



National Anti-Fraud and Corruption Strategy

Office of the Prime Minister
Malta
May 2021

Executive Summary

Fraud and corruption have serious consequences on any society, and if left unchecked they bring about negative consequences both in the economic and in the social spheres. Over the years, legislation was developed in the area and a number of legal instruments have been implemented. Moreover, there are various international conventions on fraud and corruption to which Malta is a party. Malta's membership of the European Union also gives rise to an obligation to protect the Community's financial interests. All these obligations required, and at the same time bolstered, the need for a National Anti-Fraud and Corruption Strategy. In fact, a National Anti-Fraud and Corruption Strategy was issued in 2008. However, following an evaluation of this Strategy, given developments that have since taken place, an update of such strategy was considered necessary. This was effected following consultation with all members of the Co-ordinating Committee set-up in terms of the Internal Audit and Financial Investigations Act, (Chapter 461 of the Laws of Malta). It is to be noted that those aspects of the strategy that were still considered relevant were maintained.

This strategy analyses the local background on fraud and corruption, defining international obligations, domestic legislation, and the administrative scenario in place, especially in view of the EU requirements in the area. The Transparency International Corruption Perceptions Index (CPI) 2019 grades 180 countries and territories by their perceived

levels of public sector corruption, according to experts and business people. In view of the results of the CPI, the situation in Malta needs to be addressed to improve the CPI scores.

The main aim of the strategy is to continue providing for a normative, institutional, and operational framework for the effective and efficient fight against fraud and corruption in Malta, reflecting local requirements, EU, and other international obligations. The main thrusts of the strategy are prevention, deterrence, detection, investigation, and prosecution of fraud and corruption, whilst encouraging and facilitating transparency and accountability.

The strategy has four main objectives, namely:

1. Capacity Building – The fight against irregularities, fraud, and corruption can only be effective and efficient if all the necessary skills and tools are available to national partners to enable a professional and competent approach and to contribute towards having a stronger analytical capability in place for the purposes of prevention and detection, supporting a centralised system of oversight for its anti-fraud action;
2. Communications Strategy – Public relations is one of the key tools in the fight against fraud and corruption. It must target the general public and also the public sector, especially key people

in key areas. It must provide secure and confidential channels to encourage people to come forward and give information on fraud and corruption;

3. Maximisation of National Co-operation
 - To improve anti-fraud cooperation and workflows across the board, whilst encouraging and facilitating collaboration at an early stage of any investigation, capturing efficiencies and synergies and allowing a holistic approach;

4. Maximisation of EU and International Co-operation – Cross border fraud and corruption is a reality that can be addressed through collaboration with EU and other international partners. It allows Malta to satisfy its international obligations and streamline and exploit all areas of mutual assistance.

Strategies for the achievement of all the above objectives are developed throughout the document.

Table of Contents

Introduction	7
Institutional Set Ups	7
Legal Measures	15
Codes of Ethics	18
Anti-Fraud and Corruption Units within Enforcement Agencies	19
Training	19
International Co-operation	20
Local Co-operation	20
Initiatives	20
Definitions	25
Irregularity	25
Fraud	25
Corruption	26
Conflict of interest	27
Background	29
Legal Scenario	29
Administrative Scenario	33
Consequences of Fraud and Corruption	33
Strategic Objectives	35
1. Capacity Building	35
2. Communication Strategy	36
3. Maximisation of National Co-operation	38
4. Maximisation of EU and International Co-operation	40
Action Plan	41

Introduction

Fraud and corruption can have onerous consequences on societies - both economic, and social. If unchecked, they could feed on themselves and grow exponentially. At their worst, fraud and corruption negatively affect the moral fibre of society and could lead to political unrest, economic instability, loss of standards of living, and increase in organised crime.

Over the years, Maltese legislation has been developing in this area and there are a number of instruments that are intended to fight fraud and corruption. Moreover, Malta is also party to various international conventions drawn up by the United Nations and the Council of Europe on the subject. Since Malta's membership in the European Union took place, the country is also expected to protect the Community's financial interests at the same level with which it protects its own funds.

The Maltese Government has taken various anti-fraud and anti-corruption measures over the years, both legal and institutional. These include:

Institutional Set-Ups

- The establishment of the **Permanent Commission Against Corruption (PCAC)** in virtue of Act No XXII of 1988 (Chapter 326 of the Laws of Malta), an independent Commission set up:
 1. To consider alleged or suspected corrupt practices and to investigate such allegations or suspicions when it determines that there are sufficient grounds for an in-depth investigation.
 2. To investigate the conduct of any public officer, including Ministers or Parliamentary Secretaries, which in the opinion of the Commission may be corrupt or may be connected with, or may be conducive to, corrupt practices.
 3. To investigate the conduct of any person who is, or had been, entrusted with functions relating to the administration of a partnership or other body in which the Government, local government, statutory body, and so on has a controlling interest or effective control, where the Commission is of the opinion that such conduct could be corrupt or connected with, or conducive to, corrupt practices.
 4. To investigate the practices and procedures of government departments, local government authorities, statutory bodies or other bodies in which the Government has a controlling interest or effective control in order to facilitate the discovery of any corrupt practices and to recommend the revision of work methods or procedures that could be conducive to corrupt practices.
 5. To instruct, advise and assist Ministers or other persons who are entrusted with the administration of government departments and other bodies where the Government has a controlling interest or effective control on ways in which corrupt practices could be eliminated.

In the case of paragraphs 1 - 4 above, Reports of the Commission's findings are submitted:

- To the Minister responsible for Justice - Article 11(a); and
- To the Attorney General in the case that a corrupt practice results from the Commission's investigation (Act No XLVI of 2020 (Article 4) amending Act No XXII of 1988 - Chapter 326 of the Laws of Malta). The PCAC is considered to be an injured party and may challenge a decision not to prosecute issued by the Attorney General.
- The setting up of **the Commission for the Administration of Justice (CAJ)** in 1994, under article 101A of the Maltese Constitution and Chapter 369 of the Laws of Malta. This Commission is chaired by the President of Malta and is now composed of eight other members including the Chief Justice, four members elected by the Courts, one member appointed by the Prime Minister, one member nominated by the Leader of the Opposition, as well as the President of the Chamber of Advocates. Its functions include the supervision of the workings of the Courts, the making of recommendations to the Minister for Justice to ensure the efficient functioning of the Courts and on matters relating to the organisation and administration of justice, and the formulation of codes of ethics regulating the conduct of members of the judiciary.
- The establishment, as an Officer of Parliament, of the Commissioner for Administrative Investigations to be called the Ombudsman in 1995, under Chapter 385 of the Laws of Malta, namely the Ombudsman Act. The Ombudsman is appointed by the President of the Republic in accordance with a resolution of the House of Representatives supported by not less than two thirds of the Members. The Ombudsman investigates

complaints made about any decision or action or lack of action by public authorities such as Government departments, statutory bodies, corporations, agencies and foundations, as well as partnerships where the Government has an effective controlling interest. The Ombudsman may conduct such investigations on his own initiative, complaints submitted by the members of the public and cases referred by Committees of the House of Representatives, or by the Prime Minister. If during or after any investigation the Ombudsman is of the opinion that there is evidence of any corrupt practice as defined in the Permanent Commission Against Corruption Act, the Ombudsman may refer his findings directly to the Attorney General. The Ombudsman is considered to be an injured party when it comes to the challenge of a decision not to prosecute issued by the Attorney General.

- The **Public Service Commission (PSC)** is an independent constitutional body established by article 109 of the Constitution. Its primary role is to give advice and to make recommendations to the Prime Minister in the making of appointments to public offices, in the removal of persons from such offices and in the exercise of disciplinary control over public officers. Its role means that the Commission has a duty to ensure that recruitment into and all promotions or appointments within the public service are made in an equitable and impartial manner, free from patronage and discrimination and are based on the principle of merit.
- The **Commissioner for Revenue (CfR)** is responsible to the Government for the administration of the Revenue Acts namely: the Income Tax Acts (Chapters 123 & 372 of the Laws of Malta), the Duty on Documents and Transfers Act (Chapter 362 of the Laws of Malta), the Monte di Pietà Act (Chapter 269 of the Laws of Malta), the Goldsmiths and Silversmiths Acts (Chapter 46 of the Laws of Malta), the Immovable Property (Acquisition

by Non-Residents) Act (Chapter 246 of the Laws of Malta), the Value Added Tax Act (Chapter 406 of the Laws of Malta), the Eco-Contribution Act (Chapter 473 of the Laws of Malta), the Customs Ordinance (Chapter 37 of the Laws of Malta), the Import Duties Act (Chapter 337 of the Laws of Malta), the Excise Duty Act (Chapter 382 of the Laws of Malta) and any regulations made thereunder. The CfR is also responsible for the enforcement of Social Security Contributions under the direction of the Ministry for Finance and Employment. The CfR is responsible for a number of directorates and their main functions are:

- **Administration and Finance** – responsible for all functions relating to the daily running of the Department and accounts for the revenue received by the Office of the Commissioner for Revenue;
- **Capital Transfers Duty (CTD)** – responsible for the collection of duties payable on capital transfers and the administration of the Monte di Pietà;
- **International & Corporate Tax Unit (ICTU)** – responsible for all areas relating to international taxation, including refund claims and double taxation treaties; the said directorate is also responsible for operations relating to companies;
- **Operations** – implements Departmental, Ministerial and Government policies in respect of Income Tax and VAT; ensures the prompt and good quality processing of all returns and documents submitted by taxpayers, and administers the taxpayer services;
- **Collection Section** – responsible for the enforcement and collection of Income Tax, F.S.S., S.S.C., VAT and Eco-contributions due. The said directorate is also responsible for the criminal prosecution of defaults related to F.S.S. and S.S.C. and the cash office and back-office;
- **Gozo Directorate** - Caters for IRD, CTD and VAT matters relating to Gozitan taxpayers and functions as a back-office catering for most of the back-office processes of the Office for CfR;
- **Compliance and Investigations Directorate** - carries out the investigative functions of the Revenue Departments (including the Social Security Department where applicable), is responsible for the Appeals Section, assists the police in certain criminal investigations, handles intelligence received from the FIAU; prepares documentation received through requests for information, and conducts research in order to establish industry benchmarks;
- **Technical & Legal (IRD)** – replies to queries of a technical nature and drafting of new legislation and implementation of Budget Measures. The said directorate is also responsible for the legal section, which assists other sections in legal matters and handles all court related matters; and
- **Technical (VAT)** – replies to queries and drafting of new legislation as well as follows the EU fora where new legislation is proposed (Council/Commission), gives feedback and advice to government on the consequences of such new proposals, participates in and gives its input to the EU institutions, follows up the whole process of new Directives/Regulations from the proposal stage to their implementation, communicating with and consulting where necessary with any interested parties, and so on. The said directorate is also responsible for the VAT criminal prosecutions Section.

- The legal and judicial representation of the Customs Ordinance (Chapter 37 of the Laws of Malta), the Import Duties Act (Chapter 337 of the Laws of Malta), the Excise Duty Act (Chapter 382 of the Laws of Malta) and any regulations made thereunder is currently vested in the Comptroller of Customs.
- The **Commissioner for Standards in Public Life**¹ is appointed by the President of Malta on the basis of a resolution of Parliament that must be supported by at least two thirds of all members of Parliament. The role of the Commissioner is defined by the Standards in Public Life Act (Chapter 570 of the Laws of Malta).

The Act gives the Commissioner jurisdiction over the following:

- members of Parliament, including ministers and parliamentary secretaries (or junior ministers); and
- persons of trust – that is to say persons who are engaged in the private secretariat of a minister or parliamentary secretary, and who serve in an advisory, consultative, or executive capacity.

The Standards Commissioner can consider whether ministers, parliamentary secretaries or other members of Parliament have acted in ways that:

- are against the law;
- are in breach of any ethical or other duty set out by law; or
- constitute an abuse of power.

Furthermore, a Bill has been drafted and is currently being discussed internally, following which consultation with stakeholders will commence. It is envisaged that this stakeholder consultation will be

concluded ahead of Cabinet endorsement of the draft Bill and its tabling in Parliament which is planned to take place by the end of June 2021.

- The setting up of the **Public Accounts Committee (PAC)** in 1995, which is a Standing Committee of the House of Representatives composed of seven members of Parliament, four from the Government side and three from the Opposition. The Chairman of the Committee is nominated by the Leader of the Opposition. The Committee has the power to:

- Inquire into matters relating to public accounts referred to it by the House of Representatives, a Minister, or the Auditor General;
- Inquire into expenditure as defined under the Constitution (articles 103 and 104);
- Examine accounts of statutory authorities;
- Request the Auditor General to submit memoranda on matters where a request is made by at least three members of the Committee;
- Consider memoranda, reports and related documents submitted by the Auditor General; and
- Report to the House of Representatives on accounts, reports or documents and on any change it considers desirable in the form of accounts, on the manner in which they are kept, on revenue or expenditure or the control of money.

- The **National Audit Office (NAO)** was established in 1997, following an amendment to the Constitution (article 108) and the coming into force of the National Audit Office Act (Chapter 396 of the Laws of Malta).

¹Available online at <https://standardscommissioner.com/the-role-of-the-commissioner/> [Accessed on 15th June 2020]

Article 108 of the Constitution provides for the establishment of the National Audit Office as an independent, autonomous body reporting directly to Parliament. Moreover, Standing Order No. 120 of the House of Representatives extended the mandate of the Office to cover independent auditing powers of examination of any financial matter concerning the use of public funds, as well as performance or value for money audits of Government offices, entities and companies where Government is a major shareholder. Audits are conducted on the NAO's initiative, upon request by the Public Accounts Committee, or as requested by the Ministry of Finance. The NAO is the external auditor of the Government; all audit reports issued by this Office are available online under the section Publications of the official website of the National Audit Office at <https://nao.gov.mt/>

- The **Internal Audit and Investigations Department (IAID)** was established in 2000 and assigned responsibility for the Government internal audit and financial investigations function, under the Internal Audit and Financial Investigations Act, Chapter 461 of the Laws of Malta. The IAID is independent of the activities it audits to ensure objective judgement essential to its proper conduct and impartial advice to Government, and its main function is to evaluate and examine Government activities, including the performance of local internal audits and risk management assignments, provides for the central harmonisation of internal audit units within entities and of a number of Ministries that have own internal audit function, conducts financial investigations, and is responsible for the audit of the following:
 - OPI – Fostering a competitive and sustainable economy to meet our challenges;
 - OPII – Investing in human capital to create more opportunities and promote the wellbeing of society;

- SME Initiative (SMEi);
- Food and/or Basic Material Assistance Operational Programme (FEAD);
- European Maritime and Fisheries Fund (EMFF);
- Italia-Malta Programme;
- Internal Security Fund (ISF);
- Asylum, Migration and Integration Fund (AMIF);
- Rural Development Programme (RDP); and
- The European Economic Area Financial Mechanism and Norwegian Financial Mechanism.
- The **Customs Department** is one of the major components within the Government's revenue functions, it also holds a multi-functional border control agency role, with a focus on trade facilitation on the one hand, and security and safety responsibilities on the other. Moreover, Customs protects the European Union's own resources, effects controls and surveillance for security purposes, meets public health requirements regarding imported goods, and ensures compliance with environmental legislation.

The following legislative framework gives the legal basis to officials exercising the Department's authority while providing stakeholders with an explanation of their rights and obligations:

- Union Customs Code (UCC);
- The Customs Ordinance (Chapter 37 of the Laws of Malta);
- The Import Duties Act (Chapter 337 of the Laws of Malta);

- The Excise Duty Act (Chapter 382 of the Laws of Malta);
- Intellectual Property Rights Act (Chapter 414 of the Laws of Malta); and
- Cash Control Regulations (Subsidiary Legislation 233.07).

Malta's Customs Department plays a significant role as one of the Union's important gateways. The Department continues to share the responsibilities of the European Union's external frontier within a network encompassing the rest of the EU Customs administrations. For this reason, the Customs Department carries out its obligations that incorporate adequate controls with optimal trade facilitation initiatives.

At international level, and based on the experience gained throughout recent years, Malta's Customs Department aims to increase its influence in the international sphere, by contributing to the policies, actions, and initiatives of the World Customs Organisation.

- **Department of Contracts** - The Department of Contracts was founded to regulate and administer public procurement initiatives and procedures, as laid down in the Public Procurement Regulations, Subsidiary Legislation 601.03.

Its mission is to deliver an efficient and effective service to both Economic Operators and Contracting Authorities alike. Its vision is to ensure that all public procurement is conducted transparently and endowed with integrity, whilst constantly adhering to the provisions as set in the Public Procurement Regulations. Furthermore, the Department of Contracts offers a level playing field amongst all Economic Operators; thus, it is ensured that there is no discrimination between them, and they are always treated equally and transparently.

The Department of Contracts, headed by the Director of Contracts is empowered to monitor procurement activities with the aim of ensuring adherence to these regulations and to ensure that the results of these monitoring activities are made available to the public through appropriate means of information. The Director of Contracts may also obtain information from all the contracting authorities on the award and performance of contracts as they may deem necessary, in order to enable them to ensure conformity with these regulations.

Amongst other functions, the Director of Contracts may, either by own initiative or upon the receipt of information regarding any specific violations or systematic problems, report this matter to the appropriate authorities. Thus, the Director of Contracts may also implement corrective measures to blacklist economic operators and also to regulate Contracting Authorities who default from adhering to the Public Procurement Regulations. The Compliance and Monitoring Unit (CMU) as set up within the Department of Contracts endeavours in enhancing monitoring and compliance of Public Procurement procedures, thus consolidating its regulatory role.

- **The Financial Intelligence Analysis Unit (FIAU)** is a government agency established under the Prevention of Money Laundering Act (Cap 373 of the Laws of Malta). It is the entity responsible for the collection, collation, processing, analysis and dissemination of information with a view to combating money laundering and the funding of terrorism. The Unit is also responsible for monitoring compliance by so-called subject persons with the relevant obligations arising from the Prevention of Money Laundering Act, the Prevention of Money Laundering and Funding of Terrorism Regulations and any Implementing Procedures issued thereunder.

The FIAU is also tasked with the administration of the Central Bank Account Register (CBAR) and with the implementation of the Restrictions on the Use of Cash.

- The **Office of the Attorney General** is the constitutionally independent prosecution service of the Republic of Malta. In the Constitution, the Attorney General is deemed to be part of the Executive but it is also provided that in the exercise of their powers to institute, undertake and discontinue criminal proceedings the Attorney General is not subject to the direction or control of any other person or authority. The same is provided in respect of other powers conferred on the Attorney General by any law in terms which authorize them to exercise that power in their individual judgement. For this purpose, the Constitution provides the Attorney General with the same guarantees of security of tenure as are provided to members of the judiciary.

With effect from the 1st October 2020, the Attorney General is responsible for the decision to prosecute and prosecutions of serious offences including:

- Genocide, crimes against humanity, and war crimes under Title I of Part II of Book First of the Criminal Code;
- Crimes against the safety of the Government under Title I Bis of Part II of Book First of the Criminal Code;
- Acts of terrorism, funding of terrorism and ancillary offences under sub-title IVA of Title IX of Part II of Book First of the Criminal Code;
- Wilful homicide under sub-title I of Title VIII of Part II of Book First of the Criminal Code;
- Unlawful exaction, extortion, bribery, embezzlement and corruption, trading in influence and accounting offences under

sub-title IV of Title III of Part II of Book First of the Criminal Code;

- Crimes of money laundering under Article 3 of the Prevention of Money Laundering Act except where such crimes are prosecuted together with crimes against the Dangerous Drugs Ordinance or the Medical and Kindred Professions Ordinance;
- Cases of fraud and misappropriation where the financial loss caused is of at least fifty thousand euro (€ 50, 000);
- Cases of evasion of customs, excise or other import duty where the duty evaded amounts to at least five hundred thousand euro (€ 500, 000); and
- Attempts or conspiracy to commit or complicity in the said offences.

Although the Attorney General enjoys Constitutional independence in the terms stated above, as a consequence of taking over the decision to prosecute and prosecutions of serious offences, a judicial review mechanism before the civil courts of decisions not to prosecute was introduced. Moreover, the decisions of the Attorney General are subject to scrutiny before courts of constitutional jurisdiction on allegations of violations of human rights provisions in breach of the Constitution and the European Convention of Human Rights. The Office of the Attorney General also acts as the central authority for the purpose of international judicial cooperation in criminal matters.

- The **Economic Crimes Unit (ECU)** within the Malta Police was set up in the mid-1980s and was originally known as the Fraud Squad, with the main investigations covering cases of fraud, misappropriation, and custom-related cases. In 2018, the ECU evolved into the Financial Crimes Investigations Department (FCID).

The FCID encompasses two (2) squads, the Anti-Money Laundering and Terrorism Financing Squad (AMLS/TF), and the Economic Crimes Squad (ECS). Furthermore, the Financial Crimes Analysis Unit (FCAU) forms part of the FCID, and the International Unit which is still in process will also form part of the FCID.

The AMLS/TF investigates cases relating to Money Laundering and Financing of Terrorism and provides assistance to foreign jurisdictions. The Tax Compliance Unit forms part of this squad.

The ECS investigates a myriad of white-collar crimes including corruption, misappropriation and embezzlement, serious fraud, falsification and forgery of documents, excise duty cases, online gaming, sports corruption and intellectual property rights violations. The Blockchain Analysis Unit (BAU) and the National Counterfeit office form part of the ECS. The National Counterfeit office liaises with the CBM in relation to counterfeit EU Currency.

The International Unit, which is still in the process to be formed, will provide better Mutual Legal Assistance to foreign jurisdictions in the remit of financial crimes, money laundering and terrorist financing. In addition, it shall liaise with CARIN, EUROPOL and INTERPOL.

- The **Office of the State Advocate** is established by the State Advocate Act (Chapter 603 of the Laws of Malta), in terms of article 91A of the Constitution, as the principal advisor to Government in matters of law and legal opinion. It is tasked to act in the public interest and to safeguard the legality of State action, and also performs other such duties and functions as may be conferred by the Constitution or by any law. The State Advocate enjoys constitutional independence and is not subject to the direction or control of any other person or

authority in the performance of the functions conferred.

The Office of the State Advocate:

- Represents Government before all judicial authorities;
- Performs functions as Government Agent before the European Court of Human Rights and the European Court of Justice;
- Provides legal advice to Government on various matters, including on proposed legislation;
- Assists with the drafting of Bills and attends the sittings of the House of Representatives during the passage of such Bills in order to advise the Ministers concerned and draft any amendments which might be deemed necessary at Parliamentary Committee Stage. In view of the bilingual publication of legal enactments, the office of the State Advocate is also responsible for the translation of all laws, a function which it performs through its Legislation Unit; and
- Acts as the competent authority for the processing of requests for the international service of documents in civil and commercial matters and for the taking of evidence in civil matters.
- The **Malta Fiscal Advisory Council (MFAC)** was established by the Minister for Finance with effect from 1st January 2015 in terms of the Fiscal Responsibility Act, 2014, Cap 534. The main purpose of the MFAC is to review and assess the extent to which the fiscal and economic policy objectives proposed by the Maltese Government are being achieved and thus contribute to more transparency and clarity about the aims and effectiveness of economic policy in Malta. The MFAC is independent in the performance of its functions.

- In accordance with European Union directives, Malta has set up the **Asset Recovery Bureau (ARB)**. The Bureau is empowered to take control amongst others of assets and property derived from criminal activity and to manage the said assets in a way which is beneficial to the community. Also, the Bureau is entrusted with the proper and efficient tracing, collection, storage, preservation, management and disposal, either in whole or in part, of proceeds of crime or property. The newly enacted Proceeds of Crime Act ensures that the ARB are involved at the early stages of investigations conducted by the Police.
- The functions of the **Malta Security Service (MSS)** are 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. It shall also be the function of the Service to act in the interests of:
 - the economic well-being of Malta; and
 - public safety, in particular, the prevention or detection of serious crime.
- The **European Public Prosecutor's Office (EPPO)** will be the EU's first independent and decentralised prosecution office. It will have the power to investigate, prosecute and bring to judgment crimes against the EU budget, such as fraud, corruption, or serious cross-border VAT fraud. In November 2017, the EU adopted Regulation (EU) 2017/1939 to set up EPPO. Its creation has been a major policy priority for the European Commission, mainly for the Directorate-General Justice and Consumers and for the European Anti-fraud Office (OLAF). The Commission is responsible for the EPPO during the setting-up phase, until it will have the capacity to implement its own budget.

This new Europe-wide body will tackle large-scale, cross-border crime against the EU budget. The launch of operations is 1st June 2021. Malta is one of the participating member states. Smooth and strong cooperation between the EPPO, OLAF, the European Union Agency for Criminal Justice Cooperation (Eurojust), the European Union's law enforcement agency (Europol) and the Member States is essential for ensuring that the scope of investigations is comprehensive and that the new institutional design for the fight against fraud is fully effective.³

Legal Measures

- Malta has signed and implemented various International Conventions on Fraud and Corruption, including:
 - The UN Convention Against Corruption;
 - The UN Convention Against International Organised Crime;
 - The CoE (Council of Europe) Criminal Law Convention;
 - The CoE Civil Law Convention; and

The Security Service Act (Cap 391 of the Laws of Malta) was enacted by Act XVII of 1996 and amended by Act XVI of 1997. The aim of this Act is to make provision about the Security Service including provision for the issue of warrants and authorisations enabling certain actions to be taken and for the issue of such warrants and authorisations to be kept under review; to establish a procedure for the investigation of complaints about the Security Service and to make provision for the establishment of a Security Committee to scrutinise this Service; to prohibit the interception of communications and for connected purposes.²

² https://fra.europa.eu/sites/default/files/fra_uploads/malta-study-data-surveillance-mt.pdf [Accessed online on 15th June 2020]

³ CAFS 2019

- The CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.
- Malta has also transposed the relevant EU treaties, conventions, regulations, decisions and agreements on irregularities, fraud and corruption.
- Malta has also amended the **Criminal Code** in the areas of fraud, corruption and bribery, in particular the amendments were implemented through Act No III of 2002, Act IX of 2003, and Act VI of 2007.
- In the case of criminal liability of legal persons, the Criminal Code has been amended to provide for such liability. Legal persons are also liable from a civil law aspect under the civil code which also provides for a specific action for damages resulting from corruption (Article 1051A).
- The **Public Finance Management Act** (Chapter 601 of the Laws of Malta, repealing the **Financial Administration and Audit Act** (Chapter 174 of the Laws of Malta), which amongst others provides for the regulation, management, and accountability of public funds and resources, and the control and auditing thereof.
- The **Prevention of Money Laundering Act** (Chapter 373 of the Laws of Malta), qualifies all criminal offences, including corruption offences, as predicate offences under the act, even if committed abroad.
- The **Police Act** (Chapter 164 of the Laws of Malta) was amended by Act XIII of 2002 to include Title IV on the Protection of Witnesses and Victims. The current Police Act came into force on 12th May 2017, which retained the part on the Protection of Witnesses and Victims.
- Article 2 (3) of the **Security Service Act** (Chapter 391 of the Laws of Malta) charges the Security Service with the prevention and detection of serious crimes, including those resulting in substantial financial gain, thus extending the functions of the Security Service to cases of serious fraud, corruption, and bribery.
- The **Public Procurement Regulations** (Subsidiary Legislation 601.03) updated in 2016 in line with EU Directives, to regulate the procurement and public contracts of the Public Sector, with the relative appropriate administrative set up, namely the Department of Contracts, which oversees and administers the procedures and processes laid down in the legislation.
- Under the **Disciplinary Procedure in the Public Service Commission Regulations** (Subsidiary Legislation Const. 03), disciplinary proceedings are dealt with by the Heads of Department, however the Public Service Commission has the duty to ensure that disciplinary action against public officers is fair, prompt, and effective. The disciplinary procedures oblige the Head of Department to refer matters which could lead to criminal procedures to the police for investigation.
- Other legislative initiatives affecting the area of fraud and corruption have been undertaken by the Maltese authorities, including the **Media and Defamation Act** (Chapter 579 of the Laws of Malta) and the Official Secrets Act (Chapter 50 of the Laws of Malta).

The Disciplinary Procedure in the Public Service Commission Regulations, in its schedule listing offences and penalties, lists **victimisation** of witness or an officer or person lodging a report under the regulations as a serious offence which could be sanctioned with dismissal. Moreover, article 28 of the Employment and Industrial Relations Act (Chapter 452 of the Laws of Malta) lays down that it is unlawful to victimise any person for making a complaint or for having initiated

or participated in proceedings for redress, or for having disclosed information to a public body regarding illegal or corrupt activities.

- The current **Public Administration Act** (Chapter 595 of the Laws of Malta) was enacted into law in 2019. This Act repealed and superseded an earlier Public Administration Act (Chapter 497) which had been enacted in 2009.

The Act of 2019 sets out the values of public administration. It also establishes a code of ethics which applies not only to Public Service employees but also to the employees of entities in the wider public sector. The Act makes it clear that whoever acts in breach of the values or the code of ethics may face disciplinary proceedings.

The Act also includes provisions for revolving doors and, for the first time, a list of vulnerable positions has been included as a new schedule to further reinforce good governance within the public administration.

The Act defines ministries and departments in organisational terms and specifies how new ministries and departments can be created. This law also deals with the leadership of the Public Service. The Act and the Constitution also establish the position of Principal Permanent Secretary. The holder of this position is required to provide leadership to the Public Service and to take measures to improve the performance of the Service. The Principal Permanent Secretary has various powers under the Act, notably to issue directives and guidelines on matters relating to the organisation and management of the Service. The Act also sets out the responsibilities of Permanent Secretaries and heads of department.

The Public Administration Act does not only cover the Public Service. It also includes provisions regulating the wider public sector. The Act provides for the

creation of “Government agencies” – bodies which are subject to direction by the Permanent Secretary in each ministry, but which are not part of the Public Service. The Act also regulates other Government entities and places such entities under the supervision of Permanent Secretaries too, with a view to improving coordination within the public administration.

- The **Protection of the Whistleblower Act** (Chapter 527 of the Laws of Malta), which was adopted in July 2013 and made applicable by a ministerial decision of 15th September 2013, establishes a system of internal and external reporting channels to be used by persons disclosing in good faith corrupt practices and other suspicious behaviour. The Act allows various forms of protection for the whistle-blower, including immunity from criminal proceedings, in which case the Attorney-General acting in consultation with a Judge of the Superior Courts and the Commissioner of Police may grant such immunity where the reporting person was him/herself involved in criminal acts. The Whistleblower Act applies in the context of an employer – employee relationship. The terms ‘employer’ and ‘employee’ are specifically defined in the Act.
- The **Fiscal Responsibility Act** (Chapter 534 of the Laws of Malta), which lays down tighter domestic fiscal rules and establishes an independent fiscal council came into force in August 2014. The Act requires that Government prepares and lays before Parliament a medium-term Fiscal Policy Statement and a Fiscal Policy Strategy which outline the Government’s fiscal objectives, strategic priorities and a three-year rolling target for fiscal management, together with a description of any underlying assumptions. The macroeconomic and fiscal forecasts are endorsed by the Fiscal Council and made public.

Codes of Ethics

- The **Freedom of Information Act** (Chapter 496 of the Laws of Malta), which came into force on 1st September 2012, aims to establish a right to information held by public authorities in order to further promote accountability and transparency in Government. This law gives a 'right-of-access' to eligible persons, increasing transparency and accessibility. Every person resident in Malta or who has been resident for a period of at least five years, and who is either a citizen of Malta or a citizen of any other EU Member State, is eligible to make a request under the FOI Act⁴.
 - On 25th May 2018, the General Data Protection Regulation (GDPR) came into effect across the EU and repealed and replaced the previous Data Protection Directive and the domestic laws implementing it. In view of this, the new '**Data Protection Act**' (Chapter 586 of the Laws of Malta) repealing and replacing the 'Data Protection Act' (Chapter 440 of the Laws of Malta) came into effect. This Act implements and further specifies the relevant provisions of Regulation (EU) 2016/679 of the European Parliament and of the Council of 27th April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data and repealing Directive 95/46/EC (General Data Protection Regulation).
 - **Legal Notice 378 of 2020– Prosecution of Offences (Transitory Provisions) Regulations, 2020**, which came into force on 1st October 2020, enabled the Attorney General to take over from the Police the decision to prosecute and the prosecution of serious offences amongst which corruption, trading in influence, money laundering and terrorism financing offences.
- Codes of Ethics have been developed for various professional activities, with the most relevant being:
 - Code of Ethics of Members of the House of Representatives;
 - Code of Ethics for Ministers and Parliamentary Secretaries;
 - Code of Ethics and Conduct for Judges and Magistrates;
 - Code of Ethics for Local Councillors;
 - Code of Ethics for Advocates;
 - Code of Ethics for Legal Procurators;
 - Code of Ethics for Accountants;
 - Code of Ethics for Employees in the Public Sector;
 - Code of Ethics for Board Directors in the Public Sector;
 - Code of Ethics for Advocates and Legal Procurators in the Attorney General's Office;
 - Code of Ethics for Advocates and Legal Procurators in the Office of the State Advocate;
 - Code of Ethics for the Police; and
 - Code of Ethics for Customs.

⁴ Available online at https://ncpe.gov.mt/en/Pages/Rights_and_Obligations/Freedom_of_Information_Act.aspx [Accessed on 18th June 2020]

Anti-Fraud and Corruption Units within Enforcement Agencies

- The various enforcement agencies have set up anti-fraud and corruption units within their structures, which include:
 - Police: units set up to specifically address economic crimes, money laundering, usury, counterfeiting, intellectual property rights, fraud, corruption, contraband, and internal affairs;
 - Office of the Attorney General: a pool of prosecutors are specifically assigned to prosecute economic crimes, money laundering and corruption falling under the responsibility of the Office;
 - Customs: set up of the Enforcement Unit, Post Clearance Audit, and Customs Intelligence Section;
 - Ministry for the Family, Children's Rights and Social Solidarity: set up of the Income Support and Investigations Directorate;
 - VAT Department: set up the Inspectorate and Assurance unit, and Reviewing and Auditing unit;
 - Commissioner for Revenue: including the Tax Audits Directorate; and
 - Ministry for Finance: set-up of the Tax Compliance Unit.

Training

- Several training programmes are held for public officials, ranging from general training programmes in the area of ethics, and other programmes targeting specific subjects in the area of investigations, fraud, and corruption. These include:
 - Induction training for public officials provided by the Institute for Public Services, which include the Public Management Toolkit and other self-contained training on ethical matters, codes of ethics, data protection, procurement and other relevant processes and procedures of the public service;
 - Training for Police officers in investigation skills, corrupt practices, and ethics;
 - In-house training focusing on economic crime provided to prosecutors at the Office of the Attorney General;
 - Participation in training provided by EU Institutions in economic and financial matters, including the fight against corruption. For example, staff from the Attorney General's Office, Police, Customs, and IAID attend such programmes regularly;
 - Attendance of public officials for professional University courses, for example training of lawyers from the Attorney General's Office in Financial Services and training of Police officials in Law; and
 - Specific training programmes in various areas undertaken on a continuous basis by individual enforcement agencies, including Police, Customs and IAID.

- The Department of Contracts, in conjunction with the Institute for Public Service, organises various training courses in relation to Public Procurement. Specifically, as part of the ‘Follow-up to the National Public Procurement Regulations’ training, a session is dedicated to ‘Fraud and Corruption’.
- The FIAU set up an ad hoc Guidance & Outreach team within the FIAU Legal Affairs Section to: issue and revise FIAU implementing procedures, issue sectorial and thematic type guidance notes, organise and deliver training events to public bodies and subject persons; introduce AML/CFT modules in various university courses; and to set up public/private partnership platforms and initiatives.

International Co-operation

- International co-operation in the area of fraud and corruption has increased substantially in the last years as a result of Malta’s accession to the European Union, Malta’s participation in international conventions and treaties, and also as a result of amendments to laws which now facilitate such co-operation, for example amendments to the Criminal Code by Act III of 2002, and Act IX of 2003;
- Various enforcement agencies continuously participate in international fora in the areas of fraud and corruption, and include participation by the Police, Customs, FIAU and IAID.

Local Co-operation

- Local co-operation between agencies involved in the area of anti-fraud and anti-corruption has also increased, both bilaterally between specific agencies (e.g. co-operation between Police and FIAU in the area of money laundering, and co-

operation between Police and MSS as and if required in cases involving corruption), and also multilaterally (for example, the set-up of the Co-ordinating Committee as provided by the Internal Audit and Financial Investigations Act, specifically set up to co-ordinate all the activities of, and to facilitate the exchange of information between, different entities charged with the protection and safeguarding of public funds); and

- The Financial Crime Task Force (FCTF) and the Inter-Agency Committee on Financing of Terrorism (ICOFT), which were primarily set up to deal with cases of money laundering and financing of terrorism.

Initiatives

Various initiatives are being undertaken, ranging from new legislation which incorporates anti-fraud and anti-corruption measures, to frameworks and codes addressing specific areas, including⁵:

- The Planning and Priority Coordination Division (PPCD) as the Managing Authority of the European Regional Development Fund (ERDF), Cohesion Fund (CF), European Social Fund (ESF) and Fund for European Aid to the Most Deprived (FEAD) which has drawn up an **Anti-Fraud Policy** and an **Anti-Fraud Strategy 2014-2020** in September 2016.

The anti-fraud policy statement has as its main objectives the promotion of a culture within the Managing Authority (MA) which deters fraudulent activity. The Anti-Fraud Strategy spells out procedures for adequate fraud risk assessment and for putting effective and proportionate anti-fraud measures in place through an action plan. The Anti-Fraud Strategy provides the main anti-fraud objectives and actions to be pursued by the PPCD in the period 2014-2020 in relation to the whole anti-fraud cycle, comprising fraud

⁵ The below is not intended to present all the anti-fraud and corruption measures taken by Maltese authorities over the years.

prevention, detection and investigation, as well as corrective measures. The MA holds the principle of ‘zero tolerance to fraud and corruption.’

- The Funds and Programmes Division (FPD) drafted an **Anti-Fraud Policy** and an **Anti-Fraud Strategy 2014-2020** in June 2016 as the:
 - Managing Authority (MA) for the Rural Development and Agriculture Fund (EAFRD) and the European Maritime Fisheries Fund (EMFF);
 - Responsible Authority for the Asylum, Migration and Integration Fund (AMIF) and Internal Security Fund (ISF);
 - National Focal Point for the EEA and the Norwegian Financial Mechanisms and the European Territorial Cooperation Programmes (ETC);
 - National Co-ordinator of the Swiss-Maltese Cooperation Programme;
 - National Contact Point for the European Globalisation Fund (EGF) and the European Solidarity Fund; and
 - National Authority for the ERASMUS+ Programme.

The anti-fraud policy statement, together with procedures for adequate fraud risk assessment and the putting in place of effective and proportionate anti-fraud measures through effective action are key components of the managing authority’s anti-fraud strategy.

The strategy sets out the FPD’s commitment to preventing, detecting and deterring fraud and corruption and to taking action where this is suspected or detected.

It aims to:

- Ensure that all funds and programmes are protected against fraud and loss;
 - Embed an ‘anti-fraud’ culture which mainstreams commitment to zero tolerance to fraud and sets out roles and responsibilities of all staff in ensuring the achievement of this objective;
 - Actively encourage detection by putting in place checks and controls at different stages to act as a deterrent to fraudulent and corrupt acts;
 - Providing clear guidance for identifying, declaring and recording conflicts of interest;
 - Seek out and share best practice ‘anti-fraud’ examples.
- The Funds and Programmes Division (FPD) as the Responsible Authority (RA) of the Asylum, Migration and Integration Fund (AMIF) and the Internal Security Fund (ISF) has revised its Anti-Fraud Policy and Anti-Fraud Strategy in December 2018 to make them tailored to address the specific needs of both funds. This strategy sets out the RA’s commitment to preventing, detecting and deterring fraud and corruption and to taking action where this is suspected or detected. The strategy is based around four key themes: Prevention, Detection, Investigation and Prosecution, and Reparation.

It aims to:

- Ensure that the AMIF and ISF are protected against fraud and loss;
- Embed an ‘anti-fraud’ culture which mainstreams its commitment to zero tolerance to fraud and sets out roles and responsibilities of all staff in ensuring the achievement of this objective;

- Actively encourage detection by putting in place checks and controls at different stages to act as a deterrent to fraudulent and corrupt acts;
- Providing clear guidance for identifying, declaring, and recording conflicts of interest;
- Seek out and share best practice 'anti-fraud' examples.
- Through Act XVII of 7th April 2020, a new sub-article has been added in the Criminal Code which transposes the provisions of the Directive (EU) 2017/1371 of the European Parliament and of the Council of 5th July 2017 on the fight against fraud (PIF) to the Union's financial interests by means of criminal law. The PIF Directive is a directive on the fight against fraud to the Union's financial interests by means of criminal law. This Directive establishes minimum rules concerning the definition of criminal offences and sanctions with regard to combatting fraud and other illegal activities affecting the Union's financial interests, with a view to strengthening protection against criminal offences which affect those financial interests, in line with the *acquis* of the Union in this field.
- The Public Procurement of Entities operating in the Water, Energy, Transport and Postal Services Sectors Regulations, 2016 came into force on 28th October 2016 through Legal Notice 351/2016. These regulations transpose the provisions of Directive 2014/25/EU of the European Parliament and of the Council of 26th February 2014 on procurement by entities operating in the water, energy, transport and postal services sectors and repealing Directive 2004/17/EC.
- The new Public Procurement Regulations (PPR), 2016 came into force on 28th October 2016 through Legal Notice 351/2016. These regulations transpose the provisions of Directive 2014/24/EU of the European Parliament and of the Council of 26th February 2014, on public procurement and repealing Directive 2004/18/EC.
- The Concession Contracts Regulations 2016 came into force on 28th October 2016 through Legal Notice 353/2016. These regulations transpose the provisions of Directive 2014/23/EU of the European Parliament and of the Council of 26th February 2014 on the award of concession contracts.
- The Procurement of Property Regulations 2020 that came into force on 30th April 2020 through Legal Notice 163/2020 introduced a legal framework for the procurement of property that government needs to follow.
- The revised **Money Laundering and Financing Terrorism (ML/FT) National Risk Assessment (NRA)** completed in 2017 forms the basis of Malta's risk-based approach with respect to ML/FT. The NRA identifies and assesses the threats (e.g. crimes generating proceeds, criminal groups) and vulnerabilities (i.e. sectors and products exposed to abuse or misuse) that Malta is exposed to, as well as the national combating abilities (for example investigations, prosecutions, and confiscations). The original ML/FT NRA, carried out in 2013 – 2014, was carried out by the Maltese Authorities through a collaborative process involving all key stakeholders and using the World Bank National Money Laundering and Terrorist Funding Risk Assessment Tool. The FIAU was responsible for the coordination of the project with the support of World Bank experts and the involvement of all key stakeholders, including policy makers, supervisors, law enforcement authorities, Attorney General, Law Courts, Judiciary, other authorities and representatives of the private sector. Its subsequent updating in 2017 was carried out by the National Coordinating Committee on Combating Money Laundering and Funding of Terrorism.

- The **National Coordinating Committee on Combating Money Laundering and Funding of Terrorism (NCC)** was established in April 2018 and is in charge of defining, overseeing, and coordinating the implementation of the National AML/CFT Strategy. The Committee is composed of the most senior officials, coming from the Ministry for Finance and Employment, the Asset Recovery Bureau, the Central Bank of Malta, the Commissioner for Revenue, the Financial Intelligence Analysis Unit, the Malta Financial Services Authority, the Malta Gaming Authority, the Malta Police Force, Ministry for Home Affairs, National Security and Law Enforcement, the Ministry for Justice, Equality and Governance and the Office of the Attorney General.
- The **National Anti-Money Laundering and Combating the Funding of Terrorism (AML/CFT) Strategy for 2017-2020** has been successfully implemented by the end of 2020. In view of this, the National Coordinating Committee on Combating Money Laundering & Funding of Terrorism (NCC) has with the input of all the key stakeholders, worked extensively on the new national anti-money laundering/combating terrorist financing/targeted financial sanctions (AML/CFT/TFS) strategy and action plan which will cover the years from 2021 to 2023. This new national strategy and action plan were finalised in March 2021, and provide a detailed list of the actions which each authority is required to implement.

The new strategy plan is based on seven policy goals, which are:

- Policy goal I aims at ensuring that the legislation is constantly updated and is in line with the requirements, through guidelines, of international organisations and in line with European standards.
- Policy goal II centres on the need to have an updated national risk assessment to be completed by 2022, which is crucial to address in view of the fact that ML/TF and proliferation financing (PF) risks are very dynamic in nature, and therefore new risks, threats and vulnerabilities are continuously emerging. An updated risk assessment will help all the competent authorities to address the risks effectively.
- Policy goal III has as an objective that of addressing the need to ensure that all the necessary outreach is carried out. For this purpose, this goal includes the establishing of a sub-committee that coordinates AML/CFT/CPF outreach initiatives. In addition, this goal also requires the establishment of a sub-committee that focuses on improving the gathering of ML, TF and PF related statistics.
- Policy goal IV concentrates on having transparency and accuracy of beneficial ownership information. This goal addresses the need to have effective risk-based supervision and dissuasive sanctioning. This stresses on the importance of public-private cooperation so that Malta ensures effectiveness, and concurrently eliminate the unnecessary de-risking policies, thereby ensuring balance.
- Policy goal V has the objective of ensuring that detection, investigations and prosecutions of money laundering offences will increase during 2021-2023.
- Policy goal VI concentrates on an effective risk-based approach on the detection and management of all assets, even virtual ones, which are subject to confiscation and it will also tackle the collection of taxes from criminal activities.

- Policy goal VII will address the monitoring of terrorism financing and sanction evading risks to ensure that Malta's economy is not used for these purposes.

To date, the emphasis was always on the tools and having the necessary legislation in place. The 2017-2020 AML/CFT national strategy focused on addressing the gaps that impeded the ability to effectively combat ML/TF. The focus of the AML/CFT/TFS national strategy for the upcoming three years focuses on using the means and tools that have been implemented to produce concrete results and further strengthen their effectiveness.

The aim of the national strategy to fight fraud and corruption is to increase co-operation, co-ordination, and communication between the national authorities and EU institutions. It addresses other international obligations in a holistic manner. It enables the fight against fraud and corruption to be more pervasive and organised, and allows joint efforts by the actors

involved. The national strategy on fraud and corruption targets both national public funds and also protects the financial interests of the Community. In this manner a strategic approach is adopted, and measures would be designed in the most appropriate, effective, and efficient manner.

The strategy is designed to target the prevention, deterrence, detection, identification, investigation, and prosecution of fraud and corruption, and focuses on transparency, accountability, responsibility, and professionalism. The focus is to protect the National and EU's financial interests from fraud, corruption, and other intentional irregularities and from the risk of serious wrongdoing within government Ministries, Departments and any other public or private entity which is in any way a beneficiary, debtor, or manager of public or EU funds. The strategy is intended to contribute towards enabling the national actors to work as a group and co-ordinate their initiatives in a strategic manner, thus enabling the mitigation of the highest risks in an effective manner.

Definitions

Irregularity

The Internal Audit and Financial Investigations Act, (Chapter 461 of the Laws of Malta) defines irregularity as ‘...whichever act or omission which unlawfully diminishes public funds and whatever is not consonant with the proper management thereof.’

From an EU perspective, Council Regulation (EC, Euratom) No 2988/95 of the 18th December 1995 of the European Communities financial interests, defines irregularity as ‘...any infringement of a provision of Community law resulting from an act or omission by an economic operator, which has, or would have, the effect of prejudicing the general budget of the Communities or budgets managed by them, either by reducing or losing revenue accruing from own resources collected directly on behalf of the Communities, or by an unjustified item of expenditure.’

Regulation (EU) No. 1303/2013 of the European Parliament and of the Council of 17th December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006 defines an irregularity as ‘any breach of Union law, or of national law relating to its application, resulting from an act or omission by an economic

operator involved in the implementation of the ESI Funds, which has, or would have, the effect of prejudicing the budget of the Union by charging an unjustified item of expenditure to the budget of the Union.’

Fraud

The PIF Directive, in line with the Convention drawn up on the basis of Article K3 of the Treaty on European Union, on the protection of the European Communities’ financial interests defines fraud as that consisting of:

- a. in respect of procurement and non-procurement related expenditure, at least when committed in order to make an unlawful gain for the perpetrator or another by causing a loss to the Union's financial interests, any act or omission relating to:
 - i. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the misappropriation or wrongful retention of funds or assets from the Union budget or budgets managed by the Union, or on its behalf;
 - ii. non-disclosure of information in violation of a specific obligation, with the same effect; or
 - iii. the misapplication of such funds or assets for purposes other than those for which they were originally granted, which damages the Union's financial interests;

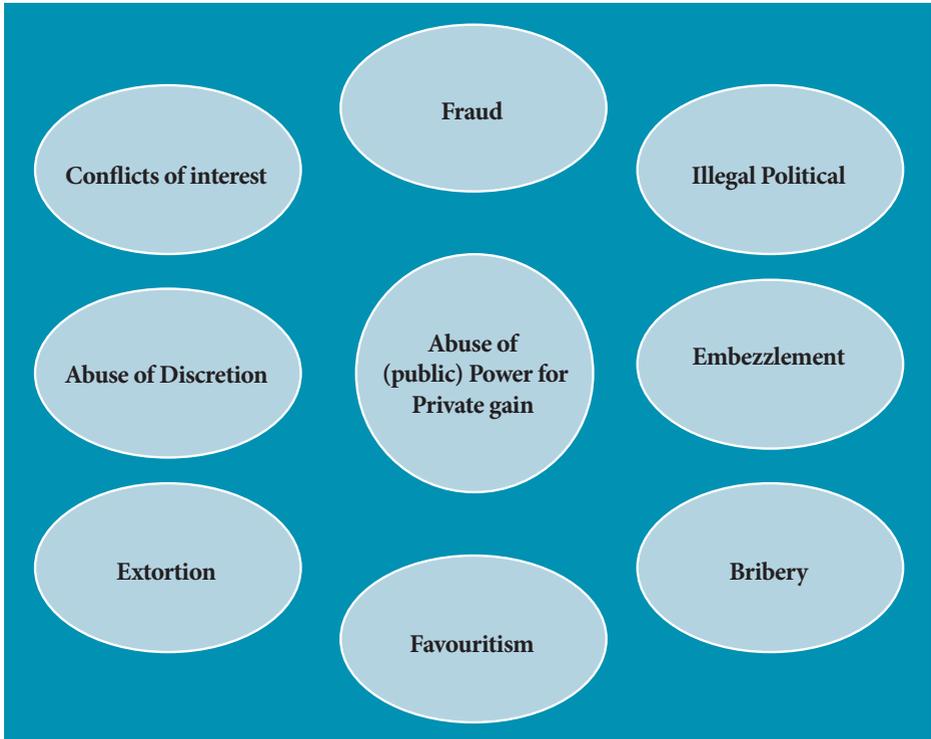
- b. in respect of revenue arising or not arising from VAT own resources and any act or omission committed in cross-border fraudulent schemes in relation to:
- i. the use or presentation of false, incorrect or incomplete statements or documents, which has as its effect the illegal diminution of the resources of the Union budget or budgets managed by the Union, or on its behalf;
 - ii. non-disclosure of information in violation of a specific obligation, with the same effect; or
 - iii. misapplication of a legally obtained benefit, with the same effect;
 - iv. the presentation of correct VAT-related statements for the purposes of fraudulently disguising the non-

payment or wrongful creation of rights to VAT refunds.

“**Suspected fraud**” means an irregularity giving rise to the initiation of administrative or judicial proceedings at national level in order to establish the presence of intentional behaviour, in particular fraud, as referred to in the definitions of Regulations (EU) No 1306/2013 and (EU) No 1303/2013.

Corruption

The United Nations Global Programme against Corruption defines corruption as the ‘...the abuse of power for private gain.’ The UN Congress in Cairo defined it as ‘...bribery or any other act relating to persons vested with responsibility, aimed at influencing the performance of their official duty and at obtaining any improper advantage for themselves or for others.’ Transparency International defines corruption as



'...the misuse of entrusted power for private gain.' The 'Global dynamics of corruption, the role of the United Nations helping member states build integrity to curb corruption' (United Nations, Vienna 2002) defines corruption as a collection of phenomena, and provides the following picture: A broad definition of corruption used by the Commission is the abuse of (public) position for private gain. Corrupt payments facilitate many other types of fraud, such as false invoicing, phantom expenditure, or failure to meet contract specifications. The most common form of corruption is corrupt payments or other advantages; a receiver (passive corruption) accepts a bribe from a giver (active corruption) in exchange for a favour.⁶

Article 8 of the PIF Directive stipulates that corruption constitutes a particularly serious threat to the Union's financial interests, which can in many cases also be linked to fraudulent conduct. Since all public officials have a duty to exercise judgment or discretion impartially, the giving of bribes in order to influence a public official's judgment or discretion, and the taking of such bribes, should be included in the definition of corruption, irrespective of the law or regulations applicable in the particular official's country or to the international organisation concerned.

Conflicts of interest

Article 61 of EU Regulation 2018/1046 of the European Parliament and of the Council (Financial Regulations) deals with conflict of interest.

1. Financial actors within the meaning of Title IV (Budget Implementation), Chapter 4 of EU Regulation 2018/1046 and other persons, including national authorities at any level, involved in budget implementation under direct, indirect and shared management, including acts preparatory thereto, audit or control, shall not take any action which may bring their own interests into conflict with those of the Union. They shall also take appropriate measures to prevent a conflict of interests from arising in the functions under their responsibility and to address situations which may objectively be perceived as a conflict of interests.
2. Where there is a risk of a conflict of interests involving a member of staff of a national authority, the person in question shall refer the matter to his or her hierarchical superior. Where such a risk exists for staff covered by the Staff Regulations, the person in question shall refer the matter to the relevant authorising officer by delegation. The relevant hierarchical superior or the authorising officer by delegation shall confirm in writing whether a conflict of interests is found to exist. Where a conflict of interests is found to exist, the appointing authority or the relevant national authority shall ensure that the person in question ceases all activity in the matter. The relevant authorising officer by delegation or the relevant national authority shall ensure that any further appropriate action is taken in accordance with the applicable law.
3. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other direct or indirect personal interest.

⁶ *Fraud Risk Assessment and Effective and Proportionate Anti-Fraud Measures of the European Structural and Investment Funds published in June 2014 - Guidance for Member States and Programme Authorities.*

Background

Fraud involving public funds is often linked with corruption, which is generally understood as any act or omission that abuses official authority or seeks to bring about the abuse of official authority, in order to obtain undue benefit.⁷

Irregularity is a broader concept than fraud. It is defined as any infringement of the law, which has, or would have, the effect of prejudicing public funds. If such breach of law has been committed intentionally, then it is fraud. Hence, what differentiates fraud from other irregularities is malicious intent on the part of the perpetrator.⁸

Irregularities, fraud and corruption are caused by defects in the formal rules regulating public sector activities (mainly legislation) and/or shortcomings in informal rules (value systems, ethics and morals).

The main underlying causes are:

- Market failures;
- Inappropriate regulatory functions by public administration;
- Inappropriate legislation;
- Ineffective and inefficient implementation of formal rules;
- Lack of enforcement and external oversight;
- Lack of control and monitoring, especially internal control; and

- Low standards of culture, ethics, morals and value systems of society.

Understanding fraud and corruption requires that their full consequences are recognised in order to appreciate the need for eliminating them. The perception that fraud and corruption are without victims must be defeated to garner the public support required to fight fraud and corruption. Only when the informal rules (culture, value systems, ethics and morals) are in tune with the formal legislation can the scourge of fraud and corruption be fought in an effective manner. Fraud and corruption must be understood not only in economic terms, but in terms of all the harm they cause. In the main, fraud and corruption replace the normal rules which determine the outcome of relationships between the various actors involved with less predictable rules.

Legal Scenario

Malta is not only subject to its own rules, laws and regulations, but has to adhere to a number of international conventions drawn up by different multilateral organisations, together with the Regulations of the European Union which were/are being/will be transposed into local legislation as applicable given Malta's membership of the EU. Conventions adopted by multilateral/international organisations include:

- UN Convention Against Corruption;
- UN Convention Against International Organised Crime;

⁷ ECA Special Report 1/2019

⁸ *ibid*

- UN International Code of Conduct for Public Officials;
- UN Declaration on Organised Crime and Bribery in International Commercial Activities;
- Council of Europe (CoE) programme of Action of the Fight against Corruption (Committee of Ministers, 1996);
- CoE Agreement on setting up of GRECO;
- CoE Criminal Law Convention (1998);
- CoE Civil Law Convention (1999); and
- CoE Convention on laundering, search, seizure and confiscation of the proceeds from crime.

From a European Union perspective and as beneficiary of a number of EU funds, in order to ensure harmonisation of the response to fraud risks throughout, taking into consideration the centralised structure, the following instruments are of particular importance:

- Convention drawn up on the basis of Article K3 of the Treaty on European Union, on the protection of the European Communities' financial interests (1995);
- Council Regulation (EC, Euratom) No 2988/95 of 18th December 1995 on the protection of the European Communities financial interests;
- Council Regulation (Euratom, EC) No 2185/96 of 11th November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities;
- Commission Decision of 28th April 1999 establishing the European Anti-fraud Office;
- Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11th September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999;
- Articles 310 and 325 of the Treaty on the Functioning of the European Union (TFEU) require the EU and the Member States to counter fraud and any illegal activities affecting the financial interests of the Union;
- Article 317 of TFEU, which states that the principle of sound management is to be applied in the use of the EU budget by Member States in cooperation with the Commission;
- Articles 30 to 33 of the Financial Regulation applicable to the general budget of the EU, which clarify the principle of sound financial management;
- Article 59.2(b) of the Financial Regulation, which gives Member States the primary responsibility, in the framework of shared management, for preventing, detecting and correcting irregularities and fraud;
- Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17th December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund and laying down general provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund and the European Maritime and Fisheries Fund and repealing Council Regulation (EC) No 1083/2006;

- Commission Implementing Regulation (EU) 2015/207 of 20th January 2015 laying down detailed rules implementing Regulation (EU) No 1303/2013 of the European Parliament and of the Council;
- Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17th December 2013 on the financing, management and monitoring of the common agricultural policy;
- Regulation (EU) No 223/2014 of the European Parliament and of the Council of 11th March 2014 on the Fund for European Aid to the Most Deprived; and
- Regulation (EU) No 514/2014 of the European Parliament and of the Council of 16th April 2014 laying down general provisions on the Asylum, Migration and Integration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management.

The above EU legislation stresses that member states shall counter fraud and other illegal activities affecting the financial interests of the Community, and these measures must be at the same level as those undertaken to counter fraud affecting their own financial interests (Article 325, Treaty on the Functioning of the European Union).

European institutions and Member States established an Anti-Fraud Co-ordination Unit (UCLAF), which was later called the European Anti-Fraud Office (OLAF). OLAF has the right to carry out independent internal, and external, investigations. It works in co-operation with the relevant institutions of the member states. Article 325 of the Treaty on the Functioning of the European Union lays down that Member States shall co-ordinate their action at protecting the financial interests of the Community, and shall organise, together with the Commission, close and regular co-

operation between the competent authorities. In line with the Commission Decision of the 28th April 1999 (1999/352/EC, ECSC, Euratom) and Regulation (EC) No 1073/1999 of the European Parliament and of the Council, the co-operation with member states was emphasised through legislative measures. Furthermore, Regulation (EU, Euratom) No 883/2013 aims to:

- Reinforce the independence of the European Anti-Fraud Office (OLAF), set up under Decision 1999/352/EC to combat fraud, corruption and any illegal activity which harm the EU's financial interests; make OLAF investigations more effective;
- Improve cooperation between the different institutions and bodies involved; and
- Strengthen the rights of individuals covered by investigations.

Moreover, the 2019 Commission Anti-fraud Strategy (CAFS) focuses on protecting the EU's financial interests from fraud, corruption and other intentional irregularities and on the risk of serious wrongdoing inside the EU's institutions and bodies. The new CAFS covers:

- Fraud – including VAT fraud – corruption and misappropriation affecting the EU's financial interests, as defined in Articles 3 and 4 of the PIF Directive;
- Other criminal offences affecting the Union's financial interests, e.g., offences linked to an abuse of procurement procedures where they affect the EU budget;
- Irregularities as defined in Article 1(2) of Regulation (EC, Euratom) No 2988/9523 (insofar as they are intentional but not already captured by the criminal offences referred to above); and

- Serious breaches of professional obligations by staff or Members of the Union's institutions and bodies, as referred to in Article 1(4) of the OLAF Regulation and in the second subparagraph of Article 2(1) of Commission Decision (EC, ECSC, Euratom) No 352/1999.⁹
- The Internal Audit and Financial Investigations Act (Chapter 461);
- Types of Internal Audits Regulations (LN 434 of 2004);
- Conflict of Interest Regulations (LN 433 of 2004);

Each year, under Article 325(5) TFEU, the Commission, in cooperation with the Member States, submits a report to the European Parliament and the Council on measures taken to counter fraud and other illegal activities affecting the EU's financial interests (PIF Report). The EU and the Member States share responsibility for protecting the EU's financial interests and fighting fraud. Member State authorities manage approximately 74 % of EU expenditure and collect traditional own resources (TOR). The Commission oversees both these areas, sets standards, and verifies compliance. In this respect, in order to protect the EU's financial interests effectively, the Commission and the Member States have to work closely together.

With regard to the local law, the following legislation is of particular importance to the subject:

- Constitution of Malta;
- Commission for the Administration of Justice Act (Chapter 369);
- The Permanent Commission against Corruption Act (Chapter 326);
- Ombudsman Act (Chapter 385);
- Public Finance Management Act (Chapter 601 of the Laws of Malta);
- General Financial Regulations (Subsidiary Legislation 174.01);
- The Public Procurement Regulations (Subsidiary Legislation 601.03);
- The Police Act (Chapter 164);
- The Criminal Code (Chapter 9);
- Disciplinary Procedure in the Public Service Commission Regulations (Subsidiary Legislation Const. 03);
- The Customs Ordinance (Chapter 37);
- The Excise Duty Act (Chapter 382);
- The Commissioner for Revenue Act (Chapter 517);
- The Value Added Tax Act (Chapter 406);
- The Malta Security Service Act (Chapter 391);
- The Auditor General and the National Audit Office Act (Chapter 396);
- The Attorney General and Council of the Republic Ordinance (Chapter 90);
- The Prevention of Money Laundering Act (Chapter 373);
- The Income Tax Act (Chapter 123);
- The Income Tax Management Act (Chapter 372); and
- The Protection of the Whistleblower Act (Chapter 527).

⁹ CAFS 2019

Administrative Scenario

Anti-Fraud Coordination Services (AFCOS) were established in all EU-accession countries. These central contact points for the co-ordination of all legislative, administrative and operational aspects of the protection of the EU's financial interests are promoted by OLAF with whom they coordinate in the fight against fraud on EU funds. AFCOS is to co-operate with OLAF and EU Member States, as required by Article 325 of the Treaty on the Functioning of the European Union.

The IAID is the designated interlocutor of OLAF in Malta and is the AFCOS for Malta which was established during the negotiations for accession under Chapter 28. An administrative Co-operation Arrangement (ACA) was signed between OLAF and IAID as the AFCOS Malta in June 2003, and which became operative as from 1st June 2003. In a letter to the Director of OLAF, the Director of the IAID stated that the Arrangement was also agreed to with the relevant investigative and prosecuting authorities in the Maltese Government structures.

In a letter dated 18th November 2016, OLAF informed IAID that a number of ACAs, including the one with Malta, were being terminated given that since their conclusion, Regulation (EU, Euratom) No 883/2013 which sets out the framework for cooperation between OLAF and AFCOS has been revised. It provides an appropriate basis for cooperation with Member States' authorities and as a result it was considered that an ACA was no longer needed for OLAF and AFCOS Malta to keep working together.

AFCOS' basic functions revolve around three themes:

1. to co-ordinate, within Malta, all legislative, administrative and operational obligations and activities related to the protection of the Community's financial interests;
2. to co-operate with OLAF and its partner institutions whenever OLAF requires

investigative assistance or, on the other hand, whenever OLAF assistance is required; and

3. to communicate with OLAF and its partner institutions with regard to mandatory reporting and information exchange.

This implies that AFCOS can conduct joint investigations with OLAF with respect to EU funds availed of by Malta. Moreover, AFCOS is responsible for coordinating the updating of the national anti-fraud strategy and shall co-ordinate its dissemination and implementation.

AFCOS has developed a vision and standards on facilitating and ensuring co-operation between the national administration, investigation authorities and prosecuting authorities, and between these institutions and the European OLAF, in cases of suspected fraud and irregularities affecting the Community's financial interests. The procedures put in place to apply this vision and these standards work in practice.

AFCOS disseminates information to authorities responsible for the management of EU funds and revenues on the obligations and procedures to be followed in order to protect the Community's financial interests. These procedures, which also apply to AFCOS, are followed in practice.

Consequences of Fraud and Corruption

Criminalising fraud and corruption and sanctioning offenders does not work unless the social, cultural and economic factors that contribute to fraud and corruption are understood. Moreover, recognising the full consequences of fraud and corruption is imperative to rebut the belief that fraud and corruption are victimless. Only in this manner can public support be mobilised in the fight against them. The main argument against fraud and corruption is that it undermines the

formal rules of society, and replaces them with informal and less predictable rules, which change continuously on a case-by-case basis.

Some forms of fraud and corruption may seem and/or actually be more harmful than others. Moreover, the harmful effects to both the individuals involved and society as a whole must be considered. It is also important that the two aspects of fraud and corruption are addressed, namely the demand and supply side. (The supply side refers to the source of the bribe money, while the demand side refers to the demand for bribes.)

It is important that both economic and social consequences of fraud and corruption are considered, although these are normally intertwined and impact, or influence, each other.

The economic consequences include:

- Public resources are allocated inefficiently;
- Productivity is decreased;
- Administrative efficiency is reduced;
- Economic development is impaired;
- Economic instability increases;
- Foreign investment decreases;
- Quality and composition of public expenditure is affected negatively;
- Collection of taxes is non-optimal and there is lack of equity;
- The underground economy flourishes;
- Transaction costs and risks increase;
- Rent-seeking behaviour increases at the cost of profit seeking; and
- Competition, both within an economy and in relation to other economies, is distorted.

The social consequences include:

- Competent and honest citizens feel frustrated;
- Population's level of trust decreases;
- The legitimacy of political and economic order is undermined;
- Poor infrastructure;
- The level of the social services such as education and health decreases;
- The standard of living decreases;
- Organised crime increases, threatening security;
- Good governance is compromised;
- The poorest are most affected, and poverty increases;
- Democratic institutions are persistently undermined;
- Social and political unrest may be encouraged;
- The moral fibre of society is eroded; and
- Undemocratic power structures are created.

It must also be understood that fraud and corruption tend to grow exponentially, and this is exacerbated when efforts are not taken to control it. Fraud and corruption escalate further fraud and corruption, and if unchecked they may become systematic, where it would affect the whole fibre and systems of society. Fraud and corruption stimulate greed, and if unchecked, they could lead to increased public anger and political unrest.

Strategic Objectives

The main aim of the anti-fraud and corruption strategy is to have a normative, institutional and operational framework for the effective and efficient fight against irregularities, fraud and corruption in Malta, reflecting both the local requirements and Malta's international obligations including those based on membership of the European Union.

In more specific terms, the objective of the strategy is to reduce irregularities, fraud and corruption to the barest minimum, and to enable a framework that facilitates deterrence, detection, identification, investigation and prosecution of instances of fraud and corruption, with a focus on the use of national public funds and resources, and also warranting the protection of the financial interests of the Community.

The main thrusts of the strategy to combat irregularities, fraud and corruption are:

1. Prevention and deterrence of irregularities, fraud and corruption;
2. Detection of cases of irregularities, fraud and corruption at an early stage;
3. Identification and investigation of cases of irregularities, fraud and corruption in the most effective manner;
4. Sanctioning and prosecution of cases of irregularities, fraud and corruption; and
5. Encouragement and facilitation of transparency, reporting and whistle blowing.

The aim is to ascertain a deterrent value to potential offenders that ensures that sanctions offset any potential gain from unlawful behaviour.

The principles of the strategy are twofold, namely increasing the effectiveness and the efficiency of the fight against fraud and corruption. These two principles require a number of measures that need to be considered focusing mainly on transparency, accountability, responsibility, professionalism, competence, co-operation, co-ordination, and communication.

The strategy has four main objectives:

1. Capacity Building

The fight against irregularities, fraud and corruption can only be effective and efficient if all the necessary skills and tools are available. Thus it is envisaged that one of the main objectives is that the skills and tools required to all of the national partners are acquired or built over a period of time to enable a professional and competent approach and contribute towards having a stronger analytical capability for the purposes of prevention and detection in place, and to support a centralised system of oversight for its anti-fraud action. Improving the human resource capacity in the field of fraud and corruption through the strengthening of existing entities as well as the development of new ones should increase the effectiveness of the government as a whole. It is also important to increase the knowledge, skills and expertise of employees through continuous training and pertinent technical equipment in order to develop key competencies and a sufficient

level of anti-fraud know-how. Transparency is to be promoted, and it is to be ensured that anyone involved in the fight against irregularities, fraud and corruption complies with the applicable ethical standards.

Having the right skills and competences, and the quantitative levels of human resources at the disposal of the national authorities is one of the most important aspects of the fight against irregularities, fraud and corruption. One of the objectives of the Financial Investigations Directorate (FID) set up within IAID is to focus on central co-ordination, co-operation and communication of the whole strategy, whilst also carrying out investigations. This team uses internal expertise and also liaises with other competent authorities, including the Office of the Attorney General, Office of the State Advocate, members of the Police force as necessary, and makes use of other professional expertise as may be necessary. This team also acts as the AFCOS to the EU OLAF and collaborate with all the national and international partners as necessary.

Professional people need to undergo continuous professional training to keep up with all the developments in this wide area of competence. Training programmes should include the following areas: legal, investigations, intelligence, analysis, forensic accounting and information system tools. A training needs analysis at each of the national authority will need to be undertaken, so that training would be planned, organised and undertaken to address all the specific areas of the requirements. This way all the skills required would be addressed. Moreover, such an approach would instil a culture of collaboration within and between all the national agencies that will serve as a platform for future co-operation. It will also instil the need for co-ordination and highlight the benefits of working together and exploit the synergies that can be captured through such approaches.

A central information system is also a requirement for the initiative. This central information system will need to address the following areas:

- Create a network of collaboration between the national agencies;
- Create a network of collaboration with international partners;
- Create a central intelligence system on irregularities, fraud and corruption; and
- Create a central document repository which will include virtual libraries on legal texts, processes manuals, training documentation, and other instruments.

Moreover, software tools for analysis and investigations will need to be acquired to enable a more professional approach. In this respect, all national authorities will be required to assess their requirements and acquire the necessary tools. It is also envisaged that the acquisition of these software tools will be co-ordinated between the national agencies to maximise all the possible avenues for collaboration, and synergies would be captured. These software tools could be shared between the different authorities as applicable in line with their respective legal mandate.

It is also envisaged that a central document repository will be developed. This system should be capable of collecting, collating, withholding, analysing, and disseminating information in the most appropriate manner, so that any information received would be exploited to the maximum benefit.

A number of experts from Co-ordinating Committee members would be identified to assist other national partners in their respective areas of expertise. They will also act as liaison officers for operational purposes and points of contact for initiating and undertaking collaboration efforts.

2. Communication Strategy

One of the key tools in the fight against irregularities, fraud and corruption is a public relations strategy. This must include approaches to inform the public on the aims of the strategy,

the wider public sector on their obligations and developed communication channels, and it must also target the people who are mostly involved in the processes that are most relevant to the initiative, namely managers and accounting officials. This strategy must also provide secure and confidential means to enable and encourage the inflow of information to the relative national partners.

This does not only encompass relations with the public, although it is one of the most important aspects but also something more fundamental, which is transparency, requiring that the public is fully aware of and can comment on various aspects of financial issues, including reporting irregularities, fraud and corruption that they may become aware of.

Therefore, the Co-ordinating Committee¹⁰ must first devise an initiative through which public financial control is analysed, and seen that it is being addressed adequately.¹¹ The Co-ordinating Committee will then be in a position to make the necessary recommendations to the appropriate authorities for the improvement of public financial control. It is also important that in its recommendations, the Co-ordinating Committee addresses the issue of transparency, however taking into consideration aspects of issues that might affect national economy and national security.

Another objective is to embark on a national campaign to inform the public on all the issues of irregularities and fraud and to inform the general public and the media of the initiatives being undertaken to fight them.

It is also important to undertake a different campaign for public service employees, which must focus on the legal, economic and ethical

issues of irregularities, fraud and corruption. As part of this campaign, it is also important to target the main actors in public financial control, namely the relevant senior management, middle management, and accounting officials. They are important both as direct actors in such matters, and also since they are the main integral part of the management of public funds. They are also the main actors who hold the key to the information that might be passed on through the appropriate channels to national authorities responsible for investigations.

Another important part of the communication strategy is the gathering of information on cases of suspected irregularities, fraud and corruption.¹² Thus, the IAID's and OLAF's fraud notification systems have to be promoted. Appropriate information channels have been developed that allow members of the public, aggrieved parties (such as contractors, suppliers, and so on), public officials, managers, accounting officials and other persons to pass information in a completely confidential manner. This strategy must include opportunities for free phones (24 hour service through answering machines) and systems using information technology (emails, internet portal – all must be capable of total anonymity, but can enable the creation of two-way communication in a secure and confidential manner which is the open communication system nowadays adopted by international bodies such as OLAF).

It is also important that channels of information between national authorities, and national and international authorities are in place to enable proper communication, co-ordination, and co-operation. The systems already in place must be examined so that they are exploited to the full and where necessary, bolstered.

¹⁰ The Co-ordinating Committee is set up according to Section 23 of the Internal Audit and Financial Investigations Act. It is chaired by the Director General IAID, with a remit to co-ordinate the activities of, and to facilitate the exchange of information between, different entities charged with the protection and safeguarding of public funds.

¹¹ This is one of the areas of the IAID; however, in this manner all the relevant entities will own the initiative and this same initiative would be supported by the Co-ordinating Committee and each department.

¹² The Manual of Procedures of the Managing Authority contains a chapter related to the identification and notification of irregularities. All irregularity reports are shared.

3. Maximisation of National Co-operation

Optimizing co-operation, co-ordination, and workflows between national partners is imperative for the success of the strategy. Data collection and analysis further improves the understanding of fraud patterns, fraudsters' profiles, and systematic vulnerabilities relating to fraud affecting the National and EU budget. This objective must include strategies and a legal framework that allows the building of structures and systems that improve anti-fraud cooperation and workflows across the board, whilst encouraging and facilitating collaboration at an early stage of any investigation, including in the fields of traditional own resources (TOR) and value-added tax (VAT). In this way efficiencies, effectiveness, and synergies can be achieved, to the benefit of all.

Data collection and analysis contribute to the fight against fraud in various ways:

1. Observing the 'anti-fraud landscape' may provide insight into emerging fraud patterns and innovative ways of preventing and detecting fraud.
2. Collecting and analysing data on established and suspected cases of fraud may deepen knowledge on vulnerabilities, fraud patterns, and profiles of fraudsters and help to deploy control mechanisms and resources in the most effective and efficient way possible.
3. Project databases combined with tools that process data on risk profiles and fraud indicators ('red flags') may help with fraud detection or potentially reduce the risk of double-funding or overcharging of cost claims.

For effective national co-ordination and co-operation, it is important to have the appropriate mechanisms in place that will

encourage, motivate and facilitate such collaboration. Such mechanisms must include a policy making arm, and an executive arm. The latter will be fulfilled by the FID (formerly known as AFCU) that was set up within the IAID. This unit, essentially is fulfilling the investigative role of the IAID, which is the nominated AFCOS Malta, and executes the major role of collaboration both with national authorities, and between national authorities and international partners. The policy-making arm can be fulfilled by the present Co-ordinating Committee set up under Article 23 of the Internal Audit and Financial Investigations Act.

The present structure of the Co-ordinating Committee has been revisited to define the membership of the necessary authorities which includes:

- Director General IAID as Chairman;
- Representative of the Financial Investigations Directorate;
- Representative of the Attorney General's Office;
- Representative of the Office of the State Advocate;
- Representative of the National Audit Office;
- Representative of Police;
- Representative of Customs Department;
- Representative of EU Managing Authorities – (PPCD and FPD);
- Representative of FIAU;
- Representative of Malta Security Service;
- Representative of the Commissioner for Revenue;

- Representative of the Ministry for the Family, Children's Rights and Social Solidarity;
- Representative of the Department of Contracts; and
- Representative of the Asset Recovery Bureau.
- Representative of the Permanent Commission Against Corruption.

Its terms of reference fulfil the role as described in this strategy and the representatives of the different national authorities are of a senior management grade, to enable decision-making and follow-up to actions identified.

The Co-ordinating Committee may also set up core teams and sub-committees from its members to enable a more effective and efficient approach with respect to specific areas, which however must report to the Co-ordinating Committee.

One of the areas that the Co-ordinating Committee must address is the definition of systems and structures that would facilitate and encourage collaboration between the national authorities. This is imperative in encouraging collaboration that would garner synergies to the benefit of all and would enable the utilisation of resources across different authorities in an effective manner. These must include defined procedures for collaboration, which however need to be practical and not overly bureaucratic. The Co-ordinating Committee must also define and establish Memoranda of Understanding between itself and the national authorities, defining the obligations and rights of each party and enabling collaboration at the appropriate level.

In order to have a more pervasive but effective and efficient system, it is important that each entity in the Co-ordinating Committee undertakes a review of its legislation (where

applicable) and identifies gaps and overlaps. In case the work of a particular entity is regulated by legislation that is not its own - for example EU legislation - then, that entity is to ensure that it has the necessary power to honour its obligations. The reports of each entity would then be discussed before the Co-ordinating Committee, and with the lead of the Attorney General, both gaps and overlaps can be addressed. Therefore, legislation would become clearer and approaches would be streamlined. Moreover, areas that would facilitate early collaboration can be identified and addressed at this stage, and the necessary legislation would be identified and addressed.

The Co-ordinating Committee must also undertake an analysis of the main, common risks which are being faced by its entity members. In this way, the key risk areas would be identified, and strategies for addressing them could be developed among partners that would allow any gaps to be addressed, resources to be utilised to the full, and areas for collaboration or joint investigative initiatives to be addressed.

In line with the CAFS 2019, a qualitative fraud risk assessment will be carried out in close consultation with all members of the Co-ordinating Committee. All members of the Co-ordinating Committee will be asked to carry out or update their own service-level fraud risk assessments to feed into a corporate fraud risk assessment. This exercise should establish fraud risks that affect all the entities and those that are particularly significant, enabling subsequent exchange of information and recommendations with respect to the establishment of best practices.

It is also important for the Co-ordinating Committee to define reporting systems, both on the strategy relating to the fight against irregularities, fraud and corruption, and also on the progress of the initiative and investigation and cases (post-investigation and prosecution).

4. Maximisation of EU and International Co-operation

The economic and business climate of today is an open system, with free movement of persons, capital, goods and also crime. Cross-border irregularities, fraud and corruption are a reality that can only be addressed through collaboration with international partners. Thus, the strategy must address this area through increased collaboration with EU and other international partners, not only to satisfy the international obligations of the country, but also to streamline and exploit all areas of collaboration.

Risk scoring tools, such as 'ARACHNE' promote a risk-based approach to project verification in shared management (European Structural and Investment Funds). ARACHNE is a tool that feeds a database of projects with publicly-available information to identify the most risk-prone projects. Based on a set of predefined risk indicators, it continually sifts through internal and external data on beneficiaries, contractors, and sub-contractors and determines potentially irregular circumstances. Enhancing the use of risk-scoring tools will help to identify risk factors at the level of individual projects.

The Co-ordinating Committee must undertake, through its members, an in-depth review of Malta's international and EU obligations in the area of irregularities, fraud and corruption.

Once these obligations, memberships and other international initiatives would be fully identified, it would be appropriate to design and plan procedures that would assist all the members to address those obligations in the most appropriate and effective manner. This would also allow synergies in addressing the different issues at the different international fora and would provide the national authorities with the appropriate back up both in terms of knowledge and in terms of the address to particular issues. Being part of the Co-ordinating Committee would ensure that issues that would have been put forward by one national authority could be put on the national agenda by the Co-ordinating Committee and its members, with increased support.

It is also important for the Co-ordinating Committee to establish a directory of the points of contact for the major international and EU partners, which it would put at the disposal of the national authorities to facilitate exchange of information and meeting of requirements.

The above strategies are to be undertaken without prejudice to the rights and obligations of the national authorities, and are only intended to facilitate and assist the different agencies in addressing their obligations in a professional manner. They are also without prejudice to the AFCOS Malta, which is the national contact point for OLAF in Malta, defined by the Administrative Co-operation Arrangement between OLAF and AFCOS of June 2003.

Action Plan

This action plan carries forward the work of the 2008 Strategy, and is intended to outline the specific actions. The Co-ordinating Committee will be responsible to agree on the implementing body within the time frames.

The action points are intended to act as the tasks that enable the strategy implementation and achievement of the objectives outlined.

Action Number	Task	Timeline in months by when the action points should be completed
1	Revision of the Terms of Reference of Co-ordinating Committee as might be necessary	Immediate upon identification of need for revision
2	Creation of sub-committees to Co-ordinating Committee.	Immediate as and when necessary
3	National Risk Assessment and follow up strategy on fraud and corruption, which will be based on risk assessments undertaken at the relevant national authorities.	Month 12
4	Ensuring competent authorities have a strategy that addresses Malta's International obligations falling within its remit in place.	Immediate
5	Enhancement of systems and structures to facilitate and encourage national collaboration.	Month 6
6	<ul style="list-style-type: none"> - Training Needs Analysis for specific/ad hoc requirements at each National Authority. - Devise Initial Training Programme – basic courses for appointed officials from the national authorities on legal background, investigations techniques, intelligence, analytical techniques, forensic accounting, and information system tools. - Devise Second Training Programme based on the Training Needs Analysis. 	<p>Month 9</p> <p>Month 12</p> <p>Month 24</p>

7	Implementation of Communications Strategies.	Month 9
8	Creation of Communications Channels for gathering of Intelligence, which could include free phones, ICT channels, and secure emails.	Month 12
9	Devise Communications Campaign for Public Service employees in general.	Month 9
10	Devise Communications Campaign for Managers and Accounting Officers in the Public Sector.	Month 9
11	Devise Communications Campaign for the general public.	Month 12
12	Analysis of Public Financial Control mechanisms in terms of accountability, transparency and reporting.	Month 15
13	Devise a Central Documentary Repository System Strategy.	Month 18
14	Creation of a Central Documentary Repository.	Month 24
15	Identification of needs and procurement of Software Tools.	Month 6
16	Identification and recommendation of changes to legislation for Co-ordinating Committee.	Ongoing
17	Implementation of changes to the Public Internal Financial Control mechanisms.	Month 24-36
18	Negotiation, finalisation and implementation of Memoranda of Understanding between national authorities and Co-ordinating Committee.	Month 15
19	Definition of reporting system on the Strategy review and fight against fraud and corruption.	Month 18
20	Recommendations on the increase of transparency in Public Financial Control mechanisms.	Month 21
21	Creation of a Network for Collaboration with International Partners.	Month 18
22	Review of national legislation in the area of fraud and corruption and recommendations for the necessary amendments.	Month 21
23	Creation of systems to encourage and define joint investigative initiatives.	Month 21



