



GOVERNMENT  
OF MALTA

# Malta Financial Services Oversight newsletter

July 2020



# in this news letter

**Police Commissioner:  
Underlining a Deep  
Commitment to Reform**

**Malta claws back €27  
million in clampdown  
on unpaid taxes**

**MFSA unveils stricter  
Shareholding Policy for  
Credit Institutions and  
Insurance Companies**

**MFSA  
launches its  
FinTech  
Regulatory  
Sandbox**

**ECB cancels Satabank license  
following recommendation  
by MFSA**

**NCC  
progress  
report**

# Underlining a deep commitment to reform

A personal address from the newly-appointed **Police Commissioner Angelo Gafa'**



On 23 June this year I had the great honour of being appointed as Malta's Commissioner of Police. This was the culmination of a public selection process for the post, the first time such a process had been used. As such it marked a significant development for our 206-year old organisation and I am determined that this spirit of change and renewal will become one of the hallmarks of my leadership.

It is for this reason that the implementation of a transformation strategy is at the top of my agenda.

For the Police Force to embark on any kind of meaningful change, we first needed to become more efficient and professional in our operations. Increasing transparency and accountability is crucial and that is why we will be publishing the transformation strategy for the public to know exactly where the Corps will be heading in the years to come.

Other important changes must take place even before the publication of the transformation strategy. These fundamental developments relate mainly to aspects of good governance and combatting financial crime, where we will take on board the recommendations forwarded by international institutions, namely the Group of States Against Corruption of the Council of Europe (GRECO) and Moneyval.

In line with the GRECO recommendations, we will restructure the Police force into a strong institutional framework on which we can implement real changes as opposed to cosmetic ones.

To start with, we will adopt a new code of ethics to better regulate the behaviour of police officers. An anti-fraud & anti-corruption policy regulating the way in which police officials interact with people from

certain sectors of society will also be introduced. We will also strengthen the regulation of parallel activities of members of the Police Force to ensure that police officers will not be allowed to engage in any conflicting activities.

I am also committed to implementing the Moneyval recommendations ensuring a more robust approach in our fight against financial crime, particularly money laundering. Crime is evolving and financial crime is one of the most serious and complex.

On my first day in office I sent a strong message of my commitment to ensure a more effective and trusted Financial Crime Investigations Department. Major decisions taken since then, including the further strengthening of human resources, are testament to the fact that the fight against money laundering is our top priority. In addition to attracting more police officers to join this dynamic Department, we will be employing experts in the financial services sector. At the same time, we are investing in technology, including through EU funds, to ensure more effective analysis of often complex financial cases.

I must also be very clear in addressing one of the most pertinent issues that normally crop up in public debate. All investigations will be given their due importance, and no one will be excluded from police scrutiny. Some financial investigations might be complex, however, I am convinced that our highly dedicated and diligent financial crime investigators assisted by international partners, particularly Europol, will not rest until we begin to reap the fruits of all the hard work that is being carried out.

As a former investigative officer and above all as a proud officer, I will lead these changes out of my conviction that the Malta Police Force can and must be an important tool for the implementation of justice and the strengthening of Malta's reputation.

# Malta claws back €27 million in clampdown on unpaid taxes

Malta's tax authorities have been successful in claiming back almost €27 million in unpaid taxes from Malta-registered companies and individuals. It follows an in-depth investigation into taxpayers featured in the so-called 'Panama Papers' and 'Swiss Leaks' reports.

Following the publication of the Swiss Leaks report, in 2015, Malta's Commissioner for Revenue requested information and assistance from French, Swiss and UK tax authorities. The Commissioner's Tax Compliance Unit initiated investigations of those taxpayers deemed to be a high-level tax risk. To date, 94 cases have been processed or are in the process of being concluded, whereby €12.6 million, in evaded tax and fines, have been levied.

A similar exercise is being carried out by the Tax Compliance Unit on those individuals and entities who features in the Panama Papers. So far led to 132 completed investigations and €14.2 million in evaded tax and fines, have been levied. Investigations on 59 local persons and on 46 cases pertaining to foreign persons, are still ongoing.

# MFSA unveils stricter shareholding policy for credit institutions and insurance companies

The MFSA has unveiled a new policy document that provides fresh guidance on Shareholding Policy for credit institutions including banks as well as insurance companies. The document makes clear that the Authority will take a dim view of entities that are overly reliant on a single shareholder or beneficial owner, both at board level as well as within the executive management.

The document outlines that the MFSA has no risk appetite for limited shareholding structures ‘that may adversely impact the overall governance, financial soundness and resilience of a license holder’.

The Authority expects that the proposed shareholding structure for such entities be reasonably diversified and balanced, in order to limit any potential shareholder dominance and to ensure wider availability of funding should capital injections be required.

The policy document highlights important considerations when deciding whether a shareholder is suitably qualified, including their reputation, their financial soundness, as well as their underlying intentions for acquiring a qualifying shareholding.

On this last point, as assessment will be made as to whether there are financial crime risks associated with the acquisition. Proposed qualifying shareholders will also be assessed to ensure they have the right skillset and experience to understand the business they are investing in.

The guidelines seek to ensure that Malta’s policies reflect European guidelines.

“The Shareholding Policy for Credit Institutions and Insurance Companies complements other efforts being made by the MFSA in promoting good corporate governance practices across the financial services industry,” said MFSA’s CEO Joseph Cuschieri.

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# MFSA launches its FinTech Regulatory Sandbox

The MFSA has launched its FinTech Regulatory Sandbox, providing a regulatory environment where FinTechs can test innovation while under certain conditions which ensure consumer protection, market integrity and financial soundness.

With the aim of fostering sustainable technology-enabled financial innovation, the MFSA Sandbox will also provide a space which drives the adoption of innovative solutions, helping FinTech start-ups and incumbents to test new concepts and ultimately offer value-added products and services to the market and wider industry.

It also enables the MFSA to have the necessary knowhow, identifying regulatory gaps and ensuring that the growth of FinTech in Malta is both secure and sustainable. The establishment of the Sandbox is part of the MFSA's long term strategy to facilitate and strengthen technological innovation and expertise across Malta and internationally. This is a critical step in enabling the MFSA to continue enacting forward looking policies to promote the growth and evolution of financial services.

This initiative builds on the MFSA FinTech Strategy and the establishment of the Virtual Financial Assets Act, which regulated crypto-assets falling outside scope of traditional financial services legislation and further strengthens Malta's position in the FinTech space.

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# ECB cancels Satabank license following recommendation by MFSA

The European Central Bank revoked Satabank's banking license on 30th June 2020 following a recommendation from the MFSA – Malta's prudential regulator. The recommendation came on the back of serious AML/CFT failings which were identified in a joint supervisory operation led by the FIAU and which resulted in a record penalty of over EUR 3.7 million issued by the FIAU in March 2019.

The action by the ECB caps a two-year investigation by Maltese regulators and authorities that also led to the unprecedented freezing of all 12,000 Satabank accounts and the appointment of EY as a competent person to oversee Satabank.

Prof Edward Scicluna, Minister and Financial Services, stated: "The unprecedented clampdown by Maltese authorities and watchdogs on Satabank sends a strong message to all that we will act hard and fast to protect the reputation of our financial services industry. Money laundering is an international scourge and institutions must play their part to ensure they do not facilitate it.

Satabank came on the radar of Malta's AML/CFT regulator back in 2016 when the bank was subject to a joint supervisory AML/CFT examination led by the FIAU in what came to be one of Malta's most extensive supervisory on-site examinations that revealed several weaknesses and gaps in its internal controls.

In addition to weak AML controls, Satabank was also subject to regulatory action by the MFSA which resulted that in July 2018, MFSA fined the bank over €60,000 for poor risk management structures. By October of that year, the ongoing regulatory interventions by the authorities had uncovered persistent issues, particularly with regard to weak AML controls, including inadequate 'Customer Due Diligence' procedures and inadequate processes for transaction monitoring. Malta's regulators swiftly acted.

On 20 October 2018, the MFSA directed Satabank to, among others, refrain, cease and desist from taking further deposits, accepting any new customers and from affecting or processing any withdrawal or outward transfers. By means of the same directive, the MFSA also upgraded the appointment of EY as a competent person to oversee its operations.

With many customers' deposits blocked, on 24 October the MFSA instructed EY to initiate a controlled process for the return of deposits. Given that concerns by the Regulator, over the lax controls the bank had exercised and question marks raised over the due diligence conducted on the source of funds, the release of customer deposits was subject to strict controls and checks.

EY conducted customer reviews using forensic data collection and analysis and filed STRs or Suspicious Transaction Reports where appropriate. By September 2019, the process had generated over 300 STRs corresponding to more than 600 customers with a total balance exceeding of €130 million.

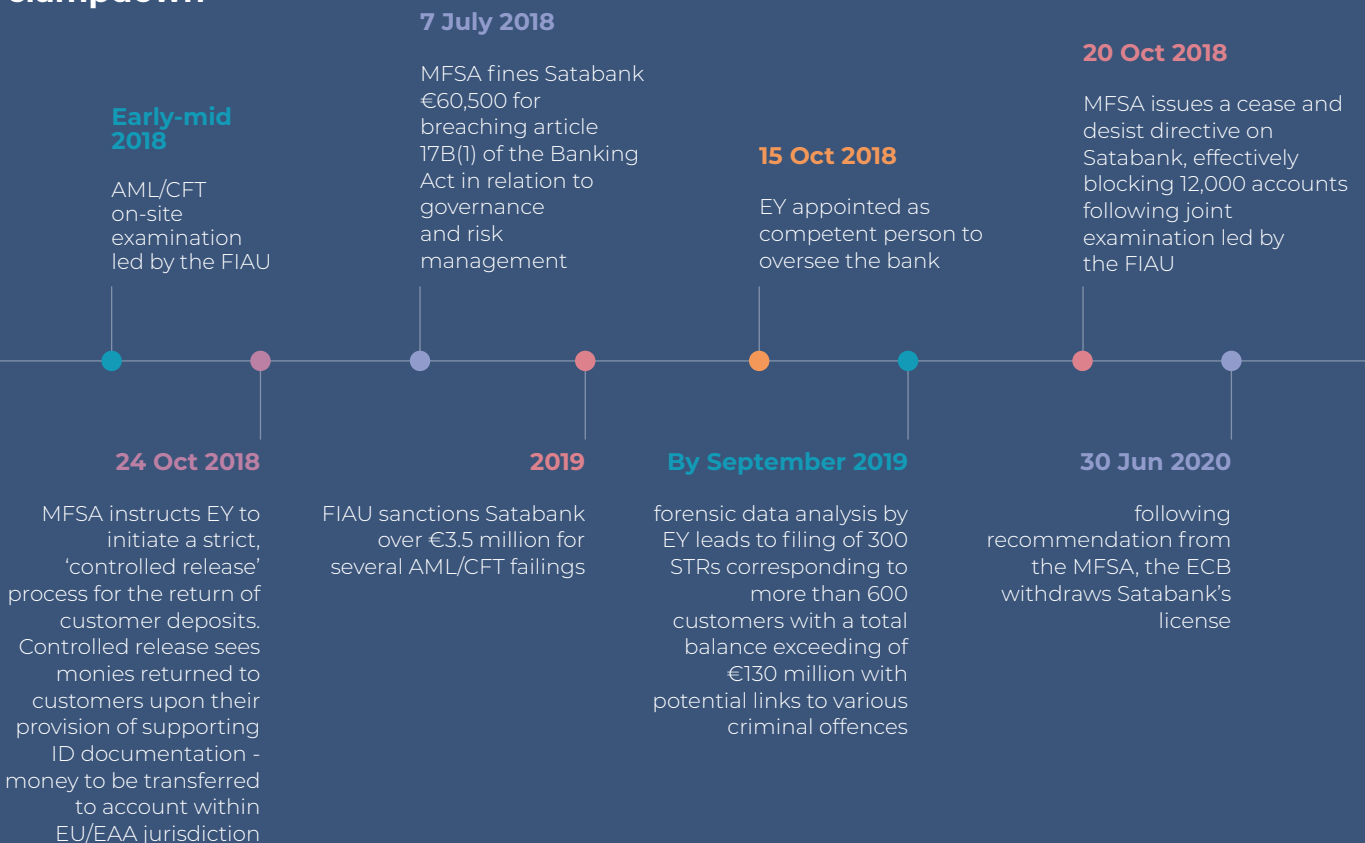
Throughout this process, EY has executed the controlled release of funds to bona fide customers upon their provision of identification documents, with monies only transferrable to a bank account within the EU/EAA jurisdiction.

In 2019, a few months after the MFSA's cease and desist directive, the FIAU slapped a record fine on Satabank for breaking AML regulations. And now a year on from that, the ECB has followed the MFSA's recommendation and stripped the bank of its license.

“It is this joined-up approach to supervision and law enforcement that is yielding results. And we want to see more of it in the future.”

Prof Edward Scicluna | Minister for Finance and Financial Services

## 'Satabank Chronology of the clampdown'





# Moneyval: Malta making progress against key recommendations in AML fight

In this edition of the Financial Services newsletter, we look at the progress made by Malta and its institutions in meeting the recommendations made by the Moneyval team in 2019.

## New & updated legislation

This month, a historic change was enacted when a Parliamentary majority voted constitutional and institutional reforms put forward by Prime Minister Robert Abela to strengthen government institutions and public administration. The amendments change the process of appointing the President of the Republic and the Judiciary and strengthen the Ombudsman's Office and allow for the provision of judicial review of the Advocate General's decisions. The Bill dealing with amendments to strengthen the Permanent Commission Against Corruption was also passed unanimously. This reform follows close dialogue between the Venice Commission of the Council of Europe and the Minister for Justice, Equality, and Governance Edward Zammit Lewis, as well as cross party cooperation.

The State Advocate Act, was approved by Parliament in 2019 and the legislation made it possible to transfer prosecuting powers for criminal cases to the Attorney General (AG). For the first time in Malta's history, the investigation and prosecution of crimes have been separated under two authorities in order to strengthen the fight against anti-money laundering.

The Office of the Attorney General will be strengthening its resources by engaging more lawyers to cater for the new responsibilities entrusted to this Office.

**Cash Control Regulations** were amended in June this year in order to make it easier for the Commissioner of Inland Revenue to detain any amount of cash suspected of being linked to criminal activity. This will allow the Customs department to retain cash for a determined period pending an investigation.

The Department will work together with the Assets Recovery Bureau and other entities as required on a case-by-case basis.

**The Prevention of Money Laundering Act** was amended in February this year to provide a maximum timeframe of nine months within which the Judiciary (Courts of Justice) are to hear and decide appeal cases lodged against the FIAU for administrative penalties imposed by the same on subject persons. This will ensure a more speedy, effective enforcement process. The amendments also permit the FIAU to proceed immediately with the publication of administrative measures even if these are appealed, and in so doing boost the dissuasive impact of those measures.

Malta is working on progressing two other crucial pieces of legislature that will introduce a system for non-conviction-based confiscation in order to make it easier to seize the proceeds of crime; and separately amendments to the Company Service Providers Act to substantially increase the penalties for regulatory breaches. These providers are considered to be the gatekeepers to Malta's financial system as the structures they set up may have wide-ranging effects and uses within the financial sector.

## Tougher enforcement

Malta's agencies and institutions have benefited from significant investment in recruitment, training, IT infrastructure and other resources to strengthen their AML capabilities. This investment is starting to show results.

The **FIAU** has boosted the frequency and depth of its supervision, carrying out 169 examinations in 2019 which represents a 250% increase on the previous year. The Authority's new CASPAR tool is making this process easier and more effective, by streamlining the collection and analysis of data on subject persons and so identifying who presents the highest risk of money laundering and/or financing of terrorism. Earlier this year, the FIAU levied a record fine on Satabank for failing to meet its AML obligations. The Bank was stripped of its license by the ECB after this action was recommended by the MFSA.

Amendments to FIAU procedures allow for closer cooperation between the Authority and the Commissioner for Revenue (CfR) on tax evasion cases. Thanks to FIAU information shared with the CfR, the Commissioner initiated 127 tax audits, 33 of which concluded with the recovery of €1.1m in evaded taxes and related charges to January 2020.

The **MFSA's** Financial Crime Compliance Unit (FCC), responsible for cooperating with the FIAU in the carrying out of AML site visits, completed 60 visits in the 12 months starting 1st July 2019 to 30th June 2020, up from 19 in 2018, and is targeting 75 for the next period. Furthermore, all prudential visits, which are projected to reach 290 this year, incorporate an aspect of AML/CFT.

The **Malta Gaming Authority's** newly combined AML and compliance unit is now taking a more holistic approach to prudential supervision of MGA licensees. As the supervisory arm of the FIAU with regards to the gaming industry, the MGA's unit carries out AML inspections, and is now making better use of information that emerges following research triggered by information requests from FIAU, the Asset Recovery Bureau, Malta Police Force, and the Law Courts, as well as information that stems from the MGA's own prudential supervisory action in order to better inform MGA and FIAU joint action.

The **Maltese Business Registry** (MBR) plays a pivotal role in ensuring that Malta-registered companies are not used for money laundering and/or financing of terrorism. Companies are required to provide up-to-date information about their beneficial ownership and on basic data. Taking a robust approach, the MBR began striking off non-compliant companies. Defunct procedures have been initiated against 10,207 companies of which 9,943 have been struck off.

Currently, the register of beneficial owners of companies is 90% populated with only 10% of companies being in default. In April 2020 MBR issued reminder notices to these companies. The MBR will now take action against these companies that are in default by striking them off from our Register in terms of the new regulations issued under the Companies Act (Register of Beneficial Owners) Regulations.



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Contributing Institutions

