if a stateless person commits a crime in Malta that would, in any case, be subject to Maltese jurisdiction.

## **Subparagraph 2 (c) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

*...*

*(c) The offence is one of those established in accordance with article 23, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 23, paragraph (a) (i) or (ii) or (b) (i), of this Convention within its territory; or*

### **(a) Summary of information relevant to reviewing the implementation of the article**

429. Money laundering needs to have been committed in Malta for Maltese courts to have jurisdiction, although the predicate offence need not have occurred in Malta, according to article 2 of the Prevention of Money Laundering Act.

#### **Prevention of Money Laundering Act**

"criminal activity" means any activity, whenever or wherever carried out, which, under the law of Malta or any other law, amounts to: ...

(b) one of the offences listed in the Second Schedule to this Act;

430. The following additional measures (cited under UNCAC article 23(1)(b)(ii)) are

referred to.

## **Prevention of Money Laundering Act**

2. (1) In this Act, unless the context otherwise requires - ...

“money laundering” means - ...

- (v) attempting any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii) and (iv) within the meaning of article 41 of the Criminal Code;
- (vi) acting as an accomplice within the meaning of article 42 of the Criminal Code in respect of any of the matters or activities defined in the above foregoing sub-paragraphs (i), (ii), (iii), (iv) and (v);

## **Criminal Code (Conspiracy)**

48A. (1) Whosoever in Malta conspires with one or more persons in Malta or outside Malta for the purpose of committing any crime in Malta liable to the punishment of imprisonment, not being a crime in Malta under the Press Act, shall be guilty of the offence of conspiracy to commit that offence.

...

### **(b) Observations on the implementation of the article**

- 431. The provision under review deals with preparatory acts to money laundering, or acts of participation, committed outside Malta, which appear to be largely covered in article 2(1)(vi) when read together with the definition of “criminal activity” in the Act.
- 432. Conspiracy to money laundering, if committed partly in Malta, is covered under article 48A of the Criminal Code. The Maria Abela, Carmel Vella Bonavita case was referred to as a case in point.

## **Subparagraph 2 (d) of article 42**

*2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:*

...

*(d) The offence is committed against the State Party.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

- 433. Malta referred to the following provision.

## **Criminal Code**

121C. Without prejudice to the provisions of article 5, the Maltese courts shall also have jurisdiction over the offences laid down in this sub-title where:

- (a) only part of the action giving execution to the offence took place in Malta; or
- (b) the offender is a Maltese national or permanent resident in Malta, a public officer or servant of Malta or a member of the House of Representatives or of a Local Council; or
- (c) the offence involves a public officer or servant of Malta or is a member of the House of

Representatives or of a Local Council; or

(d) the offence involves any of those persons to whom reference is made in article 121(4)(b), (c) or (d) and that person is at the same time a citizen or permanent resident in Malta within the meaning of article 5(1)(d).

**(b) Observations on the implementation of the article**

434. Maltese officials explained that the State protection principle would be encompassed by the foregoing jurisdictional provisions cited, including article 5. However, the reviewers did not see the relevance of the cited provision to the State protection principle. In any case, Maltese officials reported that this is a facultative provision and hence Malta cannot be said to be in breach.

**Paragraph 3 of article 42**

*3. For the purposes of article 44 of this Convention, each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.*

**(a) Summary of information relevant to reviewing the implementation of the article**

435. Malta cited article 5(1)(h) of the Criminal Code.

**Criminal Code**

5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta – ...

(h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person;

**(b) Observations on the implementation of the article**

436. The provision is legislatively implemented in article 5(1)(h) of the Criminal Code.

**Paragraph 4 of article 42**

*4. Each State Party may also take such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when the alleged offender is present in its territory and it does not extradite him or her.*

**(a) Summary of information relevant to reviewing the implementation of the article**

437. Malta would establish jurisdiction only if the reason is one of those cited in article 5(1)(h) (quoted above).

**(b) Observations on the implementation of the article**

438. Malta has not established jurisdiction under these circumstances, except in cases where extradition is refused on the grounds that the person would be subject to the death penalty if extradited.

**Paragraph 5 of article 42**

*5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that any other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

439. Malta indicated that no specific legal provision is necessary, as this is done as a matter of good practice

**(b) Observations on the implementation of the article**

440. Malta states that this is done as a matter of good practice in accordance with regulations on conflicts of jurisdiction, in particular the Prevention and Settlement of Conflicts of Exercise of Jurisdiction in Criminal Proceedings Regulations, 2014 regulating possible conflicts between Member States of the Union. However, no examples of implementation were provided.

441. The provision under review appears to have been legislatively implemented, at least regarding the relationship with other EU Member States.

**Paragraph 6 of article 42**

*6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.*

**(a) Summary of information relevant to reviewing the implementation of the article**

442. A joint reading of articles 5 and 121C of the Code clearly manifest the instances when Maltese courts can exercise jurisdiction, with the latter article having most relevance in this context.

**(b) Observations on the implementation of the article**

443. The reviewers are of the view that Malta has implemented the provision under review in the form of articles 5 and 121C of the Criminal Code.

## Chapter IV. International cooperation

444. Regarding the general principles regulating the relationship between international law (treaties, conventions, etc.) and national law in the Maltese legal system, Maltese officials provided that Malta follows a dualist system in that all treaties need to be transposed into domestic law, namely the Extradition Act, which is the only legislative instrument that can be enforced in a court of law. Moreover, unless a treaty has been implemented into Maltese law, no ratification is embarked upon.
445. As a general matter concerning the transposition of treaty obligations into domestic law, Maltese officials explained that Maltese authorities, and particularly national courts, interpret the domestic legislation in line with international treaties, in the same manner as with European Union Framework decisions, following the Pupino case<sup>8</sup>. No conflict has arisen to date in the application of existing legislation, although Maltese authorities recognized that in principle a conflict could occur if a treaty obligation was not properly transposed. It was further explained that for some treaty obligations it is not necessary to enact specific legislation because there are no contradictory provisions of general law. In this regard, Maltese officials noted that treaties establish obligations between States and not between the State and an individual.
446. Against this background, a number of observations are made regarding the implementation by Malta of chapter IV of the Convention. In particular, it is noted that for many UNCAC provisions there is no specific provision in Malta's legislation but, according to Maltese officials, no specific legislation is needed because there is no contradictory provision in the domestic law, which would, in any case, be interpreted in line with the Convention. Nonetheless, the reviewers noted under the specific UNCAC provisions that Malta may wish to consider, in the interest of greater legal certainty, especially for consistency in future cases, more clearly specifying particular UNCAC obligations in its domestic legislation or adopting guidelines or other formalized procedures to address such obligations.
447. In this context, Malta referred to Article 3 (4) of the Interpretation Act, Chapter 249, which provides as follows:
- (4)(a) Any reference in any law to "international law" shall be construed as a reference to international law interpreted where required in accordance with such international instruments, if any, to which Malta may from time to time be a party.
- (b) Any reference in any law to Malta's international obligations shall be construed as a reference to the obligations of Malta assumed under international law.

### **Article 44 Extradition**

#### **Paragraph 1**

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<sup>8</sup> C-105/03 Pupino. The case recognizes inter alia the principle that national authorities, especially national courts, are under an obligation to interpret national law in conformity with European Union framework decisions.

*1. This article shall apply to the offences established in accordance with this Convention where the person who is the subject of the request for extradition is present in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

448. Malta indicated that Article 8 of the Extradition Act imposes the double criminality requirement as one of the conditions for extradition to be granted.

**Extradition Act**

8.\* (1) For the purposes of this Act, an offence of which a person is accused or has been convicted in a designated foreign country is an extraditable offence in respect of that country if -

(a) it is an offence in respect of which a fugitive criminal may be returned to that country in accordance with the arrangement and is punishable under that law with imprisonment for a term of twelve months or a greater punishment; and

(b) the act or omission constituting the offence or the equivalent act or omission, would constitute an offence against the law of Malta if it took place within Malta or, in the case of an extra-territorial offence, in corresponding circumstances outside Malta.

449. Malta indicated that issues of dual criminality have been raised in a number of cases, though none dealing with offences covered by the Convention.

450. The following statistics were provided by Malta on extradition in relation to all criminal matters, and not only limited to corruption:

	2008	2009	2010	2011	2012
Malta as Requesting State	3	0	1	0	4
Malta as Requested State	1	4	2	2	1*

(\*case re-activated from 2010)

451. Statistical data available regarding European Arrest Warrants and SIS alerts is as follows:

	2008	2009	2010	2011	2012
Malta as Requesting State	1	7	16	15	12
Malta as Requested State	14	7	12	9	6

452. No requests for extradition have been refused by Malta to date, except in one case where the request did not satisfy Malta's legal requirements (see below paragraphs 8 and 17 of article 44).

**(b) Observations on the implementation of the article**

453. It is noted that Article 8 of the Extradition Act introduces a minimum penalty requirement for extradition that is not provided for in article 44 (1) of the Convention, but is allowable under paragraph 8 of article 44 of UNCAC.

## Article 44 Extradition

### Paragraph 2

*2. Notwithstanding the provisions of paragraph 1 of this article, a State Party whose law so permits may grant the extradition of a person for any of the offences covered by this Convention that are not punishable under its own domestic law.*

#### (a) Summary of information relevant to reviewing the implementation of the article

454. It is possible for Maltese authorities to extradite persons for offences of corruption in the absence of dual criminality in some cases according to the Extradition (Designated Foreign Countries) Order of 7 June 2004, which implemented the Council Framework Decision of 13 June 2002 on the European Arrest Warrant and the Surrender Procedures between Member States of the European Union.

#### Article 59(2) of the Extradition (Designated Foreign Countries) Order

The conduct constitutes an extraditable offence in relation to the scheduled country [all EU countries] if these conditions are satisfied:

- (a) the conduct occurs in the scheduled country and no part of it occurs in Malta;
- (b) a certificate issued by an appropriate authority of the scheduled country shows that the conduct is scheduled conduct;
- (c) the certificate shows that the conduct is punishable under the law of the scheduled country with imprisonment or another form of detention for a term of three years or a greater punishment.

It is noted that “corruption” is an offence listed on Schedule 2 of this Order under number 7. The above cited provision is without any reference to Maltese law and differs from paragraph (3) of the same Article 59, which provides for the extradition of offences punishable under the law of the scheduled country with imprisonment or another form of detention for a term of twelve months or more (however described in that law) *only if* “the conduct would constitute an offence under the law of Malta if it occurred in Malta”.

455. Extradition of persons for offences of corruption in the absence of dual criminality is also possible to Iceland and Norway according to Article 59(2) of the Extradition (Republic of Iceland and Kingdom of Norway) Order.

#### (b) Observations on the implementation of the article

456. Outside the simplified extradition procedures described above under the European Arrest Warrant and Surrender Procedures and for Iceland and Norway, dual criminality remains a requirement in all other cases.

## Article 44 Extradition

### Paragraph 3

*3. If the request for extradition includes several separate offences, at least one of which is extraditable under this article and some of which are not extraditable by reason of their period of imprisonment but are related to offences established in accordance with this Convention, the requested State Party may apply this article also in respect of those offences.*



**(a) Summary of information relevant to reviewing the implementation of the article**

457. Malta indicated that this could be possible under Article 10 (3) and (4) of the Extradition Act.

**Extradition Act**

10. (3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Malta, be dealt with in that country for or in respect of any offence committed before his return under this Act other than –

(a) the offence in respect of which his return under this Act is requested;

(b) any lesser offence proved by the facts proved before the court of committal; or

(c) any other offence being an extraditable offence in respect of which the Minister may consent to his being so dealt with.

(4) Any such arrangement as is mentioned in sub-article (3) may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purpose of that subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in that certificate.

**(b) Observations on the implementation of the article**

458. In relation to countries belonging to the Council of Europe, Article 2(2) of the European Convention on Extradition (1957), which Malta has ratified, could further be deemed applicable as a basis on which to implement the provision under review. As stated under other provisions below, the said obligation would be strongly adhered to since it is established by treaty.

**European Convention on Extradition, 1957**

“If the request for extradition includes several separate offences each of which is punishable under the laws of the requesting Party and the requested Party by deprivation of liberty or under a detention order, but of which some do not fulfill the condition with regard to the amount of punishment which may be awarded, the requested Party shall also have the right to grant extradition for the latter offences.”

**Article 44 Extradition**

**Paragraph 4**

*4. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. A State Party whose law so permits, in case it uses this Convention as the basis for extradition, shall not consider any of the offences established in accordance with this Convention to be a political offence.*

**(a) Summary of information relevant to reviewing the implementation of the article**

459. Malta indicated that corruption-related offences carry a punishment under the Criminal Code and the Prevention of Money Laundering Act of over one year imprisonment, and hence they are extraditable.

460. The threshold penalty is also applicable to the other Members of the Council of Europe through Article 2(1) of the European Convention of Extradition.

#### **European Convention of Extradition**

2. (1) Extradition shall be granted in respect of offences punishable under the laws of the requesting Party and of the requested Party by deprivation of liberty or under a detention order for a maximum period of at least one year or by a more severe penalty. Where a conviction and prison sentence have occurred or a detention order has been made in the territory of the requesting Party, the punishment awarded must have been for a period of at least four months.

461. The same threshold penalties are applicable according to Article 2(1) of the Framework Decision on the European Arrest Warrant, transposed into Maltese legislation by Articles 59 and 60 of the Extradition (Designated Foreign Countries) Order of 7 June 2004.

462. Malta's bilateral treaties regulating extradition are found on the following site: <http://www.justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&gotoID=276>.

463. Article 2(1) of the bilateral agreements on extradition (with the United States of America, Egypt, Libya and Tunisia) also states that an offence shall be an extraditable offence if it is punishable under the laws of both States by deprivation of liberty for a period of at least one year or by a more severe penalty.

464. Although Malta does not take the Convention as the legal basis for cooperation with other States on extradition (as per the depositary notification referenced in the introduction to this report C.N.276.2008.TREATIES-9<sup>9</sup>), Article 10(1)(a) of the Extradition Act nonetheless addresses the political offence issue.

#### **Extradition Act**

10. (1) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister or to the court of committal – (a) that the offence of which that person is accused or was convicted is an offence of a political character.

465. Reference is also made to article 32 of the Extradition Act (quoted under the next provision under review).

#### **(b) Observations on the implementation of the article**

466. Taking into account both extradition treaties and Maltese domestic legislation, as well as what is provided for in article 44(8) of the UNCAC, Malta has legislatively implemented article 44(4) of the UNCAC. No examples of implementation were provided.

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<sup>9</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/CN.276.2008-Eng.pdf>

## Article 44 Extradition

### Paragraphs 5 to 7

*5. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.*

*6. A State Party that makes extradition conditional on the existence of a treaty shall:*

*(a) At the time of deposit of its instrument of ratification, acceptance or approval of or accession to this Convention, inform the Secretary-General of the United Nations whether it will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and*

*(b) If it does not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.*

*7. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

467. Malta indicated that it makes extradition conditional on the existence of a treaty.

468. Malta explained that, although the Convention is not taken as a legal basis for extradition (C.N.276.2008.TREATIES-9<sup>10</sup>), this does not exclude extradition should a request be made on the basis of the Convention, due to the powers granted to the Minister under Articles 30A and 32 of the Extradition Act.

#### **Extradition Act**

30A. (1) This article applies if the Minister believes that-

(a) arrangements have been made or are applicable between Malta and another country for the extradition of a person to that country; and

(b) the country is not a designated Commonwealth country or a designated foreign country.

(2) The Minister may certify that the conditions in subarticle (1)(a) and (b) are satisfied in relation to the extradition of the person.

(3) If the Minister issues a certificate under subarticle (2), this Act applies in respect of the person's extradition to the other country as if that country were a designated foreign country.

(4) As applied by subarticle (3), this Act has effect with any other modifications specified in the certificate.

(5) A certificate under subarticle (2) in relation to a person is conclusive evidence that the conditions in subarticle (1)(a) and (b) are satisfied in relation to the person's extradition.

32. (1) The offences referred to in articles 115 to 121B of the Criminal Code shall be deemed to have been included as extraditable offences in all extradition treaties made by Malta (or are applicable to Malta) with Convention countries and which extend to, and are binding on, Malta on the date of the coming into force for Malta of the Convention.

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<sup>10</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/CN.276.2008-Eng.pdf>

(2) Where this Act does not apply in the case of any state which is a party to the "Criminal Law Convention on Corruption" the provisions of article 31(2) and (3) shall mutatis mutandis apply to any such country so however that the reference to "subarticle (1)" in the said subarticle (3) shall be read and construed as a reference to subarticle (1) of this article.

(3) In this article:

"Convention countries" means those countries which are contracting parties to the Convention;

"the Convention" means the Criminal Law Convention on Corruption done at Strasbourg on the 27th January 1999.

469. More specifically, according to Article 43(1) of the Maltese Constitution, "extradition is only permitted in pursuance of arrangements made by treaty and under the authority of a law".

470. Nonetheless, according to paragraph (4) of the same Article 43, "the provisions made by or under the Extradition Act, as for the time being in force, for the removal of persons from Malta to another Commonwealth country to undergo trial or punishment in that country in respect of an offence committed in that country and any general arrangements for the extradition of persons between Commonwealth countries to which Malta for the time being adheres shall be deemed, for the purposes of sub-article (1) of this article, to be arrangements made by treaty".

471. According to Article 4(1) and (2) of the Extradition Act, the Minister may by order designate any Commonwealth country and establish that the Extradition Act shall have effect in relation to the return of persons to or from that country.

472. By the Extradition (Designated Commonwealth Countries) Order of 1 February 1984, the following countries have been specified for the purposes of Article 4 of the Extradition Act: Australia, Barbados, Canada, the Republic of Cyprus, Gambia, Jamaica, New Zealand, Singapore, Trinidad and Tobago, and the United Kingdom of Great Britain and Northern Ireland.

473. Malta is party to the Convention on Extradition of the Council of Europe (ratified by all 47 Member States of the Council of Europe, plus Israel, Korea and South Africa), and the extradition of persons from or to those countries is provided for in Malta's Extradition (Designated Foreign Countries) Order (No. 2) of 17 June 1996.

474. In addition, Malta has signed four bilateral agreements with the United States of America, Tunisia, Libya and Egypt. Negotiations with Morocco on the enactment of a treaty were at an advanced stage during the country visit.

475. Simplified extradition procedures are available to Malta under the London Scheme for Extradition within the Commonwealth. Before its independence in 1960, Malta also acceded to the treaties adopted by the United Kingdom of Great Britain and Northern Ireland.

**(b) Observations on the implementation of the article**

476. The requisite notification to the Secretary General has been made: "Pursuant to Article 44.6, the Government of Malta declares that it does not take this convention as the legal

basis for co-operation on extradition with other State Parties.” (C.N.276.2008.TREATIES-9<sup>11</sup>).

477. Although Malta does not consider the Convention as a legal basis for extradition, the Minister may, notwithstanding its depositary notification, on a case by case basis enter into extradition relations with other countries that are not Commonwealth or designated countries, pursuant to Article 30A. It was explained that this would include incoming requests on the basis of the Convention.

## Article 44 Extradition

### Paragraph 8

*8. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.*

#### (a) Summary of information relevant to reviewing the implementation of the article

478. Malta referred to the information provided under paragraph 1 of article 44 above, specifically the minimum penalty requirements for extradition.

479. Malta further cited Articles 10 and 11 of the Extradition Act which list the general restrictions on the return of an individual:

### Extradition Act

#### Article 10.\*

(1) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if it appears to the Minister or to the court of committal -

(a) that the offence of which that person is accused or was convicted is an offence of a political character; or

(b) that the request for his return (though purporting to be made on account of an extraditable offence) is in fact made for the purpose of prosecuting or punishing him on account of his race, place of origin, nationality, political opinions, colour or creed; or

(c) that he might, if returned, be prejudiced at his trial or punished, detained or restricted in his personal liberty by reason of his race, place of origin, nationality, political opinions, colour or creed.

(2) A person accused of an offence shall not be returned under this Act to any country, or committed to or kept in custody for the purpose of such return, if it appears as aforesaid that if charged with that offence in Malta he would be entitled to be acquitted under any rule of law relating to previous acquittal or conviction.

(3) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, unless provision is made by the law of that country, or by an arrangement made with that country, for securing that he will not, unless he has first been restored or had an opportunity of returning to Malta, be dealt with in that country for or in respect of any offence committed before his return under this Act other than -

(a) the offence in respect of which his return under this Act is requested;

(b) any lesser offence proved by the facts proved before the court of committal; or

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<sup>11</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/CN.276.2008-Eng.pdf>

(c) any other offence being an extraditable offence in respect of which the Minister may consent to his being so dealt with.

(4) Any such arrangement as is mentioned in subarticle (3) may be an arrangement made for the particular case or an arrangement of a more general nature; and for the purpose of that subsection a certificate issued by or under the authority of the Minister confirming the existence of an arrangement with any country and stating its terms shall be conclusive evidence of the matters contained in that certificate.

(5) For the purposes of this section, an offence against the life or person of a head of state, or any related offence described in article 5(3), shall not necessarily be deemed to be an offence of a political character.

Powers of the Minister with respect to return of offenders.

Article 11.\*

(1) A person shall not be returned under this Act to any country, or committed to or kept in custody for the purposes of such return, if the Minister, in the exercise of any power conferred on or reserved by the Government in or in respect of any arrangement, has so directed.

(2) Without prejudice to the generality of the provision of subsection (1) of this section, the Minister may refuse to make an order under article 13 or article 21 in any of the following cases:

(a) where the request is for a person unlawfully at large after conviction and the punishment awarded is less than four months imprisonment;

(b) where according to the law of the requesting country the offence in respect of which the return is requested is subject to the death penalty and the requesting country has not given an assurance accepted as sufficient by the Minister that the death penalty will not be awarded or will, if awarded, not be carried out;

(c) where the request is for the return of a person convicted of an offence in his absence and the requesting country has not given an assurance accepted as sufficient by the Minister that such person will be granted a new trial if he so requests;

(d) if prosecution for the offence in respect of which extradition is requested is barred by prescription either according to the law of Malta or according to the law of the requesting country;

(e) where the request is for a person who is in Malta having been returned thereto as mentioned in article 25(1) and the Government is under an obligation not to return such a person to another country;

(f) if any amnesty has been granted in respect of the offence for which the return is requested and the courts of Malta had jurisdiction to try that offence;

(g) if the person whose extradition is requested is a citizen of Malta.

480. Malta reported that it has not refused any extradition requests to date where its legal requirements were satisfied.

#### **(b) Observations on the implementation of the article**

481. The information under paragraph 4 of the UNCAC article above as regards the minimum penalty requirement for extradition is referred to. Grounds for refusal are provided for in Articles 10 to 12 of the Extradition Act, as well as in extradition treaties.

482. Malta explained that according to the principles regulating the relationship between international law (treaties, conventions, etc.) and national law in the Maltese legal system, all treaties need to be transposed into domestic law, namely the Extradition Act, which is the only legislative instrument which can be enforced in a court of law. Moreover, it is contested that no conflict arises, for instance with regard to grounds for refusal, as unless a treaty has been implemented into Maltese law, no ratification is embarked upon.

483. The reviewers observe that Malta has established conditions for extradition in line with the Convention.

## **Article 44 Extradition**

### **Paragraph 9**

*9. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

484. Malta cited Articles 15 and 22 of the Extradition Act.

#### **Extradition Act**

15.\* (1) A person arrested in pursuance of a warrant under article 14 shall (unless previously discharged under subarticle (3) of that article) be brought as soon as practicable and in any case not later than forty-eight hours from his arrest before the Court of Magistrates (Malta) as a court of criminal inquiry (in this Act referred to as the court of committal) which shall have for the purposes of proceedings under this section the same powers, as nearly as may be, including power to remand in custody or on bail, as the said court has when sitting as aforesaid.

(2) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the Minister) after which he will be discharged from custody unless such an authority has been received.

(3) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence and it is further satisfied –

(a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the Courts of Criminal Justice of Malta;

(b) where the person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large, the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his return thereunder; but if the court is not so satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody:

Provided that notwithstanding any order discharging him from custody such person shall remain in custody until the expiration of three working days from any such order and, where an appeal has been entered by the Attorney General, until the appeal is disposed of or abandoned, or the Attorney General consents to the release of such person.

(4) Where a person has been brought before a court of committal as provided in subarticle (1), the provisions of article 401(1) of the Criminal Code shall apply as if the words "one month" wherever they occur therein were substituted with the words "two months" and as if the words "three months" in the proviso thereto were substituted with the words "six months".

(5) Where the person arrested declares before the court of committal that he is willing to be extradited, the said court upon being satisfied of the voluntariness of such declaration shall commit him to custody to await his return and all the provisions of this Act for his extradition shall be deemed to be satisfied and the Minister shall thereupon, notwithstanding any other provision of this Act but saving the provisions of article 21(2) and (4) thereof, by warrant order

him to be returned to the requesting country. No appeal shall lie from the decision of the court committing the person to custody under the provisions of this subarticle.

\*For the applicability of this article to the Republic of Tunisia and the United States of America, vide Subsidiary Legislation S.L.276.06 and S.L.276.07 respectively.

22.\* (1) In any proceedings under or for the purposes of this Act in respect of a person in custody thereunder -

(a) a document, duly authenticated, which purports to set out evidence given on oath in the requesting country shall be admissible as evidence of the matters stated therein;

(b) a document, duly authenticated, which purports to have been received in evidence, or to be a copy of a document so received, in any proceeding in any such country shall be admissible as evidence;

(c) a document, duly authenticated, which certifies that a person was convicted on a date specified in the document of an offence against the law of, or of part of, any such country shall be admissible as evidence of the fact and date of the conviction.

(2) A document shall be deemed to be duly authenticated for the purpose of this section -

(a) in the case of a document purporting to set out evidence given as aforesaid, if the document purports to be certified by a judge or magistrate or officer in or of that country to be the original document containing or recording that testimony or a true copy of that original document;

(b) in the case of a document that purports to have been received in evidence as aforesaid or to be a copy of a document so received, if the document purports to be certified as aforesaid to have been, or to be a true copy of a document which has been, so received;

(c) in the case of a document which certifies that a person was convicted as aforesaid, if the document purports to be certified as aforesaid,

and in any such case the document is authenticated either by the oath of a witness or by the official seal of a Minister in or of the requesting country.

(2A) Notwithstanding the provisions of subarticles (1) and (2) the Court may receive in evidence in proceedings under or for the purposes of this Act any document not authenticated in accordance with those provisions where the document is authenticated or deemed to be authenticated in accordance with the provisions of subarticles (2B) and (2C).

(2B) In any proceedings under or for the purposes of this Act a document issued in the requesting country may also be received in evidence in proceedings under this Act if it is duly authenticated in accordance with subarticle (2C).

(2C) A document shall be deemed to be duly authenticated if (and only if) one of these applies -

(a) it purports to be signed by a judge, magistrate or officer of the requesting country; or

(b) it purports to be certified, whether by seal or otherwise, by the Ministry, department or other authority responsible for justice or for foreign affairs of the requesting country; or

(c) it purports to be authenticated by the oath, declaration or affirmation of a witness.

(2D) Any document which is to be sent in connection with proceedings under this Act, may be transmitted by any secure means capable of producing written records and under conditions permitting the ascertainment of its authenticity.

(3) It shall be lawful for the Commissioner of Police or for the Attorney General as the case may be, as well as for the person the return of whom is requested, to produce evidence before the Court of Criminal Appeal even though such evidence shall not have been produced before the court of committal.

(4) In this article, "oath" includes affirmation or declaration; and nothing in this section shall be construed as prejudicing the admission in evidence of any document which is admissible in evidence apart from this article.

\*For the applicability of this article to the Republic of Tunisia and the United States of America, vide Subsidiary Legislation S.L.276.06 and S.L.276.07 respectively.

**(b) Observations on the implementation of the article**



485. It is noted that Articles 15 and 22 of the Extradition Act refer to any offence, not only those to which this article applies.

486. Simplified extradition arrangements are also available to Malta under the London Scheme and the European Arrest Warrants.

## **Article 44 Extradition**

### **Paragraph 10**

*10. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

487. Malta cited Articles 13 through 15(1) of the Extradition Act as applicable.

### **Extradition Act**

#### **Article 13**

(1) Subject to the provisions of this Act relating to provisional warrants, a person shall not be dealt with under this Act except in pursuance of an order of the Minister (in this Act referred to as an authority to proceed) issued in pursuance of a request made in writing to a Minister by or on behalf of the Government of the designated Commonwealth country or of the designated foreign country in which the person to be returned is accused or was convicted.

(2) There shall be furnished with any request made for the purposes of this section on behalf of any country -

(a) in the case of a person accused of an offence, a warrant for his arrest issued in that country;

(b) in the case of a person unlawfully at large after conviction of an offence, a certificate of the conviction and sentence in that country, and a statement of the amount if any of that sentence which has been served, together, in each case, with -

(i) particulars of the person whose return is requested, including information sufficient to establish his identity and nationality;

(ii) particulars of the facts upon which and the law under which such person is accused or was convicted, the legal description of the offence and a copy of the relative enactments or (if this is not practicable) a statement of the relevant law; and

(iii) evidence sufficient to justify the issue of a warrant for his arrest under article 14.

(3) On receipt of such a request, the Minister may issue an order to proceed unless it appears to him that an order for the return of the person concerned could not lawfully be made, or would not in fact be made, in accordance with the provisions of this Act.

#### **Article 14**

(1) A warrant for the arrest of a person accused of an extraditable offence, or alleged to be unlawfully at large after conviction of such an offence, may be issued by a magistrate -

(a) on the receipt of an authority to proceed; or

(b) without such authority, upon information that the said person is, or is believed to be, in or on his way to Malta,

and any warrant issued by virtue of paragraph (b) is in this Act referred to as a provisional warrant.

(2) A warrant of arrest under this section may be issued upon such evidence as would, in the opinion of the magistrate, authorise the issue of a warrant for the arrest of a person accused of committing a corresponding offence or, as the case may be, of a person alleged to be unlawfully at large after conviction of an offence within the jurisdiction of the Courts of Criminal Justice of Malta.

(3) Where a provisional warrant is issued under this section, the magistrate by whom it is issued shall forthwith give notice to the Minister, and transmit to him the information and evidence, or certified copies of the information and evidence, upon which it was issued; and the Minister may in any case, and shall if he decides not to issue an authority to proceed in respect of the person to whom the warrant relates, by order cancel the warrant and, if that person has been arrested thereunder, discharge him from custody.

(4) A warrant issued under this section shall be forthwith executed by a Police officer.

(5) The provisions of articles 355E, 355F, 355I, 355AB, 355AC and 357 of the Criminal Code shall apply mutatis mutandis to a warrant of arrest and to a warrant of search issued for the purposes of this Act.

#### Proceedings for committal

##### Article 15

(1) A person arrested in pursuance of a warrant under article 14 shall (unless previously discharged under subarticle (3) of that article) be brought as soon as practicable and in any case not later than forty-eight hours from his arrest before the Court of Magistrates (Malta) as a court of criminal inquiry (in this Act referred to as the court of committal) which shall have for the purposes of proceedings under this section the same powers, as nearly as may be, including power to remand in custody or on bail, as the said court has when sitting as aforesaid.

(2) Where the person arrested is in custody by virtue of a provisional warrant and no authority to proceed has been received in respect of him, the court of committal may fix a reasonable period (of which the court shall give notice to the Minister) after which he will be discharged from custody unless such an authority has been received.

(3) Where an authority to proceed has been issued in respect of the person arrested and the court of committal is satisfied, after hearing any evidence tendered in support of the request for the return of that person or on behalf of that person, that the offence to which the authority relates is an extraditable offence and it is further satisfied –

(a) where the person is accused of the offence, that the evidence would be sufficient to warrant his trial for that offence if it had been committed within the jurisdiction of the Courts of Criminal Justice of Malta;

(b) where the person is alleged to be unlawfully at large after conviction of the offence, that he has been so convicted and appears to be so at large,

the court shall, unless his committal is prohibited by any other provision of this Act, commit him to custody to await his return thereunder; but if the court is not so satisfied or if the committal of that person is so prohibited, the court shall discharge him from custody:

Provided that notwithstanding any order discharging him from custody such person shall remain in custody until the expiration of three working days from any such order and, where an appeal has been entered by the Attorney General, until the appeal is disposed of or abandoned, or the Attorney General consents to the release of such person.

(4) Where a person has been brought before a court of committal as provided in subarticle (1), the provisions of article 401(1) of the Criminal Code shall apply as if the words "one month" wherever they occur therein were substituted with the words "two months" and as if the words "three months" in the proviso thereto were substituted with the words "six months".

(5) Where the person arrested declares before the court of committal that he is willing to be extradited, the said court upon being satisfied of the voluntariness of such declaration shall commit him to custody to await his return and all the provisions of this Act for his extradition shall be deemed to be satisfied and the Minister shall thereupon, notwithstanding any other provision of this Act but saving the provisions of article 21(2) and (4) thereof, by warrant order him to be returned to the requesting country. No appeal shall lie from the decision of the court committing the person to custody under the provisions of this subarticle.

**(b) Observations on the implementation of the article**

488. The provision is legislatively implemented; no examples of implementation were provided.

**Article 44 Extradition**

**Paragraph 11**

*11. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

489. Malta indicated that Article 5(1)(h) of the Criminal Code vests the Maltese courts with jurisdiction in these cases.

**Criminal Code**

5. (1) Saving any other special provision of this Code or of any other law conferring jurisdiction upon the courts in Malta to try offences, a criminal action may be prosecuted in Malta – ...

(h) against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen or that the offence for which his return was requested is subject to the death penalty in the country which made the request, even if there is no provision according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person

490. Furthermore, Article 43(3) of the Maltese Constitution expressly provides for the possibility of Maltese citizens being removed from Malta as a result of extradition proceedings.

491. Nonetheless, the fact that the requested person is a national of the requested country is considered an optional ground for refusal in the European Convention of 1957, and also in the bilateral treaties on extradition signed by Malta.

**(b) Observations on the implementation of the article**

492. The aforementioned Article 5(1)(h) of the Criminal Code clearly states that “a criminal action may be prosecuted in Malta [...] against any person in respect of whom an authority to proceed, or an order for his return, following a request by a country for his extradition from Malta, is not issued or made by the Minister responsible for justice on the ground that the said person is a Maltese citizen [...], even if there is no provision

according to the laws of Malta other than the present provision in virtue of which the criminal action may be prosecuted in Malta against that person”.

493. It is noted, however, that the cited provision from the Criminal Code is permissive and provides that a criminal action “may be prosecuted.” While taking into account that the UNCAC provision does not require States parties to institute criminal proceedings, it does establish an obligation to “submit the case without undue delay to competent authorities for the purpose of prosecution” (*aut dedere aut judicare*). In this context, Maltese officials explained that national authorities, especially Maltese courts, interpret domestic legislation in conformity with the Convention and other international treaties. Nonetheless, the reviewers observe that, in the interest of greater legal certainty, Malta may wish to more clearly specify the *aut dedere aut judicare* obligation in its domestic legislation.
494. Although not all bilateral extradition treaties establish such an obligation (e.g., Libya), the corresponding national law provision in the Criminal Code would be applicable in such cases.
495. During the country visit, a number of examples (not related to corruption) were cited where Malta has in fact extradited its nationals, including cases of human trafficking, drugs, conspiracy, forgery, and money laundering. Maltese officials explained that Malta has never refused the extradition of a national.

## **Article 44 Extradition**

### **Paragraph 12**

*12. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 11 of this article.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

496. Malta indicated that it extradites its nationals and has never requested their conditional extradition.

#### **(b) Observations on the implementation of the article**

497. Although such a possibility is expressly provided for in Article 5(3) of the Framework Decision on the European Arrest Warrant, it has been transposed into Maltese legislation only as far as active extradition is concerned, i.e., when Maltese authorities seek for the extradition of nationals of the requested country. See Article 64 of the Extradition Order (Designated Foreign Countries) of 7 June 2004.
498. Malta does not establish or require the conditional extradition of its nationals.

## Article 44 Extradition

### Paragraph 13

*13. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested State Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting State Party, consider the enforcement of the sentence imposed under the domestic law of the requesting State Party or the remainder thereof.*

#### (a) Summary of information relevant to reviewing the implementation of the article

499. Malta indicated that there are no obstacles to Malta surrendering its own nationals and would not therefore deny an extradition request on that basis.

#### (b) Observations on the implementation of the article

500. Although such a possibility is expressly provided for in Article 4(6) of the Framework Decision on the European Arrest Warrant, it has been transposed into Maltese legislation only as far as active extradition is concerned, i.e., when Maltese authorities seek for the extradition of nationals of the requested country. See Article 65 of the Extradition Order (Designated Foreign Countries) of 7 June 2004.

501. Malta indicated that it does not refuse extradition of its nationals and therefore this problem does not arise. Moreover, this provision is conditional on the applicable domestic law.

## Article 44 Extradition

### Paragraph 14

*14. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.*

#### (a) Summary of information relevant to reviewing the implementation of the article

502. Malta cited Article 16 of the Extradition Act.

#### Extradition Act

##### Article 16

Where a person is committed to custody under article 15, the court shall, besides informing him that he will not be returned until after the expiration of fifteen days from the date of its order of committal and that, except in the case of a committal to custody to await return under the provisions of article 15(5), he may appeal to the Court of Criminal Appeal, also inform him that, if he thinks that any of the provisions of article 10(1) and (2) has been contravened or that any provision of the Constitution of Malta or of the European Convention Act is, has been or is likely to be contravened in relation to his person as to justify a reversal, annulment or modification of the court's order of committal, he has the right to apply for redress in accordance with the

provisions of article 46 of the said Constitution or of the European Convention Act, as the case may be.

503. Malta indicated that there have been no examples of implementation relating to corruption as there have been no such cases.

**(b) Observations on the implementation of the article**

504. The provision is legislatively implemented; there have been no examples of implementation in corruption-related cases.

**Article 44 Extradition**

**Paragraph 15**

*15. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.*

**(a) Summary of information relevant to reviewing the implementation of the article**

505. Apart from the protections afforded by the Convention and the European Convention on Extradition, one should also note the provisions of Article 10 of the Extradition Act (cited under paragraph 8 of the UNCAC article above).

506. There have been no examples of implementation as there have been no such cases.

**(b) Observations on the implementation of the article**

507. The provision is legislatively implemented. There have been no examples of implementation.

**Article 44 Extradition**

**Paragraph 16**

*16. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

508. No such possibility for refusal exists in the Extradition Act.

509. Furthermore, Malta has ratified the Second Additional Protocol to the European Convention on Extradition, whose Article 2 replaced Article 5 of the Convention introducing the following provision in paragraph (2) thereof: "Extradition may not be refused on the ground that the law of the requested Party does not impose the same kind of tax or duty or does not contain a tax, duty, custom or exchange regulation of the same

kind as the law of the requesting Party.” The Protocol has been transposed into internal legislation by means of the European Convention on Extradition (Fiscal Offences) Order of 18 February 2001.

**(b) Observations on the implementation of the article**

510. The provision is legislatively implemented. During the country visit Maltese officials explained that 90 per cent of incoming requests relate to financial crimes, and these requests are invariably executed.

**Article 44 Extradition**

**Paragraph 17**

*17. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.*

**(a) Summary of information relevant to reviewing the implementation of the article**

511. Malta noted that consultations are held with requesting States in all cases. Bearing in mind that Malta has never refused an extradition request satisfying all legal requisites, such a consultation process achieves greater significance.

512. To exemplify the statement, Malta cited one case where extradition was refused because the supporting documentation was not authenticated. Despite diverse consultations, the lacuna was not rectified. Malta explained that it holds consultations to avoid or rectify such situations.

**(b) Observations on the implementation of the article**

513. Based on the information provided, there is no specific provision in this regard in the Maltese legislation. It was explained that Malta consults with requesting States as a matter of practice and that there is nothing precluding a court from requiring additional information to reach a decision. Nonetheless, Malta should consider, in the interest of greater legal certainty, especially for consistency in future cases, adopting guidelines or other formalized procedures to address the duty to consult before refusing extradition.

**Article 44 Extradition**

**Paragraph 18**

*18. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.*

**(a) Summary of information relevant to reviewing the implementation of the article**

514. As indicated above, Malta has signed a number of bilateral treaties in addition to being a party to European treaties on extradition.

## **(b) Observations on the implementation of the article**

515. Malta has concluded bilateral and multilateral extradition agreements as provided in the provision under review. The treaties are described under paragraph (5) of UNCAC article 44.

## **Article 45 Transfer of sentenced persons**

*States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences established in accordance with this Convention in order that they may complete their sentences there.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

516. Malta signed the Council of Europe Convention on the Transfer of Sentenced Persons, 1983. Malta has also signed two bilateral treaties on this subject with Libya and Egypt and is in advanced stages of negotiation on a relevant treaty with Morocco.

517. Malta's statistics for requests related to the transfer of sentenced persons in criminal cases generally (not limited to corruption) are as follows:

	2008	2009	2010	2011	2012
Malta as Requesting State	0	3	1	8	1
Malta as Requested State	1	5	5	0	41

### **(b) Observations on the implementation of the article**

518. Malta has implemented this article.

## **Article 46 Mutual legal assistance**

### **Paragraph 1**

*1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

519. Malta indicated that it has not refused assistance to date in any request transmitted to it.

520. Malta seeks to ensure the widest possible range of judicial assistance, as outlined in particular in Article 649 of the Criminal Code (quoted below), which makes provision for the execution of letters of request in general. Other applicable legislation includes the Dangerous Drugs Ordinance and the Prevention of Money Laundering Act, which are more specific in their respective scope. Assistance in relation to the offence of funding of



terrorism, which is criminalized under the Criminal Code, is also regulated by Article 649 of the Criminal Code.

### **Criminal Code**

649. (1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

(2) The provisions of subarticle (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority or by the international court is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of subarticle (3) shall be applicable.

(3) Where the Minister responsible for justice communicates to a magistrate a request made by the judicial authority of any place outside Malta for the examination of any witness present in Malta, touching an offence cognizable by the courts of that place, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, notwithstanding that the accused be not present, and shall take down such testimony in writing.

521. In terms of Maltese law, the assistance afforded may range from the serving of summons and documents to enforcement of confiscation orders, from the hearing of witnesses to search and seizure, from the production of documents to video conference. By means of investigation orders or following testimony on oath (wherein one is exempted from confidentiality/professional secrecy obligations), any bars to the production of documents or the rendering of testimony which would otherwise be bound by confidentiality are overridden. With regards to requests for tracing, seizing and freezing of assets, Articles 435B, 435C, and 649 of the Criminal Code, Articles 9 and 10 of the Prevention of Money Laundering Act, and Articles 24B-C of the Dangerous Drugs Ordinance provide for the applicable procedure when Malta is the requested State.

522. Further provisions may be made under articles 628A and 628B of the Criminal Code which state:

### **Criminal Code**

628A (1) The Minister responsible for justice may make regulations to give effect to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or is otherwise applicable to Malta and which makes provision for mutual assistance in criminal matters.

628B. (1) Without prejudice to the generality of the power conferred on the Minister by article 628A the Minister may, in particular, make regulations designating the competent person, body corporate or unincorporated, authority or agency for the purpose of providing the assistance that may be requested under any arrangement referred to in article 628A(1) and prescribing the conditions and procedures for the execution of any request for such assistance for all or any of the following purposes -

- (a) the questioning of persons being investigated or prosecuted for a criminal offence; (b) the taking or production of evidence;
- (c) the service of any document or act;
- (d) the interception of communications;
- (e) the temporary transfer of a prisoner for the purposes of identification or for obtaining testimony or other assistance;
- (f) the entry into and search of any premises and the seizure of any item;
- (g) the taking of fingerprints or of intimate or non-intimate samples;
- (h) the exhumation of any body;
- (i) the provision of records and documents;
- (j) the investigation of proceeds of criminal offences;
- (k) the monitoring, freezing or seizing of assets of any kind including bank accounts;
- (l) the verification of any evidence or other material.

523. In general, where the Attorney General communicates to a magistrate a request made by the judicial, prosecuting or administrative authority of any place outside Malta for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

524. Regarding requests for assistance relating to offences punishable by over 1 year's imprisonment, and to money laundering offences, Malta explained the following procedure. When the Attorney General, in the capacity of central competent judicial authority, receives a request made by the judicial, administrative or prosecuting authority of any place outside Malta for investigations or any other assistance to take place in Malta in respect of a person suspected by that authority of an act or omission which, if committed in Malta or in corresponding circumstances, would constitute an offence, the Attorney General applies to the Criminal Court for an investigation order or an attachment order or for both (Article 435B Criminal Code; Article 9, The Prevention of Money Laundering Act, Article 24B, Dangerous Drugs Ordinance). If the investigation order or attachment order is granted, then it will prevail over any obligation of confidentiality or professional secrecy, and the provisions applicable to a domestic investigation order or attachment order apply.

525. Other requests which are executed by the police, namely the collection of evidence and the taking of interviews are executed within an average time-frame of 3 weeks. Requests which are executed by the Attorney General, namely through the issue of investigation, attachment or freezing orders are executed within an average timeframe of 2 weeks.

526. Malta has a designated unit which deals with mutual legal assistance, including also extradition requests and European Arrest Warrant requests. The unit is headed by the Deputy Attorney General and has two prosecutors working on cases. It also works closely with a police inspector who heads the Police International Relations Unit (which comprises also Malta's Schengen "SIRENE" bureau, i.e. Supplementary Information Request at the National Entry) and which, in turn, is assisted by another Inspector and the officers working in the SIRENE bureau.

527. Requests to the designated unit are processed immediately and a system operated by the unit allows the office to track the progress of each request. The unit was also assigned a police officer to act as liaison officer for the execution of requests requiring police intervention, (e.g. search and seizure, service of summons, arrest for purposes of interrogation, court hearings etc.).

528. When requests involve the hearing of witnesses, a request would be fully executed within a maximum of 3-6 months, given the workload incumbent on the Courts. In general terms it can be said that the time taken for a request to be executed depends on the complexity of the case and also on considerations such as those of confidentiality and the need not to hamper or disrupt any ongoing investigations. In all instances the requesting State is kept informed of the stage proceedings have reached as well as being invited to participate in the said execution. Within this unit one also finds contact points within the European Judicial Network (EJN). This was opted for in order to enhance the assistance provided by the unit.

529. Statistical data provided by Malta in relation to MLA requests in all criminal matters not limited to corruption (including letters rogatory/requests for interviews, search and seizure orders, information of judicial records, service of summons and/or documents, requests for the issue of investigation/attachment and freezing orders) is as follows:

	2008	2009	2010	2011	2012
Malta as Requesting State	9	18	40	12	18
Malta as Requested State	31	56	61	99	81

530. A full list of all bilateral and multilateral treaties that Malta has entered into in relation to mutual legal assistance is cited under paragraph 30 of this article below.

531. Malta also follows the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (Harare Scheme).

**(b) Observations on the implementation of the article**

532. Malta appears to be able to provide a wide range of mutual legal assistance in line with the Convention.

**(c) Successes and good practices**

533. The integration of a police officer to act as liaison officer for the execution of requests requiring police intervention, (e.g. search and seizure, service of summons, arrest for purposes of interrogation, court hearings etc.) into the designated unit dealing with mutual

legal assistance, extradition requests and European Arrest Warrant requests is positively noted.

## **Article 46 Mutual legal assistance**

### **Paragraph 2**

*2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, treaties, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 26 of this Convention in the requesting State Party.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

534. Malta reported that Article 649 of the Criminal Code is normally invoked to grant legal assistance requests emanating from prosecuting, investigative, administrative authorities or an international court. Malta also referred to Article 4(d) of the Interpretation Act, which includes legal persons by reference to the term 'person', as well as Article 13 of the same Act.

#### **Article 649(1) of the Criminal Code**

(1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/ and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

#### **Article 4 of the Interpretation Act**

4. In this Act and in every other Act whether passed before or after the commencement of this Act, unless the contrary intention appears - ...

(d) the expression "person" shall include a body or other association of persons whether granted legal personality, in accordance with the provisions of the Second Schedule to the Civil Code, or not.

#### **Article 13**

13. Where any offence under or against any provision contained in any Act, whether passed before or after this Act, is committed by a body or other association of persons, be it corporate or unincorporate, every person who, at the time of the commission of the offence, was a director, manager, secretary or other similar officer of such body or association, or was purporting to act in any such capacity, shall be guilty of that 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:

Provided that, except in respect of offences under or against a provision contained in an Act in which a provision similar to that of this article occurs, the provisions of this article shall apply only to offences committed after the commencement of this Act.

**(b) Observations on the implementation of the article**

535. While there is no reference in Article 649 to legal persons or MLA requests regarding legal persons, Malta explained that Article 649 does not exclude assistance in relation to legal persons, insofar as the cited provision only refers to witnesses and does not specify the subject matter of the investigation. Moreover, the majority of requests for legal assistance have in effect related to legal persons.

**Article 46 Mutual legal assistance**

**Subparagraph 3 (a) through (i)**

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

- (a) Taking evidence or statements from persons;*
- (b) Effecting service of judicial documents;*
- (c) Executing searches and seizures, and freezing;*
- (d) Examining objects and sites;*
- (e) Providing information, evidentiary items and expert evaluations;*
- (f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;*
- (g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;*
- (h) Facilitating the voluntary appearance of persons in the requesting State Party;*
- (i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;*

**(a) Summary of information relevant to reviewing the implementation of the article**

536. Malta cited Article 649 of the Criminal Code and the laws referred to under paragraph 1 of article 46 as the relevant articles which empower the authorities to grant all measures of legal assistance. As indicated above, the assistance afforded by the Maltese authorities may range from the serving of summons and documents to the enforcement of confiscation orders, from the hearing of witnesses to search and seizure, from the production of documents to video conference.

**(b) Observations on the implementation of the article**

537. Regarding examples of implementation, Malta referred to the general statistics on MLA (provided above under paragraph 1 of the UNCAC article).

## Article 46 Mutual legal assistance

### Subparagraph 3 (j) and (k)

*3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:*

*(j) Identifying, freezing and tracing proceeds of crime in accordance with the provisions of chapter V of this Convention;*

*(k) The recovery of assets, in accordance with the provisions of chapter V of this Convention.*

### (a) Summary of information relevant to reviewing the implementation of the article

538. Malta referred to Articles 435B-D of the Criminal Code (cited above). As indicated above, with regards to requests for tracing, seizing and freezing of assets, Articles 435B, 435C, and 649 of the Criminal Code, Articles 9 and 10 of the Prevention of Money Laundering Act, and Articles 24B-C of the Dangerous Drugs Ordinance provide for the applicable procedure when Malta is the requested State.

539. When the request is for the temporary seizure of all or any of the moneys or property, movable or immovable, of a person charged or accused of an act or omission which if committed in Malta, or in corresponding circumstances, would constitute an offence carrying a maximum of over one year imprisonment or a money laundering offence, the Attorney General applies to the Criminal Court for a freezing order. (Article 435C Criminal Code; Article 10, The Prevention of Money Laundering Act, Article 24C, Dangerous Drugs Ordinance). The freezing order issued in this case remains in force for a period of six months but is renewable for further periods of six months upon an application by the Attorney General and upon the court being satisfied that the conditions which led to the making of the order still exist or that the accused has been convicted and the sentence in his regard or any consequential or accessory confiscation order, whether made in civil or criminal proceedings, has not been executed. Where the accused has been convicted but no confiscation order has been made the freezing order shall still be renewed where the court is satisfied that civil or criminal proceedings for the making of such an order are pending or imminent. A freezing order under these provisions may be revoked at any time at the request of the Attorney General or, after hearing the Attorney General, at the request of any interested person upon the court being satisfied that the conditions which led to the making of the order no longer exist or that there has been a final decision acquitting the person concerned.

540. Mutual assistance in relation to confiscation is regulated by Article 435D of the Criminal Code. Upon receipt of a request for the enforcement of a confiscation order the Attorney General may apply to the Civil Court demanding the enforcement in Malta of the order. A copy of the confiscation order and all documents in support thereof are filed with the application. The application is served upon the person whose property the foreign confiscation order purports to confiscate and that person is entitled to respond. The court is required to set down the application for hearing without delay and in any case not later than thirty days from the date of the filing of the application. The court shall not order the enforcement of the foreign confiscation order if (a) the respondent had not been notified of the proceedings which led to the making of the foreign order (b) if the foreign order

was obtained by fraud (c) if the foreign order contains any disposition contrary to the public policy, or the internal public law in force in Malta (d) if the foreign order contains contradictory dispositions. The decision of the court ordering the enforcement of the foreign order shall have the effect of forfeiting in favour of the Government of Malta all things and property whatsoever situated in Malta the confiscation of which had been ordered in the foreign order subject to any directions which the Government may give providing for the further disposal of the same things and property so forfeited. To secure the property the confiscation of which had been ordered by the foreign order pending the proceedings in Malta the Attorney General may obtain certain the issue of certain orders and injunctions provided for in the civil law of Malta. The foreign confiscation order to be enforced may emanate from a court of criminal or civil jurisdiction. Requests which are transmitted to the Courts for execution (being requests which require the lifting of secrecy obligations) or which require the summoning of witnesses to testify under oath are executed within an average timeframe of 2-3 months.

**(b) Observations on the implementation of the article**

541. While Articles 435C and 435D of the Criminal Code seem to comply with article 46(3)(j) of the UNCAC, they do not seem to comply with what is provided for in subparagraph (k) thereof, regarding asset recovery, to its full extent.
542. In explaining how Malta has implemented the Council Decision 2007/845/JAI, of 6 December, concerning cooperation between Asset Recovery Offices, Malta reported that asset recovery is conducted by the Registrar of Courts through a purposely designated office which, following convictions which have become *res judicata*, effects searches and confiscates property (including that previously frozen) in the Government's favour.
543. Malta further explained that the EU Framework Decisions on mutual recognition of freezing and confiscation orders have been implemented as regulations under the Criminal Code as subsidiary legislation, SL 9.13 on Freezing Orders (Execution in the European Union) Regulations and SL 9.15 Confiscation Orders (Execution in the European Union) Regulations<sup>12</sup>.
544. Regarding participation of Maltese authorities in the Camden Asset Recovery Inter-Agency (CARIN) network, Malta reported that one of the many duties of the Malta Police Force is to execute foreign requests for assistance. These can either be on a police-to-police exchange of information basis from INTERPOL, EUROPOL and other authorities or commission rogatoire from foreign judicial and police authorities. The Malta Police Force is legally bound to execute these foreign requests in lieu of several protocols and conventions:
- EU Convention on Mutual Assistance in Criminal Matters 1959
  - UN Vienna Convention 1988
  - Schengen Convention 1990
  - Money Laundering Convention 1990
  - Europol Decision
  - Convention on Mutual Assistance and co-operation between Customs Administrations 1997

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<sup>12</sup> <http://justiceservices.gov.mt/LOM.aspx?pageid=27&mode=chrono&p=1&lawid=8574>

- EU Convention on Mutual Assistance in Criminal Matters between Member States 2000 and its Protocol
- UN Transnational Organized Crime 2000

The Malta Police also executes CARIN requests to trace criminal assets on behalf of foreign authorities. CARIN is an informal network of experts and practitioners in the field of asset tracing, freezing and confiscation between worldwide law enforcement agencies. Each agency has its own “national contact point”, who receives or sends requests to other foreign authorities, mainly as regards criminal assets in other countries. Exchange of such information is carried out on an informal basis and hence cannot be used as evidence. If a reply to such a request is positive, formal letters of request (LOR) are executed between the two countries in order that such evidence, freezing and eventual confiscation can be carried out. This informal network reduces the number of official LORs that have to be executed in order to trace assets.

## Article 46 Mutual legal assistance

### Paragraph 4

*4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.*

#### (a) Summary of information relevant to reviewing the implementation of the article

545. Malta indicated that this is done by the different authorities with respect to the respective counterparts as a matter of good practice and in the determination to fight cross-border crime.

546. The FATF Recommendations demand that FIUs are enabled by law and appropriately staffed and equipped to efficiently and effectively provide the widest possible range of international co-operation in relation to money laundering, related predicate offences and terrorist financing. In line with the FATF Recommendations the FIAU is authorized by Article 16(1)(k) of the PMLA to exchange AML/CFT information with any foreign body, authority or agency which the FIAU considers to have functions equivalent or analogous to those of the FIAU. Moreover, the FIAU, being a member of the Egmont Group of Financial Intelligence Units, follows the ‘*Egmont Principles for Information Exchange between Financial Intelligence Units for Money Laundering and Terrorism Financing Cases*’ and the ‘*Best Practices for the Exchange of Information between Financial Intelligence Units*’ which have been issued in order to harmonise and systemise the exchange of information between member FIUs. Member States of the EU are also expected to adhere to Council Decision 2000/642/JHA concerning arrangements for co-operation between Financial Intelligence Units of the Member States in respect of exchanging information. The FIAU mainly exchanges information through channels set up by the Egmont Group and the FIU.Net Bureau within the Directorate-General for the Administration of Justice and Law Enforcement for the European Union. The Egmont Secure Web and the FIU.Net offer FIUs the possibility to share information making use of



a secure and rapid system, therefore ensuring the confidentiality of information being exchanged while at the same time allowing such information to be exchanged promptly.

547. Malta is a Party to both the Convention on Criminal Matters between EU Member States and the Second Additional Protocol to the European Convention on MLA, whose articles 7 and 11, respectively, provide for spontaneous exchange of information as a general rule.

**(b) Observations on the implementation of the article**

548. Regarding examples of implementation, Malta reported that these are too many and various to mention, since they are done as a matter of course on a daily basis in the course of execution of requests for MLA or in the course of investigations involving other authorities. One informs his counterparts of ongoing results of searches or witness' statements, and any results obtained from investigations of mutual concern/requested by the said authorities. During the country visit, officials confirmed that the FIAU has previously shared information with its counterparts where it came to their attention that such information could be useful to assist investigations or the analysis of cases being carried out in foreign jurisdictions. Reference is also made to the information included under UNCAC article 48 below.

**Article 46 Mutual legal assistance**

**Paragraph 5**

*5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

549. Malta informed that this is done on the basis of administrative practice. For example, if a State has requested confidentiality, Malta is obliged to seek that State's authorization before divulging or using the said information for purposes other than those for which the information would have been granted. Since this does not bind the State towards the individual, there has been no need to implement measures into domestic law, since the procedure binds States in their mutual relations and hence the matter is regulated by treaty.

**(b) Observations on the implementation of the article**

550. Although it is noted that treaty obligations are strongly adhered to, Malta may wish to consider, in the interest of greater legal certainty, especially for consistency in future cases, adopting guidelines or other formalized procedures in this respect.

## Article 46 Mutual legal assistance

### Paragraph 8

*8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.*

#### (a) Summary of information relevant to reviewing the implementation of the article

551. Malta informed that when it is necessary to lift the obligation of bank secrecy, the Courts can invoke Article 257 of the Criminal Code, thus releasing a witness from professional secrecy. Moreover, the Maltese Police can deliver production orders and investigation orders to enable the tracing of assets (Articles 435B, Chap9; Article 9, PMLA, Chap.373).

#### Criminal Code

##### Article 257

If any person, who by reason of his calling, profession or office, becomes the depositary of any secret confided in him, shall, except when compelled by law to give information to a public authority, disclose such secret, he shall on conviction be liable to a fine (multa) not exceeding forty-six thousand and five hundred and eighty-seven euro and forty-seven cents (46,587.47) or to imprisonment for a term not exceeding two years or to both such fine and imprisonment:

Provided that, notwithstanding the provisions of any other law, it shall be a defence to show that the disclosure was made to a competent public authority in Malta or outside Malta investigating any act or omission committed in Malta and which constitutes, or if committed outside Malta would in corresponding circumstances constitute -

- (a) any of the offences referred to in article 22(2)(a)(1) of the Dangerous Drugs Ordinance; or
- (b) any of the offences referred to in article 120A(2)(a)(1) of the Medical and Kindred Professions Ordinance; or
- (c) any offence of money laundering within the meaning of the Prevention of Money Laundering Act:

Provided further that the provisions of the first proviso of this article shall not apply to a person who is a member of the legal or the medical profession.

#### (b) Observations on the implementation of the article

552. Malta explained that the obligations of professional secrecy arise from the nature of the particular employment under various laws depending on the person bound by the obligation. Part II of the Professional Secrecy Act<sup>13</sup>, in particular article 3, refers to a number of persons who, by reason of their calling, profession or office, fall within the scope of article 257 of the Criminal Code, including officials and employees of the State and members of regulated professions, but also advocates, notaries, legal procurators, accountants, auditors, employees and officers of financial and credit institutions, trustees, and other licensed persons. Moreover, articles 6A and 6B of the Professional Secrecy Act address permitted disclosures and establish an obligation to disclose information otherwise covered by professional secrecy.

#### Professional Secrecy Act, Chap. 377

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<sup>13</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8844>

## Part II, The Duty of Professional Secrecy

Interpretation of article 257 of the Criminal Code.

3. (1) The persons who, by reason of their calling, profession or office, fall within the scope of article 257 of the Criminal Code include the following: members of a profession regulated by the Medical and Kindred Professions Ordinance, advocates, notaries, legal procurators, social workers, psychologists, accountants, auditors, employees and officers of financial and credit institutions, trustees, officers of nominee companies or licensed nominees, persons licensed to provide investment services under the Investment Services Act, stockbrokers licensed under the Financial Markets Act, insurers, insurance agents, insurance managers, insurance brokers and insurance sub-agents, officials and employees of the State.

(2) Subject to article 10, a person shall still remain subject to the provisions of article 257 of the Criminal Code after he has ceased to exercise the relevant calling or profession, or to occupy the relevant office.

(3) References in statutory enactments to "the duty of professional secrecy" or similar expressions shall henceforth be interpreted, unless the context otherwise requires, as references to the duty imposed by article 257 of the Criminal Code not to disclose a secret covered by that article.

### 6A. Permitted disclosures.

No offence shall be committed against section 257 of the Criminal Code or this Act by -

- (a) a person disclosing in good faith secret information in the course of and for the purpose of obtaining advice or directions from the body regulating his profession;
- (b) a person disclosing in good faith secret information to a public authority or before a court or tribunal to the extent that is proportionate and reasonably required for the specific purpose of:
  - (i) defending himself against any claim with regard to professional work in connection with which the secret information has been obtained by him; or
  - (ii) initiating and maintaining judicial proceedings seeking the recovery of fees or other sums due to him or the enforcement of other lawful claims or interests;
- (c) saving the provisions of article 642(1) of the Criminal Code or article 588(1) of the Code of Organization and Civil Procedure, a person, who in good faith discloses secret information to a competent public authority in Malta in the reasonable belief that such disclosure is reasonably necessary for the purpose of preventing, revealing, detecting or prosecuting the commission of acts that amount or are likely to amount to a criminal offence, or to prevent a miscarriage of justice.

### 6B. Obligation to disclose.

Saving the provisions of article 642(1) of the Criminal Code and of article 588(1) of the Code of Organization and Civil Procedure, a person shall disclose information otherwise covered by professional secrecy when required to do so:

- (a) by a competent law enforcement or regulatory authority investigating a criminal offence or a breach of duty;
- (b) by a magistrate in the cause and for the purposes of *in genere* proceedings; and
- (c) by a court of criminal jurisdiction in the course of a prosecution for a criminal offence.

553. Malta further explained that Article 257 of the Criminal Code coupled with the provisions under Article 4 of the Prevention of Money Laundering Act (which in turn apply to the Criminal Code through Articles 435A-D), the Dangerous Drugs Ordinance (Article 22A) as well as the Professional Secrecy Act (Articles 6A-6B) provide a sufficient legal basis for the lifting of bank secrecy.

554. The reviewers note that Article 6B, in particular, of the Professional Secrecy Act seems to be an adequate basis to provide information governed by bank secrecy in response to an MLA request. Furthermore, as noted above, Maltese officials explained during the country visit that bank and financial records are routinely provided to requesting authorities.

## Article 46 Mutual legal assistance

### Subparagraph 9 (a)

*9. (a) A requested State Party, in responding to a request for assistance pursuant to this article in the absence of dual criminality, shall take into account the purposes of this Convention, as set forth in article 1;*

#### (a) Summary of information relevant to reviewing the implementation of the article

555. No obstacles exist in the Maltese law to allow the granting of requests for legal assistance even in the absence of dual criminality, although dual criminality may be invoked when coercive measures are being requested.

#### (b) Observations on the implementation of the article

556. While there have been no cases where assistance was provided in the absence of dual criminality, Malta provided several examples where assistance was given for acts that are considered administrative violations rather than criminal offences in Malta (including cases related to taxation and fisheries). The provision under review is implemented.

## Article 46 Mutual legal assistance

### Subparagraphs 9 (b) and (c)

*9.( b) States Parties may decline to render assistance pursuant to this article on the ground of absence of dual criminality. However, a requested State Party shall, where consistent with the basic concepts of its legal system, render assistance that does not involve coercive action. Such assistance may be refused when requests involve matters of a de minimis nature or matters for which the cooperation or assistance sought is available under other provisions of this Convention;*

*(c) Each State Party may consider adopting such measures as may be necessary to enable it to provide a wider scope of assistance pursuant to this article in the absence of dual criminality.*

#### (a) Summary of information relevant to reviewing the implementation of the article

557. Malta referred to already cited provisions governing legal assistance in general. Officials noted that no definitions of coercive measures exist in the Maltese legislation apart from the very definition of the phrase itself. However, coercive measures include the taking of fingerprints or DNA (where the subject objects and hence the taking is not voluntary but coercive), searches, freezing and attachment orders and confiscation. Reference can be made to Articles 628 A and B of the Criminal Code and in particular (g) “the taking of finger prints or of intimate or non-intimate samples.” Regarding measures considered to be *de minimis*, Malta indicated that it has made no such qualification and thus MLA is not excluded.

#### (b) Observations on the implementation of the article

558. Malta has made the following reservation to the European Convention on MLA in criminal matters (1959): “The Government of Malta reserves the right not to execute letters rogatory for search or seizure if (a) the offence motivating the letters rogatory is not punishable under both the law of the requesting State and the law of Malta, or (b) the execution of the letters rogatory is not consistent with the law of Malta”.

559. Malta confirmed that even in the absence of dual criminality, it would be able to afford assistance involving coercive measures, such as taking fingerprints or DNA samples, based on the broad wording of the above cited legal provisions governing legal assistance.

## **Article 46 Mutual legal assistance**

### **Subparagraph 10 (a) and (b)**

*10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:*

- (a) The person freely gives his or her informed consent;*
- (b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

560. Malta cited Articles 435 BB and 435 BC of the Criminal Code.

#### **Criminal Code**

##### **Article 435BB.**

(1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in a foreign State for the purpose of investigations to be carried out or being carried out in Malta at the request of a judicial, prosecuting or administrative authority of that State.

(2) The provisions of article 30C of the Dangerous Drugs Ordinance shall apply mutatis mutandis to a person temporarily surrendered to Malta under subarticle (1).

##### **Article 435BC.**

(1) Pursuant to and in accordance with any treaty, convention, agreement or understanding to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may, with the concurrence of the Minister responsible for Justice, give his consent to the temporary surrender of a person in custody in Malta for the purpose of an investigation to be carried out or being carried out by a judicial, prosecuting or administrative authority of any place outside Malta at the request of the said authority.

(2) The person surrendered shall be kept in custody in the place outside Malta to which he has been surrendered.

(3) Any time spent in custody in the place outside Malta shall be deemed to be time spent in custody in Malta.

561. Furthermore, Malta also quoted Article 30C of the Dangerous Drugs Ordinance.

### **Dangerous Drugs Ordinance**

Article 30C.

(1) Subject to the provisions of subarticle (2), where a witness, expert or other person in a foreign country consents, in respect of an offence contrary to the provisions of this Ordinance, to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in Malta following a request for assistance to that effect made by the competent authority in Malta to the competent authority in that foreign country that witness, expert or other person shall not, while in Malta, be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in respect of acts, omissions or convictions prior to his departure from the foreign country.

(2) The provisions of subarticle (1) shall cease to apply when the witness, expert or other person:

(a) fails to leave Malta, after having had the opportunity to do so, within a period of fifteen consecutive days from the date on which he has been served by the Attorney General with a notice informing him that his presence in Malta is no longer required; or

(b) having left Malta, has returned of his own free will.

562. As examples of treaties ratified by Malta according to which detainees can be transferred to another country for purposes of investigation, reference is made both to the European Convention on Mutual Assistance in Criminal Matters (article 11) and the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union (article 9, Temporary transfer of persons held in custody for purpose of investigation).

### **(b) Observations on the implementation of the article**

563. The provision is legislatively implemented; no examples of implementation were provided as it was explained that there have been no such cases.

## **Article 46 Mutual legal assistance**

### **Subparagraph 11 (a) through (d)**

*11. For the purposes of paragraph 10 of this article:*

*(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;*

*(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;*

*(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;*

*(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.*

### **(a) Summary of information relevant to reviewing the implementation of the article**

564. Malta referred to the previously cited Articles 435 BB and 435 BC of the Criminal Code and Article 30C of the Dangerous Drugs Ordinance.

**(b) Observations on the implementation of the article**

565. Subparagraphs (a) and (d) of the provision are expressly implemented in Malta's legislation regarding detained people sent from Malta to another country. With regard to people brought to Malta from abroad, Malta referred to Article 30C of Dangerous Drugs Ordinance, as applied in Article 435BB of the Criminal Code.

566. Subparagraphs (b) and (c) do not seem to be expressly transposed into Maltese legislation, and none of them is transposed when it comes to people sent to Malta from a foreign country.

567. Although Malta has established some of the elements of this provision in its legislation, and these obligations are probably satisfied as a matter of ordinary practice, in the interest of greater coherence of its legislation with treaty obligations, especially for consistency in future cases, Malta may wish to consider adopting relevant legal provisions to address the requirements of the provision under review, notwithstanding that as a general matter treaty obligations are strongly adhered to by Maltese authorities.

**Article 46 Mutual legal assistance**

**Paragraph 12**

*12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.*

**(a) Summary of information relevant to reviewing the implementation of the article**

568. Malta explained that Article 30C of the Dangerous Drugs Ordinance as rendered applicable to Article 435BB of the Criminal Code (cited under paragraph 11 of the UNCAC article above) provides for this in clear terms.

**(b) Observations on the implementation of the article**

569. The provision is legislatively implemented; no examples of implementation were provided as it was explained that there have been no such cases.

**Article 46 Mutual legal assistance**

**Paragraph 13**

*13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region*

*or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent Authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.*

**(a) Summary of information relevant to reviewing the implementation of the article**

570. The Attorney General's Office has been designated as the central judicial authority in all major agreements dealing with mutual legal assistance, and the requisite notification to the Secretary General has also been made (C.N.276.2008.TREATIES-9<sup>14</sup>). The same designation has also been made for purposes of the receipt and implementation of European Arrest Warrants, extradition requests, freezing orders, confiscation orders and enforcement of financial penalties and other instruments on mutual recognition orders.

571. Malta explained that the direct transmission of MLA requests between judicial authorities, as provided for, by example, in Article 6(1) of the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union, is accepted as a matter of practice and is presupposed by Article 649 of the Criminal Code (quoted under paragraph 1 of the UNCAC article).

**(b) Observations on the implementation of the article**

572. Reference is made to the procedure and related timeframes for the provision of assistance outlined under paragraph 1 of the UNCAC article above.

573. Although not expressly provided for in the wording of the paragraph, the possibility of direct contacts between judicial authorities is a good way to speed up the execution of letters rogatory. In this regard, Malta confirmed that such direct contacts are possible and, provided it is possible to ascertain the authenticity of the request, no other conditions would need to be met.

## **Article 46 Mutual legal assistance**

### **Paragraph 14**

*14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally but shall be confirmed in writing forthwith.*

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<sup>14</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/CN.276.2008-Eng.pdf>



**(a) Summary of information relevant to reviewing the implementation of the article**

574. Malta indicated that while no specific form is laid down dictating the nature of the request, as per its depositary notification, these are to be made in writing in either English or Maltese, i.e. its official languages.

575. Malta explained that it also accepts MLA requests sent through fax or e-mail, and this has been the case for over ten years, as provided by Malta's treaties and for practical reasons.

576. The requisite notification to the Secretary General has been made: "Pursuant to Article 46.14, the Government of Malta declares that requests and annexed documents should be addressed to it accompanied by a translation in English." (C.N.276.2008.TREATIES-9<sup>15</sup>).

**(b) Observations on the implementation of the article**

577. The paragraph under review is almost identical to that of Article 6(1) of the aforementioned EU Convention on MLA, whose explanatory report gives either fax or e-mail as examples of "any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity".

**Article 46 Mutual legal assistance**

**Paragraphs 15 and 16**

*15. A request for mutual legal assistance shall contain:*

- (a) The identity of the authority making the request;*
- (b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;*
- (c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;*
- (d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;*
- (e) Where possible, the identity, location and nationality of any person concerned; and*
- (f) The purpose for which the evidence, information or action is sought.*

*16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

578. Regarding the format of requests, Malta informed that such requirements are dictated by the underlying treaty or arrangement in accordance with Article 649(2) of the Criminal Code.

**Criminal Code**

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<sup>15</sup> <http://treaties.un.org/doc/Treaties/2003/12/20031209%2002-50%20PM/CN.276.2008-Eng.pdf>

649. (2) The provisions of subarticle (1) shall only apply where the request by the foreign judicial, prosecuting or administrative authority or by the international court is made pursuant to, and in accordance with, any treaty, convention, agreement or understanding between Malta and the country, or between Malta and the court, from which the request emanates or which applies to both such countries or to which both such countries are a party or which applies to Malta and the said court or to which both Malta and the said court are a party. A declaration made by or under the authority of the Attorney General confirming that the request is made pursuant to, and in accordance with, such treaty, convention, agreement or understanding which makes provision for mutual assistance in criminal matters shall be conclusive evidence of the matters contained in that certificate. In the absence of such treaty, convention, agreement or understanding the provisions of subarticle (3) shall be applicable.

**(b) Observations on the implementation of the article**

579. The content and format requirements for incoming requests are established in law and relevant treaties. A list of treaties is provided under UNCAC article 46(30).

**Article 46 Mutual legal assistance**

**Paragraph 17**

*17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.*

**(a) Summary of information relevant to reviewing the implementation of the article**

580. Malta referred to Article 649(1) of the Criminal Code.

**Criminal Code**

**Article 649**

(1) Where the Attorney General communicates to a magistrate a request made by a judicial, prosecuting or administrative authority of any place outside Malta or by an international court for the examination of any witness present in Malta, or for any investigation, search or/and seizure, the magistrate shall examine on oath the said witness on the interrogatories forwarded by the said authority or court or otherwise, and shall take down the testimony in writing, or shall conduct the requested investigation, or order the search or/and seizure as requested, as the case may be. The order for search or/ and seizure shall be executed by the Police. The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta.

**(b) Observations on the implementation of the article**

581. The provision is legislatively implemented; no examples of implementation were provided as it was explained that there have been no such cases.

**Article 46 Mutual legal assistance**

**Paragraph 18**

*18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.*

**(a) Summary of information relevant to reviewing the implementation of the article**

582. Malta cited Article 649(6)-(12) of the Criminal Code.

**Criminal Code**

**Article 649**

(6) Where the request of the foreign authority is for the hearing of a witness or expert by videoconference, the provisions of subarticles (7) to (12), both inclusive, shall apply.

(7) The magistrate shall summon the person to be heard to appear at the time and place equipped with videoconference facilities appointed for the purpose by the magistrate. The magistrate shall give effect to any measures for the protection of the person to be heard which the Attorney General may declare to have been agreed upon with the requesting foreign authority.

(8) The magistrate shall conduct the hearing and where necessary the magistrate shall appoint an interpreter to assist during the hearing. The magistrate present shall ensure that the person to be heard is identified and that the proceedings take place and continue at all times in conformity with the fundamental principles of the law of Malta.

(9) The person to be heard may claim the right not to testify which would accrue to him or her under the law of Malta or under the law of the country of the requesting foreign authority.

(10) Subject to any measures for the protection of the person to be heard referred to in subarticle (7), the magistrate shall on the conclusion of the hearing draw up minutes indicating the date and place of the hearing, the identity of the person heard, the identities and functions of all other persons participating in the hearing, any oaths taken and the technical conditions under which the hearing took place. The document containing the record of the minutes shall be transmitted to the Attorney General to be forwarded to the requesting foreign authority.

(11) The following shall mutatis mutandis apply to the person to be heard under the provisions of subarticle (6):

(a) the provisions of article 522, where the person to be heard refuses to testify when required to do so by the magistrate;

(b) the provisions of articles 104, 105, 107, 108 and 109, as the case may be, where the person to be heard does not testify to the truth, for this purpose the proceedings before the foreign authority shall be deemed to be proceedings taking place in Malta and the person to be heard shall be deemed to be a person testifying in those proceedings. For the purpose of determining the applicable punishment as may be necessary in proceedings for perjury under this subarticle the criminal fact being inquired into or adjudicated by the requesting foreign authority shall be deemed to be liable to the punishment to which it would have been liable had the same fact taken place in Malta or within the jurisdiction of the same Maltese criminal courts.

(12) The provisions of subarticles (6) to (11), both inclusive, shall apply where the person to be heard is a person accused in the country of the requesting foreign authority provided that the hearing shall only take place with the consent of the person to be heard and that all the rules of evidence and procedure which would apply to the testimony of a person accused in criminal proceedings in Malta would also apply to the testimony of the person accused to be heard under this article.

**(b) Observations on the implementation of the article**

583. The provision is legislatively implemented, even beyond the wording of the paragraph, inasmuch the Maltese Criminal Code provides for the hearing of suspects by video conference and even hearings by telephone in certain cases. No examples of implementation were provided as it was explained that there have been no such cases.

**(c) Successes and good practices**

584. The possibility of conducting hearings by telephone in certain cases is positively noted.

## **Article 46 Mutual legal assistance**

### **Paragraph 19**

*19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.*

**(a) Summary of information relevant to reviewing the implementation of the article**

585. Malta explained that, although there is no provision in Maltese law providing for this, since it is established by treaty, the said obligation is strongly adhered to.

**(b) Observations on the implementation of the article**

586. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures on the limitation of use.

587. Concerning the general principles regulating the relationship between international law (treaties, conventions, etc.) and national law in the Maltese legal system, Malta explained that domestic law applies. Reference is also made to the information provided in the introduction to this chapter above.

## **Article 46 Mutual legal assistance**

### **Paragraphs 20 and 21**

*20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.*

*21. Mutual legal assistance may be refused:*

- (a) If the request is not made in conformity with the provisions of this article;*
- (b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, ordre public or other essential interests;*
- (c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;*
- (d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.*

**(a) Summary of information relevant to reviewing the implementation of the article**

588. As under UNCAC article 46, paragraph 19, above, Malta explained that there is no provision in Maltese law providing for this; however, the said obligation is strongly adhered to as a result of Malta's treaty obligations.

589. Malta further referred to the grounds for refusing assistance which, apart from those provided for in arrangements or treaties, are those cited in Article 649(1) and (5) of the Criminal Code:

**Criminal Code**

"(1) ... The magistrate shall comply with the formalities and procedures indicated in the request of the foreign authority unless these are contrary to the public policy or the internal public law of Malta. ...

(5) For the purposes of subarticles (1) and (3) the magistrate shall, as nearly as may be, conduct the proceedings as if they were an inquiry relating to the *in genere* but shall comply with the formalities and procedures indicated by the requesting foreign authority unless they are contrary to the fundamental principles of Maltese law..."

**(b) Observations on the implementation of the article**

590. Maltese officials explained that all requests for legal assistance are conducted in camera. They are sent to courts in sealed envelopes addressed to the Registrar personally. Confidentiality is ensured in accordance with article 649(5B) of the Criminal Code, which provides: "(5B) The proceedings referred to in this article shall, as nearly as may be, be conducted as if they were an inquiry relating to the 'in genere'". Inquiries into the in genere are held behind closed doors, provided that the rights of any person accused are safeguarded throughout.. Malta is encouraged to address the notification requirement where confidentiality cannot be ensured.

591. Maltese officials explained that no MLA requests have been refused to date where the request was properly issued.

**Article 46 Mutual legal assistance**

**Paragraph 22**

*22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.*

**(a) Summary of information relevant to reviewing the implementation of the article**

592. Malta indicated that there is no such obligation in the Maltese legislation to refuse a request on the sole ground that the offence involves fiscal matters.

**(b) Observations on the implementation of the article**

593. Malta's law does not provide grounds for refusing assistance on the basis that the offence involves fiscal matters. During the country visit a number of examples were cited to the reviewers where Malta provided assistance for requests involving fiscal matters.

## **Article 46 Mutual legal assistance**

### **Paragraph 23**

*23. Reasons shall be given for any refusal of mutual legal assistance.*

**(a) Summary of information relevant to reviewing the implementation of the article**

594. Malta has to date never refused a request for legal assistance that had been properly issued. Since this obligation is provided for by treaty, it is adhered to without the need to transpose the requirement into domestic legislation.

**(b) Observations on the implementation of the article**

595. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures.

## **Article 46 Mutual legal assistance**

### **Paragraph 24**

*24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requesting State Party may make reasonable requests for information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on the status, and progress in its handling, of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.*

**(a) Summary of information relevant to reviewing the implementation of the article**

596. Since this obligation is provided for by treaty, it is adhered to without the need to transpose the requirement into domestic legislation.

597. Reference is also made to the procedure and related timeframes for the provision of assistance outlined under paragraph 1 of the UNCAC article above. Accordingly, requests requiring court execution are executed within a maximum of 3-6 months depending on the complexity of the request. Other cases are handled in a maximum of 2-months' time.

**(b) Observations on the implementation of the article**

598. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures.

**Article 46 Mutual legal assistance**

**Paragraph 25**

*25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.*

**(a) Summary of information relevant to reviewing the implementation of the article**

599. Since this obligation is provided for by treaty, it is adhered to without the need to transpose the requirement into domestic legislation.

**(b) Observations on the implementation of the article**

600. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures.

**Article 46 Mutual legal assistance**

**Paragraph 26**

*26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.*

**(a) Summary of information relevant to reviewing the implementation of the article**

601. Since this obligation is provided for by treaty, it is adhered to without the need to transpose the requirement into domestic legislation.

602. Concerning examples of cases in which difficulties or problems in granting the requested assistance were dealt with and solved through mutual consultations, Malta referred to cases where the request was too vague or simply deemed to be a fishing expedition since the connections to Malta were missing or remote.

**(b) Observations on the implementation of the article**

603. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures.

**Article 46 Mutual legal assistance**

**Paragraph 27**

*27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.*

**(a) Summary of information relevant to reviewing the implementation of the article**

604. Since this obligation is provided for by treaty, it is adhered to without the need to transpose the requirement into domestic legislation.

605. Article 30C of the Dangerous Drugs Ordinance is also referred to.

**Dangerous Drugs Ordinance**

**Article 30C**

(1) Subject to the provisions of subarticle (2), where a witness, expert or other person in a foreign country consents, in respect of an offence contrary to the provisions of this Ordinance, to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in Malta following a request for assistance to that effect made by the competent authority in Malta to the competent authority in that foreign country that witness, expert or other person shall not, while in Malta, be prosecuted, detained, punished or subjected to any other restriction of his personal liberty in respect of acts, omissions or convictions prior to his departure from the foreign country.

(2) The provisions of subarticle (1) shall cease to apply when the witness, expert or other person:



- (a) fails to leave Malta, after having had the opportunity to do so, within a period of fifteen consecutive days from the date on which he has been served by the Attorney General with a notice informing him that his presence in Malta is no longer required; or
- (b) having left Malta, has returned of his own free will.

**(b) Observations on the implementation of the article**

606. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider adopting relevant guidelines or formal procedures to ensure that, where such persons are transferred for purposes of providing assistance, their safe conduct is ensured.

**Article 46 Mutual legal assistance**

**Paragraph 28**

*28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.*

**(a) Summary of information relevant to reviewing the implementation of the article**

607. Malta indicated that this is adhered to in practice without the need for specific implementing provisions.

**(b) Observations on the implementation of the article**

608. There is no specific provision in Malta's legislation to address the requirements of the provision under review. Maltese officials explained that no specific legislation is needed because there is no contradictory provision in the national law, and in any case domestic law would be interpreted in line with the Convention. Nonetheless, in the interest of greater legal certainty, especially for consistency in future cases, Malta may wish to consider more specifically addressing the issue of costs in relevant guidelines or formal procedures.

**Article 46 Mutual legal assistance**

**Paragraph 29**

*29. The requested State Party:*

*(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;*

*(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.*

**(a) Summary of information relevant to reviewing the implementation of the article**

609. Concerning subparagraph (a), Malta indicated that the documents referred to in the subparagraph are publicly available and hence no legislative intervention is required to render them accessible and provide requesting States with such documents. Malta further explained that such records, documents or information can be obtained by collecting copies using internal staff or after the police or any other person obtains them and forwarding them to the requesting State.

610. Concerning subparagraph (b), Malta referred to information provided under paragraph 1, UNCAC article 46 above, whereby such copies may be granted provided the restrictions on professional secrecy are lifted. Moreover, nothing precludes other authorities from cooperating with their counterparts where such agreements exist.

**(b) Observations on the implementation of the article**

611. Based on the information provided, it appears that there are no legal obstacles to the provision of publicly available government records or those that are not available to the general public if applicable restrictions on professional secrecy are lifted or by agreement. Some examples of implementation were provided where government records were provided (e.g., records from the register of companies).

**Article 46 Mutual legal assistance**

**Paragraph 30**

*30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.*

**(a) Summary of information relevant to reviewing the implementation of the article**

612. Malta has entered into two bilateral MLA treaties with China (2009) and the United States of America (2005), copies of which were provided to the reviewers during the country visit. Malta has further ratified several multilateral protocols and conventions, e.g.:

- EU Convention on Mutual Assistance in Criminal Matters 1959
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- Schengen Agreement, 1985, and subsequent Convention 1990
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990
- EU Convention on Mutual Assistance in Criminal Matters between Member States 2000 and its Protocol
- UN Convention on Transnational Organized Crime 2000

613. Malta also follows the Scheme Relating to Mutual Assistance in Criminal Matters within the Commonwealth (Harare Scheme).

**(b) Observations on the implementation of the article**

614. Malta has entered into bilateral and multilateral agreements as provided in the provision under review.

**Article 47 Transfer of criminal proceedings**

*States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence established in accordance with this Convention in cases where such transfer is considered to be in the interests of the proper administration of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.*

**(a) Summary of information relevant to reviewing the implementation of the article**

615. Malta indicated that once the Courts are vested with jurisdiction, there is nothing preventing the Maltese authorities from accepting proceedings even without the need of a treaty being invoked, as there is a duty to prosecute. If the Maltese Courts were not initially vested with jurisdiction, it would not be possible for them to accept the transfer of criminal proceedings initiated abroad according to internal rules or on the sole basis of a treaty, as it is the case under the Council of Europe Convention on the matter (not ratified by Malta), taking into account the circumstances of the case (for instance, the fact that all suspects and witnesses are living in Malta). Malta explained that, unless jurisdiction vests in the Maltese Courts acceptance of the transfer will not be possible.

616. Malta explained that it would be possible for the Maltese authorities to transfer proceedings initiated in Malta to foreign authorities on a basis other than the lack of jurisdiction of the Maltese courts, such as the fact that it is easier for those foreign authorities to investigate or to prosecute the case (for instance, because all suspects and witnesses live there and the documents which can be used as evidence are also there), even in the case in which the Maltese authorities do have jurisdiction. However, Malta noted that normally there is a duty to prosecute if the courts are vested with jurisdiction.

617. Concerning examples of implementation, there have been some case transfers in the last five years, though none dealt with offences covered by the Convention. Malta provided the following statistics.

	2008	2009	2010	2011	2012
Malta as Requesting State	1	0	0	0	0
Malta as Requested State	1	4	1	3	1

**(b) Observations on the implementation of the article**

618. The article is implemented, although the referenced examples are not limited to corruption-related cases.

## Article 48 Law enforcement cooperation

### Paragraph 1

*1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. States Parties shall, in particular, take effective measures:*

*(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;*

*(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:*

*(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;*

*(ii) The movement of proceeds of crime or property derived from the commission of such offences;*

*(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;*

*(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;*

*(d) To exchange, where appropriate, information with other States Parties concerning specific means and methods used to commit offences covered by this Convention, including the use of false identities, forged, altered or false documents and other means of concealing activities;*

*(e) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;*

*(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

619. The Malta Police Force has the duty to execute foreign requests for assistance which can either be initiated informally or on a police-to-police exchange of information basis from Interpol, Europol and other authorities or commission rogatoire from foreign judicial and police authorities. The Malta Police Force is legally bound to execute these foreign requests in line with several protocols and conventions, e.g.:

- EU Convention on Mutual Assistance in Criminal Matters 1959
- United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988
- Schengen Agreement, 1985, and subsequent Convention 1990,
- Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990
- Europol Decision

- Convention on Mutual Assistance and co-operation between Customs Administrations 1997
- EU Convention on Mutual Assistance in Criminal Matters between Member States 2000 and its Protocol
- UN Convention on Transnational Organized Crime 2000

620. The Malta police also executes Camden Asset Recovery Inter-Agency Network (CARIN) requests to trace criminal assets on behalf of foreign authorities. CARIN is an informal network of experts and practitioners in the field of asset tracing, freezing and confiscation between worldwide law enforcement agencies. Each agency has its own 'national contact point', who receives or sends requests to other foreign authorities, mainly as regards criminal assets in other countries. Exchange of such information is carried out on an informal basis and hence cannot be used as evidence. If a reply to such a request is positive formal Letters of Request (LOR) are executed between the two countries in order that such evidence, freezing and eventual confiscation can be carried out. This informal network reduces the number of official LORs that have to be executed in order to trace assets. Concerning examples of cooperation within the aforementioned networks, Malta referred to cooperation through the CARIN network and by the FIAU.

621. Malta explained that no cumulative statistics on police-to-police cooperation are maintained. However, the Maltese police provided the following statistics related to Europol matters, which are not limited to corruption.

<b>2013</b>				
<b>Month</b>	<b>Cases initiated by Malta</b>	<b>Total of transactions made by Malta</b>	<b>Requests sent by Malta</b>	<b>Requests received by Malta</b>
First quarter	11	748	17	311
Second quarter	13	797	28	291
Third quarter	-	-	-	-
Last quarter	-	-	-	-
<b>TOTAL</b>	<b>24</b>	<b>1545</b>	<b>45</b>	<b>602</b>

<b>2012</b>				
<b>Month</b>	<b>Cases initiated by Malta</b>	<b>Total of transactions made by Malta</b>	<b>Requests sent by Malta</b>	<b>Requests received by Malta</b>
January	3	315	6	77
February	1	257	3	87
March	5	313	13	118
April	3	230	6	90
May	4	221	10	86
June	1	269	4	86
July	4	283	10	93
August	2	221	5	76

September	2	192	6	66
October	2	258	4	110
November	2	264	3	108
December	1	176	1	71
<b>TOTAL</b>	<b>30</b>	<b>2999</b>	<b>71</b>	<b>1068</b>

2011				
Month	Cases initiated by Malta	Total of transactions made by Malta	Requests sent by Malta	Requests received by Malta
January	7	276	7	46
February	5	182	8	71
March	5	200	11	67
April	1	203	3	64
May	3	211	6	70
June	2	194	6	57
July	9	264	17	85
August	2	208	8	65
September	9	292	15	70
October	5	235	12	69
November	5	265	12	88
December	1	195	3	52
<b>TOTAL</b>	<b>54</b>	<b>2725</b>	<b>108</b>	<b>804</b>

2010				
Month	Cases initiated by Malta	Total of transactions made by Malta	Requests sent by Malta	Requests received by Malta
January	1	239	1	91
February	1	181	4	64
March	4	235	5	88
April	4	194	5	91
May	8	255	10	84
June	2	291	10	80
July	2	177	3	76
August	4	243	4	57
September	1	161	2	42
October	6	186	14	59
November	4	182	6	68
December	1	162	4	68
<b>TOTAL</b>	<b>38</b>	<b>2506</b>	<b>68</b>	<b>868</b>

The Maltese police provided the following statistics on outgoing and incoming requests through SIRENE channels (data not limited to corruption).

Hit statistics in SIS and exchanged SIRENE forms					Year 2012	Country MALTA	
HITS							
CISA article	No. of all hits on foreign alerts	no. of all hits abroad on own alerts	Outgoing forms		Incoming forms		
			G	H	G	H	
95	5	3	5	0	3	0	
96	7	33	5	2	26	7	
97	0	4	0	0	4	0	
98	8	6	8	0	6	0	
99 persons	4	5	4	0	5	0	
99 vehicles	0	0	0	0	0	0	
100 vehicles	1	0	1	0	0	0	
100 firearms	0	0	0	0	0	0	
100 blank docs	3	0	3	0	0	0	
100 issued docs	2	53	1	1	30	23	
100 banknotes	0	0	0	0	0	0	
TOTAL HITS	30	104					
CONSULTATION PROCEDURE							
art 25 consultations			Outgoing		Incoming		
			5		19		
FLAGGING							
no. of own alerts with at least one flag			F outgoing		F incoming		
flags art 95		7	1		2		
flags art 97		0	0		0		
flags art. 99		0	0		0		
flagged own alerts TOTAL		7					
EXCHANGE OF SIRENE FORMS							
			Outgoing forms	Incoming forms	TOTAL FORMS per category		
		A	9	15,624	15633		
		E	0	0	0		
		F	1	2	3		
		G	27	74	101		
		H	3	30	33		
		I	0	0	0		
		J	0	2	2		
		K	0	0	0		
		L	20	61	81		
		M	331	28,685	29016		
		N	1	14	15		
		O	7	9	16		
		P	0	4	4		

	Q	0	73	73	
<b>FORMS TOTAL</b>		<b>399</b>	<b>44578</b>	<b>44977</b>	<b>GRAND TOTAL</b>

The Maltese police provided the following data on messages received and sent through INTERPOL channels for the year 2012 (data not limited to corruption).

<b>Messages through I-24/7</b>			
	<b>Received</b>	<b>Sent</b>	<b>Direct for Malta</b>
Jan	1457	267	143
Feb	1496	163	128
Mar	1414	114	158
Apr	1544	140	169
May	1484	179	281
June	1480	162	174
July	1812	228	268
Aug	1388	244	215
Sep	1519	184	200
Oct	1799	198	263
<b>Total</b>	<b>15393</b>	<b>2158</b>	<b>1720</b>

622. Malta indicated that the police cooperate regularly with their counterparts via EUROPOL, INTERPOL and Malta's Schengen "SIRENE" bureau (Supplementary Information Request at the National Entry). The Attorney General's Office, as the central judicial authority, also ensures cooperation between judicial authorities of other States through Eurojust and the European Judicial Network (EJN). Moreover contacts with contact points in the Council of Europe's Group of States against Corruption (Greco) are also maintained. Malta indicated that there is no database for police cooperation at the international level. Malta also uses the SIENA (Secure Information Exchange Network Application) network as a platform for information exchange.

623. Although the FIAU is not a law enforcement body, the following information is provided on the FIAU's international cooperation activities. Reference is also made to the information provided under article 46(4) above regarding the FIAU's information sharing arrangements, including through the Egmont Group of Financial Intelligence Units and the European Union.

624. Although the FIAU is not bound by law to enter into Memoranda of Understanding (MOUs) or agreements in order to disseminate information, it actively seeks to conclude such formal arrangements with foreign authorities. As at the end of 2012 the FIAU had entered into nine MOUs with the FIUs of Belgium, Cyprus, Monaco, Latvia, Slovenia, Romania, San Marino, Canada and South Africa. The FIAU is also involved in negotiations on the conclusion of MOUs with Japan, the Holy See, Panama and Russia.

625. As shown in the table below, with the exception of the years 2007 and 2008, the FIAU has consistently made more requests for information to foreign FIUs in the course of its own analyses than provided replies to international requests for information to assist investigations and the analysis of cases being carried out in foreign jurisdictions. The average FIAU response time to international requests for information increased marginally from six working days in 2011 to seven working days in 2012.



Year	Number of requests received by the FIAU	Number of requests made by the FIAU	Percentage difference between requests made by the FIAU and requests made to the FIAU
2005	37	41	11%
2006	23	43	87%
2007	29	29	0%
2008	44	28	-36%
2009	46	83	80%
2010	45	75	67%
2011	97	142	46%
2012	74	179	142%
Total	395	620	57%

626. The majority (approximately 68 percent) of incoming requests for assistance received by the FIAU in 2012 originated from FIUs in the European Union and European Economic Area, while another 20 percent were made by FIUs of other European countries. Eight percent of the requests originated from FIUs of Asian countries, while only one request was received from a country in the Americas.

627. Figures relating to international requests for assistance made to foreign FIUs and requests for co-operation received by the FIAU during 2012 appear in the table below. In summary, for 2012 the geographical location from where these requests originated is as follows:

- Fifty requests from the FIUs of sixteen EU Member States.
- Fifteen requests from the FIUs of seven non-EU/European Economic Area countries.
- Six requests from the FIUs of six Asian countries.
- Two requests from two FIUs in African countries.
- One request from the FIU of a country in the Americas.

Requests received by the FIAU		Jurisdiction	Requests made to other FIUs	
Number	Replies		Number	Replies
-	-	Albania	1	1
-	-	Andorra	1	1
1	1	Argentina	1	1
3	3	Austria	5	4
-	-	Barbados	1	-
-	-	Belarus	1	1
3	3	Belgium	2	2
-	-	Belize	1	1
-	-	Bermuda	2	2
-	-	British Virgin Islands	6	6
3	3	Bulgaria	1	1
-	-	Cameroon	1	-
-	-	Canada	5	5
-	-	Cayman Islands	1	1
-	-	Croatia	2	2
-	-	Curacao	1	1
-	-	Cyprus	8	8
1	1	Czech Republic	4	4
5	5	France	2	1

1	1	Germany	5	5
-	-	Gibraltar	3	3
-	-	Hong Kong	5	4
-	-	Hungary	1	-
-	-	Ireland	2	2
1	1	Israel	3	3
5	5	Italy	15	8
4	4	Jersey	1	1
1	1	Kazakhstan	1	1
-	-	Latvia	1	1
-	-	Liechtenstein	2	2
2	2	Lithuania	4	4
9	9	Luxembourg	-	-
1	1	Malaysia	-	-
2	2	Moldova	-	-
1	1	Montenegro	-	-
1	1	Netherlands	5	4
-	-	Nigeria	2	2
-	-	Panama	4	1
-	-	Peru	1	1
1	1	Philippines	2	2
2	2	Poland	2	2
-	-	Portugal	3	3
1	1	Romania	2	2
3	3	Russia	1	1
1	-	San Marino	1	-
1	1	Senegal	-	-
-	-	Serbia	2	2
-	-	Seychelles	4	3
-	-	Singapore	1	1
2	2	Slovakia	2	1
3	3	Slovenia	-	-
2	2	Spain	11	10
1	1	Sri Lanka	-	-
1	1	Switzerland	12	12
1	-	Tunisia	1	-
-	-	Turkey	2	1
1	1	Turkmenistan	-	-
3	3	Ukraine	2	2
-	-	United Arab Emirates	5	5
7	7	United Kingdom	13	12
-	-	United States of America	11	11
-	-	Venezuela	1	1
<b>74</b>	<b>72</b>	<b>Totals</b>	<b>179</b>	<b>155</b>

628. Regarding subparagraph (e) of UNCAC article 48(1), Malta indicated that members of the authorities engaged in the investigation and prosecution of criminal offences frequently attend training seminars and participate in joint investigation teams with their counterparts.

629. Malta indicated that it considers this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by the Convention, although there has been no experience applying the Convention in this regard.

**(b) Observations on the implementation of the article**

630. During the country visit, officials from the Malta police force reported an increasing number of incoming requests for police cooperation over the past years, but indicated that there have been no examples of police-to-police cooperation in corruption matters.

631. It was explained that FIAU officers participate in international AML/CTF-related trainings, such as in the United States of America, Netherlands, United Kingdom and through MONEYVAL. Malta police officials also participate in international training seminars and conferences on fighting corruption.

632. During the country visit, officials from the Malta police force explained that they have one liaison officer posted at Europol, and have agreements to use other States' liaison officers on a case by case basis, in particular in third countries outside the European Union. One example of cooperation through a French liaison officer in a third country was provided. There are no liaison officers in Malta but officers are attached to embassies in other countries that also cover Malta.

**(c) Successes and good practices**

633. The reviewers positively note that Malta has provided technical investigative training to other countries, in particular through the Malta police force and the FIAU. The recent increase in dedicated resources to the international relations unit in the police is also positively noted.

**Article 48 Law enforcement cooperation**

**Paragraph 2**

*2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the States Parties may consider this Convention to be the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.*

**(a) Summary of information relevant to reviewing the implementation of the article**

**Police cooperation agreements (including agreements on criminal matters, not limited to corruption)**

- (1) Malta-Albania (Crime)
- (3) Malta-Belgium (Police cooperation)
- (4) Malta-Bulgaria (Crime)
- (5) Malta-Bulgaria (Police cooperation)

- (6) Malta-China (Crime)
- (7) Malta-China (Transnational Crime)
- (8) Malta-Croatia (Crime)
- (9) Malta-Cyprus (Crime)
- (10) Malta-Egypt (Crime)
- (11) Malta-France (Crime)
- (12) Malta-Georgia (Crime)
- (13) Malta-Greece (Crime)
- (14) Malta-Hungary (Crime)
- (15) Malta-Ireland (Crime)
- (16) Malta-Israel (Crime)
- (17) Malta-Italy (Crime)
- (18) Malta-Italy (Police Cooperation between departments not at Ministerial Level)
- (19) Malta-Latvia (Crime)
- (20) Malta-Libya (Crime)
- (21) Malta-Montenegro (Crime)
- (22) Malta-Qatar (Crime)
- (23) Malta-Romania (Crime)
- (24) Malta-Slovakia (Crime)
- (25) Malta-Slovenia (Crime)
- (26) Malta-South Africa (Police Cooperation)
- (27) Malta-Spain (Crime)
- (28) Malta-Sweden (Crime)
- (29) Malta-Tunisia (Crime)
- (30) Malta-Tunisia (Talks on Security and Police Matters)
- (31) Malta-Turkey (Crime)
- (32) Malta-Ukraine (Crime)
- (33) Malta-UAE (Crime)
- (34) Malta-UK (Crime)
- (35) Malta-USA (Crime)
- (36) Malta-Uzbekistan (Crime)

#### **Judicial cooperation agreements**

- (1) Malta-China (Mutual Judicial Assistance)
- (2) Malta-Qatar (Cooperation in the Legal Field)
- (3) Malta-Russia (Judicial Matters)
- (4) Malta-Tunisia (Agreement in the Field of Justice)
- (5) Malta-USA (Mutual Legal Assistance)

#### **(b) Observations on the implementation of the article**

634. Malta has entered into a range of bilateral and multilateral agreements or arrangements on direct law enforcement cooperation. The reviewers also noted the following multilateral agreements on police cooperation:

- (1) Interpol,
- (2) Europol Decision,
- (3) Schengen Convention (Sirene Offices).

#### **Article 48 Law enforcement cooperation**

### Paragraph 3

*3. States Parties shall endeavour to cooperate within their means to respond to offences covered by this Convention committed through the use of modern technology.*

#### (a) Summary of information relevant to reviewing the implementation of the article

635. Malta noted that this is established practice in Malta and does not require a legislative provision to be implemented.

#### (b) Observations on the implementation of the article

636. It was reported during the country visit that most incoming police requests have related to Internet fraud. New officers have also been hired in the Malta police force to deal also with cybercrime investigations.

### Article 49 Joint investigations

*States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.*

#### (a) Summary of information relevant to reviewing the implementation of the article

637. Malta indicated Article 435E(3) of the Criminal Code as applicable. For States within the European Union, Legal Notice 187 of 2012 would be further be applicable<sup>16</sup>.

#### Criminal Code

##### Article 435E.

(1) Notwithstanding anything contained in any other law it shall be lawful for the Attorney General to authorise the Executive Police and, where appropriate, the Customs authorities to allow a controlled delivery to take place with a view to identifying persons involved in the commission of any criminal offence under the laws of Malta or under the laws of another country.

For the purposes of this subarticle a "controlled delivery" shall mutatis mutandis have the same meaning assigned to it by article 30B(2) of the Dangerous Drugs Ordinance so however that the illicit or suspect consignment referred to in that subarticle may for the purposes of this subarticle consist of anything whatsoever and that the consignment may be intercepted and allowed to continue with the original contents intact or removed or replaced in whole or in part.

(2) With the same objective of identifying persons involved in the commissions of a criminal offence under the laws of Malta or under the laws of another country, it shall also be lawful for the Attorney General to authorise the Executive Police or a person under the supervision or direction of the Executive Police, to acquire or procure an illicit or suspect consignment of anything from any person or place.

(3) Pursuant to any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or which is otherwise applicable to Malta, the Attorney General may

<sup>16</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=11904&l=1>

authorise the competent authorities of another country to conduct in Malta, jointly with or under the supervision or direction of the Executive Police, investigations into criminal offences by officers acting under covert or false identity, provided that the Attorney General is satisfied of the true identity and official capacity of the officers in question and is fully informed of the nature of any documents which purport to guarantee, certify or authenticate the false identity assumed by any such officers.

Notwithstanding the provisions of any other law the making or use of such documents by the said competent authorities or by such officers for the purpose or in the course of such investigations authorised as aforesaid shall be deemed to be lawful and shall not entail any liability, civil, criminal or otherwise, on the part of such authorities or officers.

(4) Any official from another country taking part in any of the operations referred to in subarticles (1) to (3), both inclusive, shall, for the purpose of any criminal liability incurred under this Code or any other law by that official or by others for conduct against that official, be deemed to be a public officer.

(5) The provisions of subarticle (4) shall apply mutatis mutandis to any official from another country taking part in any operation in Malta of the kind referred to in subarticle (3) even if none of the officers taking part in the operation is acting under covert or false identity.

(6) For purposes of this article "competent authorities of another country" and "official from another country" shall be construed as including officials of bodies set up pursuant to the Treaty on European Union as defined in article 2 of the European Union Act.

(7) Where the Attorney General has authorised the setting up of a joint investigation team as provided in subarticle (3), the foreign officials participating in the said investigation shall be entitled to be present when investigative measures are being taken and, if so authorised by the competent officer of the Executive Police, to take investigative measures.

638. Malta informed that a joint investigation team was established under Eurojust on money-laundering, and another on hi-jacking together with other EU and non-EU states. The teams were composed of both police officers and prosecuting authorities.

**(b) Observations on the implementation of the article**

639. The European Union Convention on Mutual Assistance in Criminal Matters between Member States 2000 and its Protocol provides for the possibility of conducting joint investigations at the European Union level without a prior mutual legal assistance request.

640. Malta's bilateral treaty on mutual legal assistance with the United States of America (USA) also provides, in article 2, for the establishment of joint investigative teams (JITs) for the purposes of facilitating criminal investigations or prosecutions involving the USA and one or more Member States of the European Union.

641. It was reported during the country visit that there have been 3-4 cases where Malta was a direct signatory to JITs with other countries. Malta has also assisted in joint investigations where it was not signatory to a JIT (e.g., with France). Only one example was referred to involving a JIT in a corruption-related investigation with Croatia.

642. Malta has implemented this article.

**Article 50 Special investigative techniques**

**Paragraph 1**

*1. In order to combat corruption effectively, each State Party shall, to the extent permitted by the basic principles of its domestic legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary, within its means, to allow for the appropriate use by its competent authorities of controlled delivery and, where it deems appropriate, other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, within its territory, and to allow for the admissibility in court of evidence derived therefrom.*

**(a) Summary of information relevant to reviewing the implementation of the article**

643. The Security Service Act of Malta<sup>17</sup> enables the Maltese authorities to use special investigative tools, provided the requirements of article 2(3) are satisfied. Malta informed that the use of special investigative tools provided for in the Security Service Act is admissible as regards the investigation of all offences, including corruption offences.

644. Regarding case law interpreting the term “substantial financial gain” as a condition for the conduct to be deemed as a serious crime according to Article 2(3) of the Security Service Act, Malta explained the following. Given the extreme invasive nature of this measure, it is only allowed in respect of the more serious offences as defined in Article 3 thereof. In particular, however, Malta explained that an MLA request asking for phone tapping to be carried out in Malta regarding a corruption offence would be admitted and carried out by Maltese authorities.

645. Regarding controlled delivery, Malta referred to the afore-cited Article 435 E (1) of the Criminal Code (see above under UNCAC article 49).

646. Malta explained that Maltese authorities have not participated in international controlled deliveries, even if not related to corruption offences.

**(b) Observations on the implementation of the article**

647. It was explained during the country visit that for the police to conduct ‘intrusive’ special investigative techniques, a warrant must be issued by the Minister responsible for Home Affairs on application by the Malta Security Services. Other non-intrusive special investigative techniques, like undercover operations, can be conducted upon consent by the Attorney General, in accordance with Article 435 E (3) of the Criminal Code (cited above under UNCAC article 49).

648. It was further explained that there is no specific legal provision on the admissibility of evidence derived from special investigative techniques, but that such evidence is admissible where the technique was lawfully conducted and the evidence was collected under a warrant or investigation order issued for that purpose. There are reportedly no problems in admitting such evidence in a court of law.

649. Maltese officials reported that they have conducted controlled deliveries in drugs cases.

**Article 50 Special investigative techniques**

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<sup>17</sup> <http://www.justiceservices.gov.mt/DownloadDocument.aspx?app=lom&itemid=8858&l=1>

## Paragraphs 2 and 3

*2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.*

*3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.*

### (a) Summary of information relevant to reviewing the implementation of the article

650. Malta is party to the European Union Convention on Mutual Assistance in Criminal Matters and the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which both expressly provide for and regulate controlled deliveries, under covert operations and joint investigations teams at European level, as well as phone tapping MLA requests.

651. Malta indicated that it would not be precluded from concluding bilateral or multilateral agreements or arrangements for using such special investigative techniques at the international level, if so warranted.

652. Malta indicated that it could conduct special investigative techniques at the international level in the absence of a specific agreement or arrangement in cases where the provisions outlined in Article 3(2) of the Secret Service Act are met. Legal assistance can also be afforded upon the assurance of reciprocity.

#### **Secret Service Act**

##### Article 3

(2) The function of the Service shall be to protect national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means.

653. Furthermore, according to Article 435E (3) of the Criminal Code, the basis on which to carry out internationally under covert operations or to set up joint investigation teams may be “any arrangement, including any treaty, convention, agreement or understanding, to which Malta is a party or which is otherwise applicable to Malta”. The provision could hence also be applied to the use of such these techniques on a case-by-case basis as well as to international controlled deliveries.

### (b) Observations on the implementation of the article

654. Maltese officials confirmed during the country visit that Malta has not signed any bilateral agreements which expressly provide for any of the special investigative techniques mentioned above. However, the existing agreements on law enforcement and



judicial cooperation are broadly worded to provide for all necessary measures, though there is no specific reference to special investigative techniques.

## **Article 50 Special investigative techniques**

### **Paragraph 4**

*4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods or funds to continue intact or be removed or replaced in whole or in part.*

#### **(a) Summary of information relevant to reviewing the implementation of the article**

655. Malta indicated that this is foreseen through the application of Article 435E of the Criminal Code and referred to the detailed information provided under UNCAC article 49 above.

#### **(b) Observations on the implementation of the article**

656. Maltese officials confirmed during the country visit that Malta has had experience in international controlled deliveries, although not related to corruption offences. The provision is legislatively implemented.

**Annex 1 – Investigations and Prosecutions of Corruption and Bribery for the past four years (2 Tables)**

Year	CID	Insp	Crime	Result of Case	Summary
2009	CID/0867/E/09	Abdilla Ian Joseph	Corruption of Players	Case investigated - No case to answer	Anonymous allegations regarding a possible case of Sports Corruption, which allegations were not confirmed
2010	CID/0946/E/10	Abdilla Ian Joseph	Bribery	Case investigated - No case to answer	A case regarding possible corrupt practices in health care services, which resulted only as hearsay
2010	CID/1473/E/10	Abdilla Ian Joseph	Corruption	Case investigated - No case to answer	Allegations regarding possible corrupt practises at the Department of Contracts, which proved baseless.
2011	CID/1114/E/11	Abdilla Ian Joseph	Corruption of Players	Case investigated - No case to answer	Hearsay information relayed to the police regarding sports corruption which could not be substantiated.
2011	CID/2055/E/11	Abdilla Ian Joseph	Corruption	Case investigated - No case to answer	Anonymous allegations regarding a possible case of Sports Corruption, which allegations were not confirmed
2012	CID/529/E/12	Abdilla Ian Joseph	Bribery	Case investigated - No case to answer	Allegations regarding possible corrupt practises regarding MCAST Cleaning Tender but proved to be fruitless.
2012	CID/710/E/12	Abdilla Ian Joseph	Corruption	Case investigated - No case to answer	Allegations regarding a possible case of corruption in the allocation of a Department of Housing home, but which proved to be just a suspicion. No corruption found.
2012	CID/2049/E/12	Abdilla Ian Joseph	Corruption	Investigations in progress	Investigations regarding the Tendering process at all MCAST facilities.
2009	CID/2164/E/09	Abdilla Ian	Corruption	Two persons arraigned - One found guilty, One still sub-	Allegations regarding corruption

		Joseph		judice	in the issuing of work permits by ETC, one person was arraigned in Court and found guilty, while the case against an ETC employee is still sub-judice
2010	CID/0462/E/10	Aquilina Raymond	Bribery	On the 11/11/2010 Stephen Curmi Pleaded guilty for all charges brought against him and was sentenced for a conditional discharge for one (1) year	
2012	CID/1955/E/12	Stivala Rennie	Bribery	Under Investigations	Anonymous information Re: Alleged irregularities at a VRT Station in Luqa by a certain Salvu Psaila
2009	CID/1222/E/09	Curmi Maurice	Bribery	PA	
2010	CID/1084/E/10	Curmi Maurice	Bribery	NO CASE	
2010	CID/1986/E/10	Curmi Maurice	Bribery	PA	
2010	CID/1202/E/10	Curmi Maurice	Corruption	NO CASE	
2010	CID/0940/E/10	Curmi Maurice	Corruption of Players	NO CASE	
2010	CID/0941/E/10	Curmi Maurice	Corruption of Players	pending investigation	
2011	CID/1454/E/11	Curmi Maurice	Corruption	NO CASE	
2011	CID/2133/E/11	Curmi Maurice	Corruption	pending investigation	
2011	CID/0127/E/11	Curmi Maurice	Corruption	pending investigation	
2011	CID/1087/E/11	Curmi Maurice	Corruption	NO CASE	
2012	CID/805/E/12	Curmi Maurice	Bribery	NO CASE	
2010	CID/944/E/10	Curmi Maurice	Corruption	Suspect was arraigned, case is still sub justice	

2009	CID/2163/E/09	Farrugia Yvonne	Bribery	No case	
2010	CID/2720/E/10	Farrugia Yvonne	Bribery	3 years probation	
2010	CID/1082/E/10	Farrugia Yvonne	Corruption of Players	No case	
2009	CID/830/E/09	Farrugia Yvonne	Bribery	Sub judice	
2009	CID/0266/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with attempted Bribery. Sentenced for six months imprisonment suspended for one year & temporary interdiction for six months in terms of Article 119 of the Criminal Code.	
2009	CID/0413/E/09	Gafa' Angelo	Bribery	No Case.	
2009	CID/0459/E/09	Gafa' Angelo	Bribery	No Case.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud & Bribery. Sentenced for nine months imprisonment & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud, Bribery, Trading in influence, False declaration & VAT Fraud. Case is still Sub Judice.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	VAT Official arraigned and charged with Money Laundering, Fraud, Bribery, Unlawful exaction, false declaration, misappropriation, breaches of financial institution act, breaches of VAT act & possession of drugs. Case is still Sub Judice.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud & Bribery. Acquitted.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud, Bribery, False declarations & VAT Fraud. Acquitted.	
2009	CID/0706/E/09	Gafa'	Bribery	Tax Payer arraigned and charged with Fraud, Bribery,	

		Angelo		Trading in influence, False Declaration & VAT Fraud. Sentenced for eighteen months imprisonment suspended for four years, perpetual general interdiction & Fine (Multa) €700.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eleven months imprisonment suspended for three years & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment, suspended sentence awarded on the 14/05/08 restarts for another four years & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud, Bribery, Trading in influence, False Declaration & VAT Fraud. Sentenced for eighteen months imprisonment suspended for four years, perpetual general interdiction & Fine (Multa) €700.	
2009	CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud, Bribery & Trading in influence. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.	
2009	CID/0994/E/09	Gafa' Angelo	Bribery	No Case.	
2009	CID/1411/E/09	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.	
2009	CID/1559/E/09	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.	
2009	CID/2318/E/09	Gafa' Angelo	Bribery	Local Council Mayor arraigned and charged with embezzlement. Acquitted.	

2009	CID/0271/E/09	Gafa' Angelo	Corruption of Players	Football Club Official arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.	
2009	CID/0271/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced for Section 22, Chapter 446 Unconditional Discharge.	
2009	CID/0271/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.	
2009	CID/0384/E/09	Gafa' Angelo	Corruption of Players	No Case.	
2009	CID/0436/E/09	Gafa' Angelo	Corruption of Players	Football referee arraigned and charged with corruption of players. Sentenced for six months imprisonment suspended for two years & Fine (Multa) of €500.	
2009	CID/0513/E/09	Gafa' Angelo	Corruption of Players	No Case.	
2009	P.849/2009	Gafa' Angelo	Corruption of Players	No Case.	
2009	CID/0599/E/09	Gafa' Angelo	Corruption of Players	No Case.	
2009	CID/0529/E/09	Gafa' Angelo	Corruption of Players	No Case.	
2009	CID/0644/E/09	Gafa' Angelo	Corruption of Players	No Case.	
2009	CID/0696/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced Conditional Discharge for three months.	
2009	CID/0696/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced Conditional Discharge for three months.	
2009	CID/0696/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.	
2009	CID/0780/E/09	Gafa' Angelo	Corruption of Players	No Case.	

2009	CID/1022/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Case is still sub Judice.	
2009	CID/1022/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Acquitted.	
2010	CID/0502/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/0504/E/10	Gafa' Angelo	Bribery	79 Vehicle License Candidates arraigned and charged with complicity in forgery of documents, Trading in influence and false declarations. Some were also charged with False Swearing. Sentenced 1 person conditionally discharged for one year, 31 persons conditionally discharged for two years, 41 persons conditionally discharged for three years, 2 persons conditionally discharged for eighteen months, 1 person sentenced for eighteen months imprisonment suspended for two years & Perpetual General Interdiction, 2 persons sentenced for two years imprisonment suspended for four years & Perpetual General Interdiction. 1 case is still Sub Judice. All persons charged with False Swearing were acquitted from this charge and found guilty from the other charges.	
2010	CID/0536/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/0863/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/0976/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/1044/E/10	Gafa' Angelo	Bribery	Local Council Mayor arraigned and charged with Bribery and Vilification of a public officer. Sentenced for one year imprisonment & General Perpetual Interdiction. Acquitted from the charge of vilification of a public officer. An Appeal was filed and is still Sub Judice.	
2010	CID/1083/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/1985/E/10	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.	
2010	CID/2252/E/10	Gafa'	Bribery	Local Council Councillor arraigned and charged with	

		Angelo		Bribery. Case is still Sub Judice.	
2010	CID/2252/E/10	Gafa' Angelo	Bribery	Local Council Councillor arraigned and charged with Bribery. Case is still Sub Judice.	
2010	CID/2252/E/10	Gafa' Angelo	Bribery	Two Local Council Councillors arraigned and charged with Misappropriation, Embezzlement and Computer Misuse. Case is still Sub Judice.	
2010	CID/2252/E/10	Gafa' Angelo	Bribery	Local Council Mayor arraigned and charged with Misappropriation, Unlawful Exaction, Bribery, Embezzlement use of forged documents and blackmail. Case is still Sub Judice.	
2010	CID/2252/E/10	Gafa' Angelo	Bribery	Contractor arraigned and charged with Bribery. Case is still Sub Judice.	
2010	CID/2252/E/10	Gafa' Angelo	Bribery	Contractor arraigned and charged with Bribery. Sentenced for eighteen months imprisonment suspended for three years & Perpetual General Interdiction.	
2010	CID/2384/E/10	Gafa' Angelo	Bribery	Public Officer arraigned and charged with Bribery. Sentenced Conditional Discharge for three years in terms of Section 22, Chapter 446 & Perpetual General Interdiction.	
2010	CID/2384/E/10	Gafa' Angelo	Bribery	Two persons arraigned and charged with Bribery. Case is still Sub Judice.	
2010	CID/2699/E/10	Gafa' Angelo	Bribery	No Case.	
2010	CID/1606/E/10	Gafa' Angelo	Corruption	Contractor arraigned and charged with Bribery and Trading in influence. Case is still Sub Judice.	
2010	CID/1606/E/10	Gafa' Angelo	Corruption	Contractor arraigned and charged with Bribery. Case is still Sub Judice.	
2010	CID/1606/E/10	Gafa' Angelo	Corruption	One Person arraigned and charged with Bribery and Trading in influence. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction.	
2011	CID/0738/E/11	Gafa' Angelo	Bribery	No Case.	
2011	CID/0934/E/11	Gafa' Angelo	Bribery	No Case.	
2011	CID/1159/E/11	Gafa'	Bribery	No Case.	



		Angelo			
2011	CID/1481/E/11	Gafa' Angelo	Bribery	No Case.	
2011	CID/1703/E/11	Gafa' Angelo	Corruption	No Case.	
2011	CID/1979/E/11	Gafa' Angelo	Corruption	VAT Official arraigned and charged with Attempted Bribery. Case is still Sub Judice.	
2011	CID/1979/E/11	Gafa' Angelo	Corruption	Tax Payer is to be arraigned charged with Bribery in the following months.	
2011	CID/0018/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2011	CID/0110/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2011	CID/0216/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2011	CID/0432/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2011	CID/0623/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2011	CID/1599/E/11	Gafa' Angelo	Corruption	Public Officer arraigned and charged with Unlawful Exaction. Case is still Sub Judice.	
2011	CID/0947/E/11	Gafa' Angelo	Corruption of Players	Referred to other Inspector for investigation.	
2012	CID/0356/E/12	Gafa' Angelo	Bribery	No Case.	
2012	CID/0799/E/12	Gafa' Angelo	Bribery	No Case.	
2012	CID/0242/E/12	Gafa' Angelo	Corruption	No Case.	
2012	CID/0579/E/12	Gafa' Angelo	Corruption	No Case.	
2012	CID/0747/E/12	Gafa' Angelo	Corruption	MEPA Official arraigned and charged with Bribery. Case is still Sub Judice.	
2012	CID/0781/E/12	Gafa' Angelo	Corruption	Investigations still ongoing.	
2012	CID/1030/E/12	Gafa'	Corruption	No Case.	

		Angelo			
2012	CID/1503/E/12	Gafa' Angelo	Corruption	No Case.	
2012	CID/1695/E/12	Gafa' Angelo	Corruption	Investigations still ongoing.	
2012	CID/1731/E/12	Gafa' Angelo	Corruption	No Case.	
2012	CID/1837/E/12	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2012	CID/1943/E/12	Gafa' Angelo	Corruption	No Case.	
2009	CID/0869/E/09	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.	
2010	CID/0899/E/10	Gafa' Angelo	Bribery	Public Officer arraigned and charged with Bribery. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa' Angelo	Corruption	Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication, Private Interest in the issuing of orders, Disclosure of professional secrets, Fraud, Embezzlement, Money laundering & Accounting offences. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa' Angelo	Corruption	Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication, Private Interest in the issuing of orders, Disclosure of professional secrets, Fraud, Embezzlement, Money laundering & Accounting offences. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa' Angelo	Corruption	Two Businessmen arraigned and charged with Bribery, Complicity in Private Interest in adjudication, Complicity in Private Interest in the issuing of orders & Money laundering. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa' Angelo	Corruption	Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication & Private Interest in the issuing of orders. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa' Angelo	Corruption	Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication & Private Interest in the issuing of orders. Case is still Sub Judice.	
2013	CID/0124/E/13	Gafa'	Corruption	Ex - Enemalta Officer arraigned and charged with	

		Angelo		Bribery, Fraud & Trading in Influence. Case is still Sub Judice.	
2009	CID/1474/E/09	Cilia Ivan	Bribery		
2009	CID/2088/E/09	Cilia Ivan	Bribery		
2009	CID/2218/E/09	Cilia Ivan	Bribery	PA	
2009	CID/2259/E/09	Cilia Ivan	Bribery		
2009	CID/0645/E/09	Cilia Ivan	Corruption of Players	PA	
2009	CID/0778/E/09	Cilia Ivan	Corruption of Players		
2009	CID/0684/E/09	Cilia Ivan	Corruption of Players	PA	
2009	CID/0897/E/09	Cilia Ivan	Corruption of Players	PA	
2009	CID/0996/E/09	Cilia Ivan	Corruption of Players	PA	
2009	CID/0997/E/09	Cilia Ivan	Corruption of Players	PA	
2010	CID/0688/E/10	Cilia Ivan	Bribery	PA	
2010	CID/1209/E/10	Cilia Ivan	Bribery		
2010	CID/1812/E/10	Cilia Ivan	Bribery	PA	
2010	CID/0108/E/10	Cilia Ivan	Corruption of Players	PA	
2010	CID/0611/E/10	Cilia Ivan	Corruption of Players		
2010	CID/0740/E/10	Cilia Ivan	Corruption of Players		

### Investigations and Prosecutions of Corruption and Bribery (Gafa' Angelo)

CID File	INSP	Crime	RESULT of Case
CID/0266/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with attempted Bribery. Sentenced for six months imprisonment suspended for one year & temporary interdiction for six months in terms of Article 119 of the Criminal Code.
CID/0413/E/09	Gafa' Angelo	Bribery	No Case.

CID/0459/E/09	Gafa' Angelo	Bribery	No Case.
CID/0706/E/09	Gafa' Angelo	Bribery	Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud & Bribery. Sentenced for nine months imprisonment & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud, Bribery, Trading in influence, False declaration & VAT Fraud. Case is still Sub Judice.
			VAT Official arraigned and charged with Money Laundering, Fraud, Bribery, Unlawful exaction, false declaration, misappropriation, breaches of financial institution act, breaches of VAT act & possession of drugs. Case is still Sub Judice.
			Tax Payer arraigned and charged with Fraud & Bribery. Acquitted.
			Tax Payer arraigned and charged with Fraud, Bribery, False declarations & VAT Fraud. Acquitted.
			Tax Payer arraigned and charged with Fraud, Bribery, Trading in influence, False Declaration & VAT Fraud. Sentenced for eighteen months imprisonment suspended for four years, perpetual general interdiction & Fine (Multa) €700.
			Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eleven months imprisonment suspended for three years & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment, suspended sentence awarded on the 14/05/08 restarts for another four years & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud and Bribery. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.
			Tax Payer arraigned and charged with Fraud, Bribery, Trading in influence, False Declaration & VAT Fraud. Sentenced for eighteen months imprisonment suspended for four years, perpetual general interdiction & Fine (Multa) €700.
			Tax Payer arraigned and charged with Fraud, Bribery & Trading in influence. Sentenced for eighteen months imprisonment suspended for four years & perpetual general interdiction.
CID/0994/E/09	Gafa' Angelo	Bribery	No Case.
CID/1411/E/09	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.
CID/1559/E/09	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.

CID/2318/E/09	Gafa' Angelo	Bribery	Local Council Mayor arraigned and charged with embezzlement. Acquitted.
CID/0271/E/09	Gafa' Angelo	Corruption of Players	Football Club Official arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.
			Football Player arraigned and charged with Corruption of players. Sentenced for Section 22, Chapter 446 Unconditional Discharge.
			Football Player arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.
CID/0384/E/09	Gafa' Angelo	Corruption of Players	No Case.
CID/0436/E/09	Gafa' Angelo	Corruption of Players	Football referee arraigned and charged with corruption of players. Sentenced for six months imprisonment suspended for two years & Fine (Multa) of €500.
CID/0513/E/09	Gafa' Angelo	Corruption of Players	No Case.
P.849/2009	Gafa' Angelo	Corruption of Players	No Case.
CID/0599/E/09	Gafa' Angelo	Corruption of Players	No Case.
CID/0529/E/09	Gafa' Angelo	Corruption of Players	No Case.
CID/0644/E/09	Gafa' Angelo	Corruption of Players	No Case.
CID/0696/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Sentenced Conditional Discharge for three months.
			Football Player arraigned and charged with Corruption of players. Sentenced Conditional Discharge for three months.
			Football Player arraigned and charged with Corruption of players. Sentenced for four months imprisonment suspended for one year & Fine (Multa) of €500.
CID/0780/E/09	Gafa' Angelo	Corruption of Players	No Case.
CID/1022/E/09	Gafa' Angelo	Corruption of Players	Football Player arraigned and charged with Corruption of players. Case is still sub Judice.
			Football Player arraigned and charged with Corruption of players. Acquitted.
CID/0502/E/10	Gafa' Angelo	Bribery	No Case.
CID/0504/E/10	Gafa'	Bribery	79 Vehicle License Candidates arraigned and charged with complicity in forgery of documents,

	Angelo		Trading in influence and false declarations. Some were also charged with False Swearing. Sentenced 1 person conditionally discharged for one year, 31 persons conditionally discharged for two years, 41 persons conditionally discharged for three years, 2 persons conditionally discharged for eighteen months, 1 person sentenced for eighteen months imprisonment suspended for two years & Perpetual General Interdiction, 2 persons sentenced for two years imprisonment suspended for four years & Perpetual General Interdiction. 1 case is still Sub Judice. All persons charged with False Swearing were acquitted from this charge and found guilty from the other charges.
CID/0536/E/10	Gafa' Angelo	Bribery	No Case.
CID/0863/E/10	Gafa' Angelo	Bribery	No Case.
CID/0976/E/10	Gafa' Angelo	Bribery	No Case.
CID/1044/E/10	Gafa' Angelo	Bribery	Local Council Mayor arraigned and charged with Bribery and Vilification of a public officer. Sentenced for one year imprisonment & General Perpetual Interdiction. Acquitted from the charge of vilification of a public officer. An Appeal was filed and is still Sub Judice.
CID/1083/E/10	Gafa' Angelo	Bribery	No Case.
CID/1216/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with bribery and complicity in the issue of false declarations. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction.
CID/1225/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence, complicity in the issue of false declarations & false swearing. Sentenced Section 22, Chapter 446 for three years. Acquitted from the charge of false swearing.
CID/1227/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence, complicity in the issue of false declarations & false swearing. Sentenced Section 22, Chapter 446 for three years. Acquitted from the charge of false swearing.
CID/1229/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1235/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with bribery and complicity in the issue of false declarations. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction.
CID/1237/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1240/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence, complicity in the issue of false declarations & false swearing. Sentenced Section 22, Chapter 446 for three years. Acquitted

			from the charge of false swearing.
CID/1241/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1243/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1334/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence, complicity in the issue of false declarations & false swearing. Sentenced Section 22, Chapter 446 for three years. Acquitted from the charge of false swearing.
CID/1335/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for twenty six months.
CID/1337/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for two years.
CID/1466/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1489/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with bribery, complicity in the issue of false declarations & false swearing. Sentenced Section 22, Chapter 446, for three years.
CID/1490/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1494/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1496/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/1512/E/10	Gafa' Angelo	Bribery	1 Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced Section 22, Chapter 446 for three years.
CID/2208/E/10	Gafa' Angelo	Bribery	1 Intermediary between TM Clerk and Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced for eighteen months imprisonment suspended for two years.
CID/2209/E/10	Gafa' Angelo	Bribery	1 Intermediary between TM Clerk and Vehicle License Candidate arraigned and charged with Trading in influence and complicity in the issue of false declarations. Sentenced for eighteen months imprisonment suspended for two years.
CID/2210/E/10	Gafa' Angelo	Bribery	1 Intermediary between TM Clerk and Vehicle License Candidate arraigned and charged with Trading in influence, complicity in the issue of false declarations & false swearing. Case is still sub judice.
CID/2211/E/10	Gafa' Angelo	Bribery	1 Intermediary between TM Clerk and Vehicle License Candidate arraigned and charged with bribery, complicity in the issue of false declarations, Trading in influence & false swearing. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction. Acquitted from the charge of false swearing.

CID/2256/E/10	Gafa' Angelo	Bribery	1 TM Clerk arraigned and charged with bribery, issue of false declarations, unlawful access to use of information, embezzlement & false swearing. Case is still sub judice.
CID/2287/E/10	Gafa' Angelo	Bribery	1 Intermediary between TM Clerk and Vehicle License Candidate arraigned and charged with bribery, complicity in the issue of false declarations, Trading in influence & false swearing. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction. Acquitted from the charge of false swearing.
CID/1985/E/10	Gafa' Angelo	Bribery	No persons were charged with any crime of corruption.
CID/2252/E/10	Gafa' Angelo	Bribery	Local Council Councillor arraigned and charged with Bribery. Case is still Sub Judice.
			Local Council Councillor arraigned and charged with Bribery. Case is still Sub Judice.
			Two Local Council Councillors arraigned and charged with Misappropriation, Embezzlement and Computer Misuse. Case is still Sub Judice.
			Local Council Mayor arraigned and charged with Misappropriation, Unlawful Exaction, Bribery, Embezzlement use of forged documents and blackmail. Case is still Sub Judice.
			Contractor arraigned and charged with Bribery. Case is still Sub Judice.
			Contractor arraigned and charged with Bribery. Sentenced for eighteen months imprisonment suspended for three years & Perpetual General Interdiction.
CID/2384/E/10	Gafa' Angelo	Bribery	Public Officer arraigned and charged with Bribery. Sentenced Conditional Discharge for three years in terms of Section 22, Chapter 446 & Perpetual General Interdiction.
			Two persons arraigned and charged with Bribery. Case is still Sub Judice.
CID/2699/E/10	Gafa' Angelo	Bribery	No Case.
CID/1606/E/10	Gafa' Angelo	Corruption	Contractor arraigned and charged with Bribery and Trading in influence. Case is still Sub Judice.
			Contractor arraigned and charged with Bribery. Case is still Sub Judice.
			One Person arraigned and charged with Bribery and Trading in influence. Sentenced for two years imprisonment suspended for four years & General Perpetual Interdiction.
CID/0738/E/11	Gafa' Angelo	Bribery	No Case.
CID/0934/E/11	Gafa' Angelo	Bribery	No Case.
CID/1159/E/11	Gafa' Angelo	Bribery	No Case.
CID/1481/E/11	Gafa' Angelo	Bribery	No Case.



CID/1703/E/11	Gafa' Angelo	Corruption	No Case.
CID/1979/E/11	Gafa' Angelo	Corruption	VAT Official arraigned and charged with Attempted Bribery. Case is still Sub Judice.
			Tax Payer is to be arraigned charged with Bribery in the following months.
CID/0018/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/0110/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/0216/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/0432/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/0623/E/11	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/1599/E/11	Gafa' Angelo	Corruption	Public Officer arraigned and charged with Unlawful Exaction. Case is still Sub Judice.
CID/0947/E/11	Gafa' Angelo	Corruption of Players	Referred to other Inspector for investigation.
CID/0356/E/12	Gafa' Angelo	Bribery	No Case.
CID/0799/E/12	Gafa' Angelo	Bribery	No Case.
CID/0242/E/12	Gafa' Angelo	Corruption	No Case.
CID/0579/E/12	Gafa' Angelo	Corruption	No Case.
CID/0747/E/12	Gafa' Angelo	Corruption	MEPA Official arraigned and charged with Bribery. Case is still Sub Judice.
CID/0781/E/12	Gafa' Angelo	Corruption	Investigations still ongoing.
CID/1030/E/12	Gafa' Angelo	Corruption	No Case.
CID/1503/E/12	Gafa' Angelo	Corruption	No Case.
CID/1695/E/12	Gafa'	Corruption	Investigations still ongoing.

	Angelo		
CID/1731/E/12	Gafa' Angelo	Corruption	No Case.
CID/1837/E/12	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/1943/E/12	Gafa' Angelo	Corruption	No Case.
CID/0869/E/09	Gafa' Angelo	Corruption	No persons were charged with any crime of corruption.
CID/0899/E/10	Gafa' Angelo	Bribery	Public Officer arraigned and charged with Bribery. Case is still Sub Judice.
CID/0124/E/13	Gafa' Angelo	Corruption	Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication, Private Interest in the issuing of orders, Disclosure of professional secrets, Fraud, Embezzlement, Money laundering & Accounting offences. Case is still Sub Judice.
			Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication, Private Interest in the issuing of orders, Disclosure of professional secrets, Fraud, Embezzlement, Money laundering & Accounting offences. Case is still Sub Judice.
			Two Businessmen arraigned and charged with Bribery, Complicity in Private Interest in adjudication, Complicity in Private Interest in the issuing of orders & Money laundering. Case is still Sub Judice.
			Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication & Private Interest in the issuing of orders. Case is still Sub Judice.
			Ex - Enemalta Officer arraigned and charged with Bribery, Private Interest in adjudication & Private Interest in the issuing of orders. Case is still Sub Judice.
			Ex - Enemalta Officer arraigned and charged with Bribery, Fraud & Trading in Influence. Case is still Sub Judice.

## Annex 2 – Prosecutions for money laundering

Case Name	Amount	Court	Remarks	AG Case No	Underlying Crime	Other	Verdict	Date of Judgment	Outcome
Alfred Delia	60,000 Euors	CC	3 vehicles	1389/10	Drug Trafficking		The accused was counter ordered		
Ariam Edilberto Lore	Im4000	CC>CJ			money transfers to Panama		2 years	27th November 2008	
Atinuke Nne Ugoji		CC	Designer apparel found in possession	2022/09	heroin trafficking				
Bostan									
camilleri stella, mario et		cc		BOI	pre AG consent				
Carlos Frias Mateo	18500	CC	found in possession of these monies	1937/09					
Carmel Attard	one million approximately	BOI	charged with Maria Abela, Carmel Vella Bonavita and Alfred Calamatta		Vat Carousel Fraud from Italy				
Maria Abela	one million approximately	BOI	charged with Carmel Attard, Carmel Vella Bonavita and Alfred Calamatta. The prosecution is hoping that she will admit to the charges proffered against her in which event she will be called to testify						

			against Carmel Attard.						
Charles Vella Bonavita	one million approximately	COM	charged with Carmel Attard, Maria Abela and Alfred Calamatta. He has been counter-ordered so that he can testify against Carmel Attard and Maria Abela. He will be admitting to the charges proffered against him.						
Alfred Calamatta	one million approximately	COM	charged with Carmel Attard, Maria Abela and Charles Vella Bonavita. He has been counter-ordered so that he can testify against Carmel Attard and Maria Abela						
Charity Ofame Ovbiagele		CC	Designer apparel found in possession connected with case of Atinuke Nne Ugoji	2021/09	Heroin trafficking				
Christian Grech	14,000LM 04-07	CC	monies sent to women in Baltic	1603/08	Human trafficking	Pending appeal from preliminary pleas to jury			
Dayang Sakienah Binti Mat Lazin	6,000 E	CJ		1748/09	trafficking		6 years & €42,000	23rd November 2009	
Eduardo Navas Rios	€ 349, 500	CC	Drugs and aggravated theft	BOI	pre AG consent	Case pending Appeal	4 years 6 months	9th March	

							+ € 10,000 fine	2012	
Elton Brincat	19,000E + amounts of drugs	CC		507/09	Drug Trafficking				
Emanuel Bajada	LM 5,000	CJ		903/05	keeping brothels	Counter ordered	2yrs susp for 4 years + € 50,000	21st May 2009	
Ezechukwu Prince Okeke		CC	accused absconded	BOI	Aggravated theft				
Fabio Zulian et	820,000euro	CC			forged checks.352,000euro worth of win cheques, of which they successfully managed to cash 251,000 euros				
Farag Salem Mohamed Alosi	2.63kgs @ 24,000	CC		2395/09	Receipt of stolen property				
Francis Bonett	17,500 E	CC	in possession	1879/08	Drug Trafficking				
Freddie Delia	60,000 Euors	CC	3 vehicles	1219/10	Drug Trafficking	The accused was counter ordered			
Glenn Debattista	50,000LM	CJ			errors by prosecution				
Grace Ngome	24000	CC	in possession	942/10	suspected of drug trafficking				
Marco Delia	60,000 Euors	CC	3 vehicles	1390/10	Drug Trafficking	The accused was counter ordered			
Miriam Helena	21000	CC	in possession	623/09	suspected of drug				

Parmanand					trafficking				
Morgan Ehi Egbomon		CC		BOI	pre AG consent				
Navas Rios Edoardo		CC		BOI	pre AG consent				
Nazzareno k/a Reno Grech	LM62,000	CC		2144/09	Theft				
Nigel John Abela	80,000LM	CC		1628/09	mis/fraud/bribery/forgery/				
Noor Faizura Azura Binti Md Lias	15,000-30,000	CC	drugs & ML		admission		15 years	12th October 2009	
Osita Anagboso Obi	31492	CC	found in possession of these monies, suspected drug money	593/10					
Roderick Delia	60,00 Euros	CC	3 vehicles	1220/10	Drug Trafficking	The accused was counter ordered			
Ruth Gatt	26,000 E	CC	accomplice to Nigel Abela in ml	1627/09	fraud				
Saviour Micallef	186000	CC		1633/09	mis/fraud/bribery/forgery/				
stivala vincenzo		CC		BOI	pre AG consent				
Tarek Ahmed Bu Nenjel	2.63kgs @ 24,000	CC		2394/09	Receipt of stolen property				
Vincent Etienne Vella	200000	CC		1634/09	mis/fraud				
Uchena Anya	30000	CC		2984/10	drug Trafficking				
Josef Grech	2007	CC	Charged with Maria Stella and Dean Martin	Pre-AG	Drug Trafficking	accused has passed away			
Maria Stella	2007	CC	Charged with Josef	Pre-AG	Drug Trafficking				

Grech			Grech and Dean Martin						
Dean Martin	2007	CC	Charged with Maria Stella and Josef Grech	Pre-AG	Drug Trafficking				
James Brian Mackenzie		CC		1277/11	Tax Evasion				
Anna (Ania) Hadwen		CC		1276/11	Fraud				
Gernot Knoess		CC		1274/11	Tax Evasion				
Paul Spagnol, Maria Carmela Fenech	402000	CC			theft				
George Bugeja		CC		1275/11	Fraud				
Lorraine Vella	circa 200,000	CC		BOI	pre AG consent				
Domingo Ricardo Duran Navas	circa 200,000	CC		BOI	Drug Trafficking				
Charles Butler	circa Lm24,000	CC			Theft and Fraud				
Carmen and Stephanie Butler		CC	wife & daughter of Charles Butler & father was involved too. Judgment was appealed but court confirmed first judgment.	ref 10/05	money laundering		2 yrs susp for 4 years for Carmen	15th February 2008	The Jury's verdict found Carmen Butler guilty with 6 votes in favour and 3 against whilst Stephanie Butler was found not guilty with 8 votes in favour and one vote

									against.
George-Oliver Schembri and Donald Camilleri	circa Eur 550,000	CC			Fraud				
Godfrey Cutajar	Circa Eur 550,000 - obtained by fraud and Eur 92, 000 is the amount laundered	CC	from the info. provided by the prosecuting officer, amount laundered is around Eur 92,000 – Same applies to the case below		Fraud				
Paul Spagnol & Maria Fenech	Circa Eur 550,000 - obtained by fraud and Eur 92, 000 is the amount laundered	CC	a counter order is going to be issued later on this month because the amount indicated of Eur 402,000 is the value of the stolen goods. However, a lot of the stolen goods were retrieved and the amount laundered is only a fraction of that sum. The AG's consent had been issued for the case to be heard by the Criminal Court so that all the charges involving theft and money laundering could form part of one case.						
Maria Abela		CC			Money Laundering, forgery and malicious use of forged documents		6 years	29th March	



								2009	
Tancred Tabone		CC	Other charges included		Corruption & Bribery				
Francis sive Frank Sammut		CC	Other charges included		Corruption & Bribery				
Francis Portelli		CC	Other charges included		Corruption & Bribery				
Anthony Cassar		CC	Other charges included		Corruption & Bribery				
Il-Pulizija (Spett. Antonovitch Muscat) vs Omissis u Sharon Camilleri		MAG	before Mag NC - end of PP - originally there were 2 accused however one died.	1219/12 & 1220/12					
Wilder Lopez Garcia		CC	Drugs and ML	464/12	Drug Trafficking				
Etienne Ciantar		CC	Drugs and ML	461/12	Drug Trafficking				
Oscar Alonso Zapata Mera et		CC	Drugs and ML	481/12	Drug Trafficking				
Police (Insp. Angelo Gafa') v. Bujaila Ramadan Ali Benshibban	10, 000 euros	Mag/ CA	accused did not declare amount to the Controller of Customs			Appeal confirmed judgment	fine of 12, 675	20th May 2001	
Police (Superintendent Paul Vassallo v. Laurence Seychell		Mag			infringement of banking and financial law		Acquitted	20th January 2012	
The Republic of Malta vs Lorraine Vella		CC			laundering of money which derived from drugs and other criminal activities s/a prostitution, use and trafficking of drugs, prostitution and		10 years & €23, 000	13th February 2012	

					committal of immoral acts in public.				
The Police vs Grace Ngome	equivalent or exceeding € 10000	Mag			failing to declare amount to Controller of Customs.		fine & €court expenses totalling €2,042.96	13th April 2012	
The Republic of Malta vs Christian Grech	31507.37	CC	preliminary pleas judgment		Money Laundering		preliminary pleas rejected	14th May 2012	
The Police vs Miriam Helena Parmanand	€ 20, 835	Mag			failing to declare amount to Controller of Customs and money laundering .		acquitted	20th July 2012	
The Republic of Malta vs Domingo Ricardo Duran Navas		CC	Plea bargaining		Money Laundering		3 years and six months & € 5, 000	2nd October 2012	
The Republic of Malta vs Morgan Ehi Egbomon	exceeding 5000 Euros	CC	preliminary pleas judgment		money laundering and of carrying money in cash exceeding LM 5, 000 without declaring it.		sine die	24th October 2012	
Mario Mifsud		CC			Drug Trafficking				
Nicholas sive Nikki Dimech	24142.72	Mag (istruttoria)	Kumpilazzjoni Gdida Presentata 25/03/2013						
James Grima	74000								
Vincent Etienne Vella	198000								