

Lill-Maġistrat tal-Għassa

Rikors ta' Marion Pace Ascjak (ID Numru 315654M); Robert Aquilina (ID Numru 313178M); Samira Davis (ID Numru 50997A); Simon Sansone (ID Numru 33276M) u Emanuel Delia (ID Numru 560176M) f'isimhom proprja u f'isem l-għaqda tas-soċjeta' ċivili magħrufa bħala REPUBBLIKA li tinsab fil-proċess ta' registrazzjoni bħala għaqda volontarja, skont il-liġi, li bil-gurament jikkonfermaw.

Jesponi bil-qima:-

Illi fit-13 ta' Marzu 2013, ingħata l-gurament ta' hatra l-Onor. Konrad Mizzi bħala Ministru tal-Energija filwaqt li dik il-gimgha stess is-Sur Keith Schembri gie appuntat Chief of Staff tal-Prim Ministru;

Illi l-għada, cioe fl-14 ta' Marzu 2013, il-partner f'Nexia BT, Karl Cini bagħat email lis-soċjeta Mossack Fonseca fil-Panama, biex jinbenda l-proċess biex jinfethu "kumpaniji fil-Panama u possibilment trust"; (DOK1)

Illi Nexia BT hija ditta ta' accountants u awdituri, li l-*Managing Director* tagħha huwa Brian Tonna, li ingħatat u għadha qed tingħata għadd notevoli ta' *direct orders* minn diversi Ministeri, fosthom l-Uffiċju tal-Prim Ministru kif ukoll il-ministeru mmexxi mill-Onor. Konrad Mizzi, għal servizzi li jvarjaw minn rapporti dwar latrini pubbliċi għal konsulenza addirittura fil-forma ta' parteċipazzjoni, permezz ta' Brian Tonna, fuq il-Bord ta' Għażla tal-konsorzju għall-bini tal-Power Station tal-gass, proġett valutat vicin in-nofs biljun ewro u li kien il-wegħda elettorali ewlenija tal-Prim Ministru Joseph Muscat qabel l-elezzjoni ġenerali tal-2013;

Illi fil-21 ta' Marzu 2013, Karl Cini bagħat *reminder* lil Mossack Fonseca. Fl-istess email huwa kiteb ukoll biex isir il-persuna ta' kuntatt (*contact person*) il-ġdid għal 3 kumpaniji oħra registrati fil-*British Virgin Islands*, li huma proprjeta' ta' Keith Schembri, Malcolm Scerri (li jmexxi l-kumpaniji privati ta' Keith Schembri) u s-Sur Adrian Hillman (dak iż-żmien *Managing Director* tal-kumpanija sid il-gazzetta *The Times of Malta*), u jitlob biex is-sidien jinhbew wara "*nominee shareholders*"; (DOK1)

Illi fil-25 ta' Marzu 2013, l-istess Karl Cini reġa kiteb lil Mossack Fonseca fejn ikk-jarifika li l-benefiċjarju aħhari tal-kumpanija jew kumpaniji li ried jirreġistra fil-Panama ma kienx se tkun Nexia BT iżda individwu ieħor li dwar dan kien se jgħaddi l-informazzjoni kollha permezz ta' telefonata *Skype*; (DOK2)

Illi jirriżulta illi l-benefiċjarju aħhari ta' waħda minn dawn il-kumpaniji registrati fil-Panama fl-2013 bl-isem ta' Tillgate INC kien ic-*Chief of Staff* tal-Prim Ministru, Keith Schembri; (DOK3) filwaqt li l-benefiċjarju aħhari ta' kumpanija oħra registrati fil-Panama fl-istess jiem fl-2013 bl-isem ta' Hearnville INC kien ħadd għajr il-Ministru Konrad Mizzi. Dan sar fi żmien meta huwa kienu diġa kienu jokkupaw kariga pubblika u pożizzjoni ewlenija fil-Gvern u b'poter wiesa' ta' deċiżjonijiet importanti f'idejhom; (DOK4)

Illi jirriżulta wkoll li fl-2015, kemm Mizzi kif ukoll Schembri fethu anki *trust* kull wiehed u fl-istess jiem fi *New Zealand* sabiex fihom ipoġġu l-kumpaniji tagħhom rispettivi registrati fil-Panama u b'hekk jiżguraw '*layering*' addizzjonali ta' segretezza; (DOK3 u DOK4)

Illi fl-applikazzjoni ta' dawn il-kumpaniji, ġew immarkati l-kaxxi li jitolbu "*No Audit*" (biex ma jsirx awditjar) u "*Total Secrecy and Confidentiality*" (biex jinżammu f'segretezza u kunfidenzjalita' assoluta, u l-informazzjoni ma tingħata lill-ebda awtorita' oħra), indikazzjoni ulterjuri ta' *layering* u ta' ħtieġa ta' segretezza li insistew fuqha kemm Mizzi kif ukoll Schembri;

Illi filwaqt li Konrad Mizzi stqarr diversi drabi pubblimanet li l-kumpanija tiegħu fil-Panama kienet infetħet sempliċement biex jużaha billi fiha jpoġġi l-beni personali tal-familja, jirriżulta li dan assolutament mhux minnu u li l-kumpanija nfetħet għal skop kummerċjali sa mill-bidunett; (DOK5)

Illi fl-istess ġimgha, Nexia BT tirregistra wkoll il-kumpanija *Torbridge Services Inc*, din il-darba fil-*British Virgin Islands* (BVI);

Illi fit-12 ta' April 2013 tnehħa mill-kariga il-Kummissarju tal-Pulizija John Rizzo mingħajr ebda raġuni;

Illi f'Mejju 2013 Mossack Fonseca fethu uffiċċju tagħhom f'Malta, bl-ishma jgħajjtu 100% lil Brian Tonna. L-uffiċċju kellu l-istess indirizz ta' Nexia BT f'San Ġwann;

Illi fit-8 ta' Lulju 2013, żewġ kumpaniji ta' Mossack Fonseca (*Dubro Limited SA* u *Aliator SA*) jiffirmaw u jassenjaw żewġ ishma fil-kumpanija *Egrant INC* lil '*bearer*', li jfisser li kwalunkwe persuna li għandha l-pussess ta' dan iċ-ċertifikat ta' assenjazzjoni ta' ishma tista' titqies bħala sid jew benefiċjarja tal-ishma fil-kumpanija *Egrant INC*, anki din indikazzjoni klassika ta' *layering* u segretezza assoluta; (DOK6)

Illi fid-9 ta' Lulju 2013, l-istess żewġ kumpaniji ta' Mossack Fonseca (*Dubro Limited SA* u *Aliator SA*) jiffirmaw u jassenjaw żewġ ishma fil-kumpanija *Hearnville INC* lil '*bearer*', li jfisser li kwalunkwe persuna li għandha l-pussess ta' dan iċ-ċertifikat ta' assenjazzjoni ta' ishma tista' titqies bħala sid jew benefiċjarja tal-ishma fil-kumpanija *Hearnville INC*; (DOK7)

Illi huwa mifhum li fid-dokumenti mikxufa f'*PanamaPapers* f'April 2016 hemm ukoll kopja ta' ċertifikat *bearer* simili għal dawk hawn fuq imsemmija li din id-darba jassenja żewġ ishma fil-kumpanija *Tillgate INC* lil kwalunkwe persuna li għandha l-pussess ta' dan iċ-ċertifikat ta' assenjazzjoni ta' ishma u li allura tista' titqies bħala sid l-ishma fil-kumpanija *Tillgate INC*;

Illi dan ifisser li fl-istess jiem li ġew reġistrati il-kumpaniji *Hearnville Inc*, *Tillgate Inc* u *Egrant Inc* fil-Panama, inħargu ċertifikati *bearer* għal kull waħda minnhom sabiex effettivament il-kumpaniji jkunu jappartjenu mhux lil Brian Tonna, mhux lil Nexia BT iżda lil kwalunkwe persuna li kellha l-pussess taċ-ċertifikat *bearer* f'idejha;

Illi skont rapport tal-*Financial Intelligence Analysis Unit* (FIAU) li ġie preżentat quddiem il-Maġistrat Francesco Depasquale f'rikors quddiemu magħmul mill-Onor Simon Busuttil u l-ewroparlamentari David Casa, u li kopja awtentika tiegħu tista' tintalab direttament mill-Qorti mingħand l-FIAU, il-kumpanija *Hearnville INC* kienet proprjeta' ta' Konrad Mizzi sa minn meta giet reġistrata fl-2013 u mhux kif dejjem sostna b'mod qarrieq Konrad Mizzi li huwa sar sid il-kumpanija *Hearnville INC* fl-2015; (DOK8)

Illi f'Ottubru 2013 Socar, il-kumpanija statali tal-enerġija tal-Gvern tal-Ażerbajġan, flimkien ma kumpanija mill-Afrika bl-isem GASOL u grupp ta' investituri Maltin, rebhu l-kuntratt tal-*powerstation* il-ġdid tal-gass fost kontroversja dwar kif kienu saru l-affarijiet;

Illi fil-board ta' għażla tal-kuntratt multi-miljunarji għall-bini tal-*power station* ġdida kien hemm Brian Tonna;

Illi f'Diċembru 2013 il-kumpanija li opera taħtha il-bank magħruf bħala *Pilatus Bank* giet reġistrata f'Malta u ftit wara ingħatat liċenzja biex topera il-bank Pilatus Bank, li lllum il-liċenzja tiegħu sfiat revokata mill-Bank Ċentrali Ewropew, li sidu huwa Ali Sadr Hasheminejad, Iranjan li meta ngħata liċenzja ta' bank kellu biss 32 sena, li juża passaporti differenti mahruġa fost l-oħrajn minn St Kitts u Nevis u li f'Marzu tal-2018 spiċċa arrestat fl-Istati Uniti u mressaq il-qorti fl-Istati Uniti fejn gie mixli b'diversi reati u li jekk jinstab hati għalihom iwasslu għal piena total ta' 125 sena ħabs; illi skont rapport tal-FIAU il-liċenzja ta' dan il-bank ingħatat wara interess personali minn Keith Schembri; (DOK15)

Illi fi Frar 2014 *Torbridge Services Inc* giet trasferita mingħand Brian Tonna għal għand ċertu Cheng Chen, uffiċċjal għoli fis-*Shanghai Electric Power* li kien innegozja direttament u personalment ma' Konrad Mizzi il-bejgħ tal-*Enemalta* lil *Shanghai Electric Power* (SEP);

Illi fl-11 ta' Marzu 2014, appuntu, ix-Shanghai Electric Power iffirmit il-ftehim ma' Konrad Mizzi, Ministru tal-Energija f'isem il-Gvern Malti, biex tixtri l-powerstation tal-BWSC għal €220 miljun u 33% tal-Enemalta għal €100 miljun;

Illi f'Diċembru 2014, il-Prim Ministru Joseph Muscat, il-Ministru Konrad Mizzi, Keith Schembri u s-Sur Kurt Farrugia, responsabbli mill-komunikazzjoni fl-Uffiċċju tal-Prim Ministru, żaru l-Ażerbajġan għal laqgħat mal-President tal-Ażerbajġan u li kuntrarjament għal dak li dejjem sar fuq iżjara tal-Prim Ministru, għaliha ma attenda l-ebda ġurnalist Malti, l-ebda membru tal-korp diplomatiku u l-ebda membru tas-servizz pubbliku Malti, u li matulha gie ffirmat ftehim ta' xiri ta' *fuel* mingħajr hadd mill-Kumitat tax-Xiri tal-*Fuel* kien preżenti. Il-poplu Malti sar jaf b'din iż-żjara biss minn fuq il-media tal-Ażerbajġan;

Illi fi Frar 2015 gie publikat il-Kodiċi tal-Etika Ministerjali l-ġdid fejn, bla mistenni, tneħħa l-obbligu li Ministru jiddikjara anke' l-assi li jkunu f'isem martu jew żewġha skont il-każ;

Illi f'Marzu 2015 l-Uffiċċju tal-Awditur Ġenerali (l-NAO) ippublika rapport fuq il-*hedging agreements* tal-2014 u fih ikkritika lill-Ministru Konrad Mizzi tal-indhil Ministerjali bla precedent fix-xiri tal-*fuel*, filwaqt li ikkonferma li l-Enemalta tilfet €14.1 miljun minn dan il-ftehim;

Illi f'April 2015 il-Prim Ministru Joseph Muscat rega' mar l-Ażerbajġan u għal darb'ohra ma kien akkumpanjat minn l-ebda ġurnalist jew impjegat taċ-ċivil jew tal-korp diplomatiku;

Illi fis-16 ta' Ġunju 2015 il-Ministru Konrad Mizzi iffirma *statement* lil Nexia BT li permezz tagħha jikkonferma li l-iskop ta' *Hearnville Inc* huwa unikament skop ta' konsulenti u senseriji u mhux skop personali, indikazzjoni ċara li Mizzi kien qed jigdeb ripetutamente, anki bil-ġurament, dwar l-iskop tal-kumpanija tiegħu fil-Panama; (DOK5)

Illi fit-22 ta' Lulju 2015 il-kumpanija registrata fil-Panama tal-Ministru Konrad Mizzi (*Hearnville Inc*), giet trasferita fi trust fi New Zealand (DOK5A), indikazzjoni ċara ta' *layering*, filwaqt li fl-istess jum Gasol tbiegħ l-ishma tagħha fl-Electrogas lill-kumpliment tal-partners fil-konsorzju, għal somma mhux magħrufa (imma li skont il-ġurnal *The Malta Independent* kienet tlaħhaq l-għexieren ta' miljuni ta' ewro);

Illi l-kumpanija li kellha l-Gasol hija jew kienet ukoll klijent ta' *Mossack Fonseca*;

Illi matul Awwissu tal-2015, Karl Cini talab permezz ta' *emails* u wara diversi tentativi u ħafna pressjoni akkwista mingħand *Mossack Fonseca* l-inkartament tad-dokumenti tal-kumpaniji *Tillgate INC* u *Hearnville INC* sabiex, fi kliemu, Keith Schembri u Konrad Mizzi ikunu jistgħu jieħduhom huma stess personalment fid-Dubai sabiex jifihū kont bankarju fid-Dubai; (DOK8)

Illi skont ir-rapport tal-FIAU hawn fuq imsemmi, Konrad Mizzi effettivament kien jinsab fid-Dubai fis-27 t'Awwissu 2015; illi dan juri li Konrad Mizzi gideb meta qal li qatt ma fetaħ kont bankarju barra minn Malta għall-kumpanija u/jew trust tiegħu (DOK18 pagna 9 “He insisted that the trust never opened a bank account.”) u juri bla ebda ombra ta' dubju li dak li hemm miktub fl-*emails* ta' Karl Cini ma kienx xi haġa li Cini vvinta minn żniedu iżda kien qed jaġixxi b'komunikazzjoni stretta ma' u struzzjonijiet minn għand Konrad Mizzi u Keith Schembri; (DOK9)

Illi f'Settembru 2015 għaddew diversi *emails* bejn Karl Cini u *Mossack Fonseca* fejn hareġ li Nexia BT kienet għamlet bosta tentattivi biex tiftaħ kontijiet f'postijiet differenti għall-kumpaniji sigrieti u mhux fid-Dubai biss, mill-ġdid indikazzjoni cara ta' *layering*; (DOK10)

Illi fis-17 ta' Ottubru 2015, Karl Cini baghat email lil *Mossack Fonseca* biex jispjega li l-kumpaniji imsemmija ta' Konrad Mizzi u Keith Schembri kienu ser jintużaw għal operazzjonijiet ta' "riciklaġġ u remote-gaming", indikazzjoni cara oħra li Konrad Mizzi gideb meta qal u insista, anki taħt għurament, li l-kumpanija kien fetaħha għal skop personali u mhux għal skop ta' attivita' ta' natura kummerċjali; (DOK10)

Illi fis-26 ta' Novembru 2015 Karl Cini baghat *email* lil *Mossack Fonseca* jistaqsi fuq il-kriterji biex ikun jista' jinfetaħ kont bankarju għal Schembri u Mizzi barra minn Malta u b'mod partikolari dwar il-ħtieġa jew kundizzjoni ta' depositu ta' miljun dollaru Amerikan li kien qed jitlob wiehed mill-banek indikat minn *Mossack Fonseca*. B'mod partikolari Cini staqsa jekk dan id-depożitu hux meħtieġ biss għall-ewwel depożitu jew jekk hemmx bżonn li jithalla fil-kont l-ammont ta' miljun dollari bhala *running balance* fuq bażi kontinwa; (DOK10)

Illi fit-2 ta' Diċembru 2015, minkejja li l-bank qallu li kemm id-depożitu kif ukoll ir-*running balance* irid ikun ta' miljun dollaru fis-sena jew f'dawk l-akwati, Karl Cini jikkonferma li għab il-konferma (“*go ahead*”) ta' Schembri u Mizzi biex jinfethu dawn il-kontijiet għal "dawk iż-żewġ kumpaniji fil-Panama" u dan meta hu fatt magħruf li l-introjtu tal-Ministru Mizzi u tac-Chief of Staff tal-Prim Ministru huma ferm u ferm u ferm inqas minn dan biex qatt jiġġustifika kif setgħu jibdeu jagħmlu tali depożiti annwalment; (DOK10)

Illi terġa, fis-17 ta' Diċembru 2015 f'*email* dettaljata, Karl Cini jagħti r-raġunijiet għaliex infethu l-kumpaniji sigrieti fil-Panama minn Keith Schembri u Konrad Mizzi u hawn jiżvela li dawn infethu sabiex jirċievu xejn anqas minn €5,000 kuljum jew €150,000 fix-xahar jew madwar €2,000,000 fis-sena mingħand żewġ kumpaniji biss klienti tagħhom (*target clients*) u cioe' il-kumpaniji *17 Black Limited* u *Macbridge Limited*, it-tnejn reġistrati fid-Dubai; (DOK11)

Illi fl-istess *email* tas-17 ta' Diċembru 2015, Cini kiteb ukoll lil *Mossack Fonseca* li s-soċjetajiet fil-Panama tal-Ministru Mizzi u ta' Keith Schembri kellhom joperaw fis-

settur marittimu u tas-sajd fil-Bangladesh, turizmu fl-Asja, proġetti ta' infrastruttura fl-Afrika u l-Indja kif ukoll remote gaming u riciklagg ta' skart, u dan meta s-sidien tal-kumpaniji msemmija kienu Ministru tal-Gvern Malti u Chief of Staff tal-Prim Ministru li suppost ma setgħu jagħmlu xejn hlief ix-xogħol tal-kariga pubblika tagħhom; illi inoltre din hija addirittura prova oħra ta' kemm Konrad Mizzi gideb, anki taħt ġurament, meta qal li l-kumpanija fil-Panama fetahha biex fiha jpoġġi l-beni jew assi tal-familja għax għandu "international family";

Illi l-*emails* u dokumenti li huma parti mid-data estensiva mis-servers ta' *Mossack Fonseca* li ħarġu fil-*Panama Papers* u li għaddew mingħand *whistleblower* lill-konsorzju ta' ġurnalisti investigattivi *International Consortium of Investigative Journalists* (ICIJ) jieqfu fid-bidu ta' Frar 2016 cioe' ftit jiem biss qabel Daphne Caruana Galizia kixfet kollox fuq is-sit tagħha daphnecaruana.galizia.com;

Illi effettivament, fit-22 ta' Frar 2016, Daphne Caruana Galizia bdiet tikxef lil Konrad Mizzi u Keith Schembri (<https://daphnecaruana.galizia.com/2016/02/if-the-hat-fits-wear-it/>);

Illi mhux magħruf meta il-Prim Ministru Joseph Muscat sar jaf b'dan kollu iżda, li hu żgur huwa li l-Prim Ministru irrifjuta lil jkeċċi lil Mizzi u lil Schembri mill-karigi pubbliċi tagħhom, anzi zammhom f'kariga pubblika anki wara l-elezzjoni ta' Ġunju 2017 u addirittura irrifjuta ripetutament li jiftaħ inkjesta pubblika ai termini tal-Att dwar l-Inkjesti Pubbliċi u allura dan iqajjem il-mistoqsija ta' meta, jekk u kemm l-Onor. Joseph Muscat kienx jaf jew kienx kompliċi f'dak kollu li sar, bhala minimu, kompliċita' sabiex ma ssirx ġustizzja;

Illi fl-24 ta' Frar 2016, il-Ministru Konrad Mizzi ddikjara li hu fetah trust f'New Zealand biex tiġi hodi l-affarijiet tal-familja pero heba l-fatt li din iżżomm kumpanija reġistrata fil-Panama. Minn dokumenti li ħarġu wara, jirriżulta li dak li qal l-Onor Mizzi assolutament mhux minnu; aktar tard l-istess Mizzi baqa' jirrepeti din il-gidba anki taħt ġurament fil-Qorti; (DOK4, DOK11, DOK12 u DOK14)

Illi fis-27 ta' Frar 2016 sar magħruf li anki c-*Chief of Staff* tal-Prim Ministru, Keith Schembri, 'kumbinazzjoni' kellu l-istess strutturi eżatt bħal Konrad Mizzi, cioe' trust fi New Zealand li taħbi fiha kumpanija reġistrata fil-Panama; (<https://daphnecaruana.galizia.com/2016/02/breaking-now-konrad-mizzi-keith-schembri-the-deal-in-baku-and-why-youre-paying-so-much-for-your-fuel/>)

Illi fit-3 ta' April 2016 l-*ICIJ* ippubblikaw il-*Panama Papers* mad-dinja kollha, u kienu jikkonsistu f'xejn anqas minn 11.5 miljun dokument u *email* li ġew mgħoddija mis-servers ta' *Mossack Fonseca* permezz ta' *whistleblower* lill-konsorzju ICIJ; illi aktar tard l-awtoritajiet Ġermaniżi offrew lill-awtoritajiet Maltin access shih għad-data ta' *Panama Papers* u din id-data tista' faċilment tintalab minn din l-onorabbli Qor-

ti sabiex tivverifika l-awtentiċità tad-dokumenti esebiti u possibbilment takkwista saħanistra aktar materjal minn dak hawn esebiti;

Illi fis-27 ta' April 2016 Michael Cassar irriżenja minn Kummissarju tal-Pulizija f'it siegħat biss wara li rċieva rapport tal-FIAU fuq dawn il-kumpaniji sigrieti liema rapport kien jindika li kellhom jinbdeu investigazzjonijiet kriminali mill-Pulizija fuq suspett raġjonevoli ta' hasil ta' flus mill-Ministru Konrad Mizzi u miċ-*Chief of Staff* tal-Prim Ministru Keith Schembri;

Illi sa llum għadhom ma ttiehdu l-ebda passi mill-Pulizija, u mhux magħruf jekk effettivament qatt inbdeu investigazzjonijiet u jekk f'dak il-każ, jekk qatt tlestewx; anzi f'numru ta' okkażjonijiet intqal mill-Pulizija li m'hemmx x'tinvestiga u dan minkejja numru ta' rapporti tal-FIAU li ntbagħtu lill-Pulizija għall-investigazzjoni tagħha;

Illi fit-2 ta' Awwissu 2016, irriżenja l-Kap tal-FIAU, Manfred Galdes, li taħt it-treġġja tiegħu l-FIAU kienet lestiet investigazzjoni fid-dettal li wasslet għar-rapport li huwa kien ta lill-allura Kummissarju tal-Pulizija Michael Cassar fis-26 jew 27 ta' April 2016;

Illi fis-16 t'Ottubru 2017 giet assassinata brutalment Daphne Caruana Galizia li kienet kixfet l-iskandlu ta' PanamaPapers u sa llum għadu mhux magħruf min ordna l-qtil tagħha;

Illi fit-18 t'April 2018, il-proġett DaphneProject, kompost minn numru ta' ġurnalisti minn madwar id-dinja li nġhaqdu flimkien sabiex ikompli l-investigazzjonijiet ta' Daphne Caruana Galizia wara li din inqatlet, kixef l-*email* (parti mill-emails ta' PanamaPapers) li Karl Cini kien baġat lil *Mossack Fonseca* fis-17 ta' Diċembru 2015 u li fiha kien stqarr li l-kumpaniji ta' Mizzi u Schembri kienu se jirċievu €5,000 kuljum jew €150,000 fix-xahar mingħand il-kumpanija *17 Black* (DOK11) u kixef ukoll li l-istess kumpanija *17 Black* kienet dahħlet is-somma ta' €1.3 MILJUN mingħand kumpanija marbuta mal-*power station* ġdida u kumpanija registrata fis-*Seychelles* imsejha *Mayor Trans* ta' xi hadd mill-Ażerbajġan; (<https://www.timesofmalta.com/articles/view/20180418/local/mizzi-and-schembris-panama-target-client-received-16-million.676783>)

Illi di piu, l-FIAU ukoll ikkonfermat (DOK9) u dan issa magħruf wara r-rivelazzjonijiet mill-media lokali u barranija, li f'Lulju 2015 xejn inqas minn €161,000 intbagħtu lil *17 Black* minn *Orion Engineering Ltd*, soċjeta proprjeta ta' ċertu Mario Pullicino mill-Mellieħa, li hija l-aġent lokali għall-*Floating Storage Unit* tat-*tanker* tal-gass tal-LNG ankrat fil-bajja ta' Marsaxlokk, u dan meta mhux suppost hemm ebda rabta bejn is-soċjetajiet *17 Black Limited* u *Orion Engineering Limited*;

Illi l-€1.3 MILJUN intbagħtu lil *17 Black Limited* f'Novembru 2015 permezz tal-bank ABLV, bank fil-Latvja li d-Dipartiment tat-Teżor Amerikan f'it xhur ilu ddikjara

li huwa magna ta' hasil ta' flus għal politiċi korrotti u fil-fatt għe magħluq bl-intervent tal-Bank Ċentrali Ewropew;

Illi l-awtoritajiet Amerikani responsabbli mill-ġlieda kontra l-hasil tal-flus identifikaw transazzjonijiet lejn *17 Black Limited* bhala “*shell company activity, suspicious wire transfers and money laundering*”; aktar ċar minn hekk ma tistax tkun;

Illi permezz ta' stqarrija ufficjali li c-Chief of Staff tal-Prim Ministru hareg, permezz tad-DOI, b'reazzjoni għal dak li nkixef fit-18 t'April 2018, Keith Schembri ammetta li iva, kellu pjani ta' negozju ma' *17 Black Ltd* u *Macbride Ltd* fejn qal li dawn kienu “*potential clients of his business group*”, ammissjoni lampanti li kien hemm tabilhaqq rabta bejn Schembri u *17 Black* u *Macbride* li minn għandhom kien mistenna jdaħħal €5,000 kuljum; (DOK13)

Illi fid-9 ta' Novembru 2018, l-aġenzija internazzjonali tal-aħbarijiet *Reuters* kif ukoll it-*Times of Malta* kixfu li sid il-kumpanija *17 Black* registrata fid-Dubai u li minn għandha kienu se jithallsu €5,000 kuljum lil Keith Schembri u Konrad Mizzi mhu hadd hlief Yorgen Fenech, wiehed mis-sidien tal-power station il-ġdida li kienet il-wegħda elettorali ewlenija tal-Prim Ministru Joseph Muscat fl-2013: (ara <https://www.timesofmalta.com/articles/view/20181109/local/exclusive-17-black-owner-identified-as-local-power-station-businessman.692998>) u (<https://www.reuters.com/article/us-malta-daphne-offshore-exclusive/exclusive-mystery-company-named-by-murdered-maltese-journalist-is-linked-to-power-station-developer-idUSKC-NINE18M>)

Illi b'hekk huwa fatt inkonfutabbli li fil-kumpaniji ta' Mizzi u Schembri kienu se jidhlu €5,000 kuljum jew €150,000 fix-xahar minghand Yorgen Fenech u għaldaqstant il-mistoqsija tqum għaliex kien se jithallsu dawn il-flus u tqum ukoll il-mistoqsija dwar kif u minn fejn qed jgħaddu llum dawn il-flus;

Illi mir-rapport tal-*Financial Intelligence Analysis Unit* (FIAU) immarkat DOK9 u li kopja awtentika tiegħu tista' tinkiseb direttament mill-qorti minghand l-FIAU, joħorġu bosta konklużjonijiet skjaċċanti li anki waħda biss minnhom messha waslet għal passi immedjati kontra Konrad Mizzi u Keith Schembri, fosthom:

- illi Konrad Mizzi għandu jiġi investigat fuq hasil ta' flus, li hija l-konklużjoni prinċipali tar-rapport tal-FIAU.
- illi l-kumpanija li minnha Konrad Mizzi u Keith Schembri kienu se jdaħħlu €5,000 kuljum jew €150,000 fix-xahar (*17 BLACK Ltd*), daħhlet flus mill-kumpanija li għandha t-tanker tal-gass tal-LNG li jinsab ankrat f'Marsaxlokk.
- illi *17 BLACK Ltd* daħhlet mill-anqas miljun u nofs dollaru (inkluż minghand Mario Pullicino u mill-Ażerbajġan).
- illi Konrad Mizzi kien is-sid ta' *Hearnville INC* sa minn meta nfethet fl-2013 u mhux mill-2015, kif ilu jgħid, anki taħt gurament li issa jirriżulta li kien gurament falz.

- illi Konrad Mizzi iffirma l-kuntratt tal-LNG personalment.
- illi l-attentati li saru biex jifthū *bank account* barra saru fl-istess żmien li saru d-deals tal-*Enemalta*.
- illi baqgħu jippruvaw jifthū bank account barra sa ftit jiem biss qabel Daphne Caruana Galizia kixfet li għandhom kumpanija sigrieta fil-Panama.
- illi Mizzi u Schembri assolutament ma riedux jikxfu mal-banek Maltin li kienu se jifthū *bank accounts* barra.
- illi Konrad Mizzi mar id-Dubai personalment biex jiftaħ *bank account* hemm.
- illi Mizzi u Schembri huma shab fin-negozju.
- illi Mizzi mar iċ-Ċina 17-il darba f'sentejn.
- illi Mizzi u Schembri kienu lesti jhallsu \$4,500 f'*fees* sempliċement biex jifthū *bank account* barra minn Malta u 'l bogħod mill-lenti tal-iskrutinju pubbliku.
- illi l-ispiza biex iżzomm kumpanija fil-Panama ma tistax tkun ġustifikata b'salarju ta' Ministru jew bl-assi dikjarati minn Konrad Mizzi.
- illi fid-dikjarazzjoni tal-assi tiegħu fil-Parlament, Konrad Mizzi iddikjara aktar dħul milli kien fil-fatt qed idahħal u allura għamel dikjarazzjoni falza.
- illi Mizzi gideb ripetutament lill-Membri tal-Parlament Ewropew li ġew Malta.
- illi Nexia BT ma kellhom l-ebda *instructions* bil-mitkub mingħand Mizzi u Schembri u kollox sar biss bil-fomm u dan ikompli jitfa dell fuq dak li kienu qed jagħmlu.
- illi Cheng Chen, iċ-Ċiniż li nnegozja l-bejgħ tal-Enemalta ma Mizzi kien qed jistenna li jdaħħal \$1 miljun dollaru ftit wara li sar id-deal, f'kumpanija sigrieta fil-BVI li fetahlu wkoll Brian Tonna.
- illi l-FIAU għandha wkoll suspetti kbar fuq id-*deal* li għamel Konrad Mizzi fil-Montenegro fuq *power station* hemm.
- illi Karl Cini heba mill-FIAU minn kienu s-sidien vera tal-kumpaniji li fetah fil-Panama, u
- illi Nexia BT iffalsifikaw dokumenti.

Illi l-istess FIAU ikkonkludiet li dawn l-attivitajiet kollha kienu jindikaw suspett ragjonevoli ta' hasil ta' flus "*and/or the existence of the proceeds of crime*" iżda waqqfet hemm u ma hadet ebda passi u milli jidher, lanqas biss għaddiet dan ir-rapport partikolari tagħha lill-Kummissarju tal-Pulizija għall-investigazzjoni tal-Pulizija;

Illi huwa magħruf li l-Ministru Mizzi insista biex fl-14 ta' April 2015 jiffirma hu personalment il-ftehim bejn il-Gvern Malti u *SOCAR Trading* għall-provvista ta' LNG lil *Electrogas* għat-18-il sena li ġejjin meta mhuwiex prassi li Ministru jiffirma ftehim

bhal dan flok l-ufficjali relevanti. L-FIAU tant rat dan il-fatt bhala wiehed stramb u suspettuż li staqsiet lil Ministru Mizzi għala kellu dan l-interess personali kollu f'dan il-kuntratt multi-miljunarju bejn żewġ entitajiet li taw l-esklussivita lis-SOCAR (socjeta tal-Gvern tal-Azerbajġan) għal 18-il sena u sabet ukoll li dan il-ftehim kien imbagħbas (*tampered*);

Illi matul dan il-perjodu in kwistjoni, l-Ministru Mizzi kien il-Ministru tal-Energija, iżda anki wara l-elezzjoni ta' Ġunju 2017, meta sar Ministru tat-Turiżmu baqa', b'mod mill-aktar stramb, jintervjeni, jinneozja u anki joħroġ stqarrijiet ufficjali b'rabta mal-*power station* li taqa' f'dekasteru li suppost ma kellux aktar x'jaqsam miegħu;

Illi sija l-Ministru Mizzi u Keith Schembri kienu intimament involuti fil-proġett tal-*power station* f'Marsaxlokk u t-tnejn li huma siefru kemm-il darba lejn l-Azerbajġan b'mod klandestin, fosthom mal-Prim Ministru Joseph Muscat mingħajr ebda ufficjali tas-servizz pubbliku jew ġurnalisti jakkumpanjawhom;

Illi s'issa għadu mhux magħruf min hu sid il-kumpanija registrata fid-Dubai bl-isem ta' *Macbridge Limited*, li flimkien ma' 17 Black Limited kienet se thallas €5,000 kuljum ossia €150,000 kull xahar lil Schembri u Mizzi filwaqt li m'hemmx dubju li kemm Karl Cini, Brian Tonna, Keith Schembri, Konrad Mizzi u anki l-istess Prim Ministru Joseph Muscat lkoll qed jirrifjutaw jghidu ta' min hi din il-kumpanija minkejja li jafu ben tajjeb jew messhom jafu ta' min hi;

Illi huwa fl-aqwa interess tal-ġustizzja li jsir magħruf bla aktar dewmien min hu/hi/huma sid il-kumpanija *Macbridge Limited*;

Illi d-ditta *Mossack Fonseca* issa inghalqet wara li giet dikjarata korrotta u kriminali fil-Panama filwaqt li s-sidien tagħha u bosta ufficjali tad-ditta, qed jistennew li jitressqu b'akkużi ta' bosta reati kriminali fosthom hasil ta' flus u frodi;

Illi fit-twegiba tiegħu għall-Interpellanza Parlamentari numru 5261 tal-Onor Simon Busuttil, il-Ministru Mizzi ċaħad kwalsiasi rabta mas-socjeta *17 Black Limited* meta issa huwa imgiddeb mill-*email* ta' Karl Cini tas-17 ta' Diċembru 2015 fejn hareġ ċar li Mizzi kien se jithallas €5,000 ossia €150,000 fix-xahar mill-kumpaniji *17 Black* u *Macbridge Ltd*; (DOK11)

Illi fir-reazzjonijiet pubbliċi tagħhom, kemm Konrad Mizzi kif ukoll Keith Schembri mhux biss inqabdu jigdbu iżda saħansitra inqabdu jgiddbu lilhom infushom. Tant illi għall-ewwel, Keith Schembri, Chief of Staff tal-Prim Ministru, kien qal li Daphne Caruana Galizia kienet gidbet fuqu meta harget bl-aħbar, fiwaqt li issa ammetta li *17 Black Ltd* u *Macbridge Ltd* kienu parti mill-*business plans* tiegħu. Dan filwaqt li Konrad Mizzi ma ammetta qatt li kien f'negozju ma Schembri u baqa' jghid li l-kumpanija tiegħu kienet intiza għal skop personali u familjari meta issa huwa mgiddeb mid-dokumenti hawn fuq imsemmija u esebiti ma' dan ir-rikors;

Illi huwa ċar li, bhala minimu, il-pjani ta' Konrad Mizzi u Keith Schmbri, kienu pjani ta' evażjoni ta' taxxa f'Malta, filwaqt li aktar verosimilment, il-pjani tagħhom kienu

ben aktar nefasti minn hekk, inkluż reati jew attentati ta' reati kriminali ta' korruzzjoni, tixhim, dhul ta' flus minn sorsi illeċiti u hasil ta' flus;

Illi huwa ċar ukoll li Nexia BT, permezz ta' Karl Cini u/jew Brian Tonna, ripetutament ħbiet u qarrqet bl-FIAU meta Karl Cini gideb u ta dikjarazzjoni falza dwar il-verita' jew heba l-identita' tas-sidien tal-kumpaniji sigrieti fil-Panama ta' Keith Schembri u Konrad Mizzi u naqas ukoll milli jgħaddi lill-FIAU il-korrispondenza sħiħa dwar il-kumpanija tagħhom fil-Panama;

Illi Karl Cini gideb u ta dikjarazzjoni falza wkoll lil FIAU, kontra dak li huwa suppost għamel skond il-ligi bhala *Money Laundering Reporting Officer (MLRO)* ta' Nexia BT, li "*all instructions and discussions with the clients were verbal*", meta huwa ovvju li transazzjonijiet bħal dawn kienu jehtiegu rekord bil-miktub minghand il-klijenti tiegħu;

Illi Karl Cini naqas ukoll bhala *MLRO* għaliex messu mill-ewwel irraporta lill-FIAU li ċ-*Chief of Staff* tal-Prim Ministru u Minstru ewlieni tal-Gvern kienu talbuh jifthilhom kumpanija sigrieta fil-Panama; huwa naqas ukoll minn dmirijietu bhala *MLRO* meta issa sar maghruf li lil FIAU ħbielha apposta, minkejja mitlub mill-FIAU, l-*email* tiegħu lil *Mossack Fonseca* tat-2 ta' Diċembru 2015 fejn kiteb "*go ahead to start the opening of the accounts for those 2 Panama Companies..tnx*"; (DOK10)

Ir-rapport tal-Uffiċċju tal-Awditur Ġenerali tat-28 ta' Novembru 2018

Illi fit-28 ta' Novembru 2018, l-Uffiċċju tal-Awditur Ġenerali (NAO) ippublika rapport ta' 500 paġna bl-eżitu tal-investigazzjoni li huwa għamel fil-kuntratt tal-*power station* tal-gass lil Electrogas (<https://nao.gov.mt/en/press-releases/4/211/an-investigation-of-matters-relating-to-the-c>) li fih instab:

1. Li l-kuntratt iffirmit mill-Enemalta u allura mill-Ministru Konrad Mizzi qed ifisser li l-enerġija elettrika qed tinxtara ferm oghla mingħand l-*Electrogas* milli kieku tinxtara mill-*interconnector* (u cjoe, €50.64 iktar għal kull *MegaWatt* fis-siegħa għall-enerġija prodotta). Jiġifieri l-elettriku mixtri mill-*power station* tal-*Electrogas* kif ried il-Ministru Konrad Mizzi u l-Prim Ministru Joseph Muscat huwa 82% OGHLA minn dak mixtri mill-*Interconnector*, spiża u żieda esageratament għolja li għaliha qed iħallas inutilment kull min iħallas il-kont tad-dawl u li tqajjem aktar suspetti li dak li sar kien irregolari (€112.39/MWh mill-*power station* tal-LNG kontra €61.75/MWh mill-*interconnector* = differenza ta' €50.64/MWh = elettriku mill-LNG huwa 82% AKTAR);
2. Li l-kunsens li l-Ministru tal-Enerġija ta fit-22 ta' Lulju 2015 sabiex il-*GASOL* (ditta taż-żejt mill-Afrika) tithalla toħroġ mill-konsorzju *Electrogas* kien bi ksur tal-kuntratti viġenti;
3. Li l-*GASOL* (li kienet *lead member* tal-*Electrogas*) qatt ma messha kienet parti minn dan il-konsorzju għax kienet teknikament falluta u ma kkontribwiet xejn finanzjarjament għall-konsorzju u t-twettiq tal-proġett¹; Tant illi f'para 9.2.14 jingħad: "*Having considered that the departure of Gasol plc had no influence on the outcome of the RfP Stage 2 and Stage 3 evaluation, it is not clear to the NAO what evident advantage the ElectroGas Consortium identified in nominating Gasol plc as its lead member. More so when the exit of Gasol plc occurred so soon after the signing of the Transaction agreement.*"
4. Li l-NAO sab "*concerns raised by bidders that it was not an industry standard for LNG suppliers to form part of project equity*" u għalhekk "*The NAO technical advisor indicated that it was not the norm for suppliers of the fuel to be part of project equity*";
5. Li filwaqt li fil-bidu tas-sejħa inizjali (*Expression of Interest u Request for Proposals*) kien eskluż kwalsijasi *security of supply agreement* minn-naħa tal-Gvern

¹ "*Evident in the submission by the ElectroGas Consortium were the financial difficulties encountered by Gasol plc, with documentation made available for evaluation at RfP stage indicating the risks identified by the auditors of Gasol plc. The Stage 2 Evaluation Committee was certainly aware of this situation as it acknowledged that Socar Trading SA had provided a letter of commitment to cover the equity contribution of Gasol plc. The NAO is of the opinion that, although not qualified, the financial statements should have raised significant concern for the Stage 2 Evaluation Committee with respect to the role of Gasol plc in the Consortium.....The NAO maintains that the Stage 2 Evaluation Committee too readily dismissed concerns that the audit reports should have raised. Furthermore, justification that Socar Trading SA mitigated such risks through its commitment to cover the equity contribution of Gasol plc raise further doubt as to the utility of Gasol plc as the lead member of the ElectroGas Consortium*"

(cioe' forma ta' garanzija mill-Gvern li torbtu jixtri l-produzzjoni tal-elettriku generat mill-*Electrogas*), il-Ministru tal-Energija Konrad Mizzi effettivament awtorizza tali garanzija fl-ammont fenomenali ta' €360 miljun (garanzija bla ebda precedent għall-Gvern Malti fi proġett suppost privat liema garanzija bankarja iggarantiet dħul minimu lill-*Electrogas*) b'tali mod li l-Gvern spicċa refa fuqu r-riskju kollu(2) tal-proġett (fi kliem l-Awditur Ġenerali) u ġie aġevolat immensament il-konsorzju *Electrogas*³. F'para 10.9.6 u 7 l-NAO jinnota li din kienet l-ewwel darba li l-gvern għamel tajjeb b'garanzija statali għal proġett li hu tal-privat;

6. Li l-NAO jinnota (para 2.4.3) li l-Kumitat tal-Evalwazzjoni tal-EoIC stess kien konxju li l-aktar aspetti dgħajfa tal-konsorzju *Electrogas* kienu n-nuqqas ta' esperjenza fl-LNG u l-kapaċità li jforni l-LNG;
7. Li l-NAO ra ta' interess partikolari l-fatt li: *“According to correspondence issued by the Cabinet Secretary on 27 November 2017, Cabinet had, on 13 November 2017, discussed two memoranda titled ‘Progress in Refinancing of ElectroGas Malta Limited Bridge Loan secured by a Government Guarantee’ and ‘Termination of LNG Security of Supply Agreement’. Of particular interest was that Cabinet authorised the Minister for Tourism to appear on behalf of Government on the agreement to terminate the LNG SSA.”* Jigifieri, minkejja li l-Ministru responsabbli fl-2017 kien haddiehor, u ċjoe l-Onor Joe Mizzi, xorta waħda l-*Cabinet* (immexxi mill-Prim Ministru Joseph Muscat) iddeċieda li jkun l-ex Ministru għall-Energija Konrad Mizzi li jidher għan-nom tal-Gvern f'kuntratt li ma kienx għadu jagħmel parti mid-dekasteru tiegħu, u dan kontra l-prassi kostanti fil-*Cabinets* ta' gvernijiet suċċessivi Maltin li l-ex Ministri ta' settur ma jiffirmawx kuntratti li għalihom kienu, izda ma jkunux għadhom, politikament responsabbli;
8. Li dwar it-trattament preferenzjali li l-*Enemalta* tat lil *Electrogas*, l-NAO iddikjara li *“These major changes, at this stage in the RfP process, were deemed by the NAO as a shortcoming in terms of the governance of the procurement process. Although all bidders were informed of these developments, the nature of the changes and their timing drew the Office’s concern, for they drastically altered the nature of the contractual relationship that was to be entered into, rendering the risk to revenue for the selected bidder inexistent. **The risk was transferred in its entirety to Enemalta and Government, now obligated to purchase 85 per cent of the annual contract quantity, be it power and gas, irrelevant of requirements.** Aside from considerations relating to risk, in the NAO’s opinion, it*

2 *“The NAO maintains that the introduction of the concept of security of supply was a substantial change from that stated in the EoIC and RfP, which served to significantly reduce the risk to bidders.It is in this context that concerns regarding the governance of the RfP process emerge, with the Office of the opinion that this significant factor ought to have been disclosed at the outset.”*

3 Anzi, mhux talli hekk izda l-NAO sab li fil-bidunett tal-proċess ta' għażla, kien hemm *bidder* li wera u staqsa jekk l-*Enemalta* kienetx lesta tipprovdi garanzija bankarja peress li altrimenti l-proġett ma kienx ikun finanzjarjament vijabbli, u l-*Enemalta* ċaħditlu tali talba, iktar tard fil-proċess l-*Enemalta* hekk għamlet mal-*Electrogas*.

was in Enemalta's interest to disclose all conditions favourable to prospective bidders in order to encourage competitive tension in the RfP, with relevant implications on value for money.”;

9. Li f'para 12.6.2/5 l-NAO innota li għalkemm sa mill-bidu tal-proċess kien hemm xi kandidati li staqsew fuq xi tip ta' ftehim ta' sigurtà tal-provvista jew garanzija mill-gvern, fis-sejha pubblika ma saret l-ebda referenza bil-miktub dwar ar-rangamenti bħal dawn. Għall-NAO, din il-bidla li saret aktar tard tul il-proċess hi nuqqas sinifikanti li għamel differenza sostanzjali fir-relazzjoni kuntrattwali bejn l-*Electrogas* u l-*Enemalta*;
10. Li tant kemm kien ovvju għall-NAO li l-*Enemalta* riedet akkost ta' kollox tip-premja u tagħzel lil *Electrogas* li qalet hekk: *“Concern by a bidder was expressed regarding the fact that the project was only feasible with financing ... This request was not acceded to by Enemalta, claiming that it was incumbent on the bidder to demonstrate the ability to secure funding. In this respect, Enemalta referred the bidder to the RfP, which stipulated that for each type of debt finance, the bidder was to provide confirmation that all relevant funds were to be committed, subject only to bid acceptance and to the conditions set in the Transaction Agreements.”* U minkejja dan, l-*Enemalta*, permezz tal-Ministru Konrad Mizzi, u l-Gvern Malti permezz tal-Ministru tal-Finanzi Edward Scicluna u tal-Prim Ministru Joseph Muscat, iktar tard qabdu u ddecidew li jagħtu garanzija bankarja enormi u bla precedent ta' €460 miljun biex hadu r-riskju minn fuq l-*Electrogas* u tefgħuh fuq it-*taxpayer* Malti;
11. Li l-Gvern Malti, permezz tal-Ministru Konrad Mizzi intrabat li jixtri 85% tal-enerġija elettrika u/jew gas mill-*Electrogas* kull sena, ikunu x'ikunu l-bżonnijiet tiegħu, u cjoe anke jekk ma jkollux bżonn jixtri tali ammonti;
12. Li fil-proċess tal-għażla kien hemm diversi istanzi ta' ċaqliq tal-lasti u *“difference in treatment”*⁴ b'mod li gie aġevolat il-konsorzju *Electrogas*, tant li l-Awditur Ġenerali ddikjara li tali konsorzju kellu jkun eskluż mill-proċess tal-għażla kif kienu esklużi konsorzji ohra. F'para 2.6.7 u 10 l-NAO jinnota li l-Kumitat uża kejl differenti ma' kandidati differenti li kellhom l-istess nuqqasijiet, u jagħti xi eżempji. L-NAO tħasseb fuq dawn l-inkonsistenzi fl-approċċ li uża l-Kumitat tal-Evalwazzjoni u deherlu li wħud mill-kandidati bir-raġun ġew skwalifikati iżda jinnota li nżammu ohrajn bl-istess nuqqasijiet, appuntu bħal *Electrogas*;

⁴ *“The bids submitted by the ElectroGas Consortium and the Endeavor Consortium had shortcomings in terms of completeness identified by the Stage 1 Evaluation Committee. Notwithstanding this, the Committee deemed both bids materially complete. Having reviewed the documentation submitted and the report drawn up by the Committee, the NAO is of the opinion that the conclusion arrived at by the Committee was reasonable. However, the Office's attention was drawn to the fact that, although similar shortcomings were identified in submissions by the ElectroGas Consortium and the Endeavor Consortium, the Committee only sought advice from the technical and legal team with respect to the bid made by the ElectroGas Consortium. This difference in treatment was of concern to the NAO...”*

13. Li f'para 12.5.3 l-NAO juri t-thassib tiegħu dwar id-diskrepanzi li kien hemm bejn ir-rekwiżiti tal-bidu u l-ftehim finali, fosthom li l-Electrogas seta' jhallas il-multi tad-dewmien sa għaxar snin minn meta jibda jforni l-energija;
14. Li f'para 3.3.11/3.3.13/3.8.6/3.10.7 l-NAO ma setax jifhem kif l-*Enemalta* tgħid li ma kienx hemm soluzzjonijiet tal-ħażna tal-LNG fuq l-art u għalhekk is-sejha tat-tieni fażi tal-evalwazzjoni tagħmel referenza biss għal soluzzjonijiet tal-ħażna tal-LNG 'il bogħod mill-art (fuq l-ilma), mentri l-NAO jinnota li kien hemm erba' kandidati li pprezentaw alternattivi għal ħażna tal-LNG fuq l-art. Jinnota wkoll li skont il-minuti tal-*Programme Review Board*, l-ispeċjalisti tekniċi li qabddet l-*Enemalta* u xi pubblikazzjonijiet tal-Kummissjoni Ewropea jgħidu li l-ħażna fuq l-art hi aħjar minn ħażna fuq l-ilma;
15. Li anke fejn si tratta iż-żmien biex matulu jitlesta l-proġett (element essenzjali tas-sejha f'dan il-kaz) u t-trattament preferenzjali lil *Eletctrogas*, l-NAO sab f'para 3.9.8: "*Although the Endeavor Consortium did not lodge an appeal, various objections were raised in correspondence submitted to Enemalta on 17 October 2013. In this respect, the Consortium provided a number of clarifications in reply to the shortcomings identified by Enemalta in its letter dated 13 October 2013. With regard to the project completion timeline of 24 months, the Consortium stated that it was impossible for a bidder to complete the project within 24 months and since delay liquidated damages were included as part of the process, the Consortium opted for a two-month delay.*" Dan ifisser li dak li kien ovvju u cioe' li l-proġett ma setax jitlesta entro sentejn, u minkejja li l-*Enemalta* taħt id-direzzjoni politika tal-Ministru Konrad Mizzi kienet taf ben tajjeb u giet infurmat formalment b'din l-impossibilita, xorta waħda caħdet it-talba tal-konsorzju li kkompetat mal-Electrogas biex xorta waħda sentejn wara l-Electrogas kienu għadhom ma lestewx il-proġett, anzi l-proġett tlesta addirittura wara erba' snin sħaħ;
16. Li ma sarx proċess serju ta' *due diligence* u li ċertu għarbiel kien sar biss permezz ta' sempliċi *internet searches*⁵, per eżempju, fejn jingħad illi: "*checks relating to fraud, bribery and corruption, internal controls, risk management considerations, ethical conduct and other governance issues were not part of the due diligence carried out ... A major concern identified by the NAO at the RfP stage of evaluation related to the lack of appropriate due diligence undertaken.*" ... u li "*Notwithstanding that claimed by Enemalta, the NAO is of the opinion that the due diligence undertaken was insufficient and only partially addressed the risks associated with a project of this magnitude*";

⁵ "*Of significant concern to the NAO was the lack of appropriate due diligence undertaken at the RfP stage of evaluation. The NAO acknowledges that an element of due diligence, consisting of basic Internet-based searches, was carried out at the EoIC stage. However, it is pertinent to note that the EoIC Evaluation Committee deemed it imperative that a detailed due diligence process be undertaken at the RfP stage. Notwithstanding this, in the review of the RfP evaluation process, the NAO noted no indication that a due diligence review of the two qualified bidders had been undertaken*"

17. Li Brian Tonna, *Managing Partner* ta' Nexia BT, kien fuq il-bord ta' għażla li għażel il-konsorzju rebbieh, l-istess Brian Tonna li flimkien ma Karl Cini fetaħ il-kumpaniji sigrieti fil-Panama għall-Onor. Konrad Mizzi u għal Keith Schembri, kunflitt ta' interess flagranti li jsaħħaħ aktar is-suspetti ta' irregolarita';
18. Li Nexia BT kienu wkoll l-awdituri tad-ditta GEM li hi parti mill-konsorzju *Electrogas*, liema ditta GEM hija l-vejikolu li permezz tiegħu *Tumas Group* u l-*Gasas Group* għandhom l-ishma fl-*Electrogas*, l-istess *Tumas Group* ta' Yorgen Fenech li huwa sid ta' 17 Black Ltd, li minnha kienu se jithallsu €5,000 kuljum lil Konrad Mizzi u Keith Schembri tramite il-kumpaniji sigrieti tagħhom fil-Panama;
19. Li hemm 8% ohra mill-ishma ta' GEM fl-*Electrogas* li huma ta' Yorgen Fenech f'ismu personali u dan iqajjem il-mistoqsija ovvja dwar għaliex Yorgen Fenech għandu ishma f'ismu personali meta huwa wkoll parti minn *Tumas Group* li hija parti mill-konsorzju GEM fl-istess proġett;
20. Li L-Enemalta, li kienet taħt id-direzzjoni politika tal-Ministru Konrad Mizzi ma tatx lill-NAO, minkejja diversi talbiet⁶, l-istudji li kienu suppost jiġġustifikaw l-għażla tat-tanker tal-gass (*offshore floating storage tanker*) flok l-għażla ta' hażna fuq l-art. Mhux talli hekk, talli fir-rapport tiegħu, l-NAO qal li l-esperti tekniċi tal-Enemalta “*clearly outlined that an onshore option for LNG infrastructure was better than the offshore alternative*”. Minkejja dan, il-Ministru Konrad Mizzi ried li jmur għall-għażla tat-tanker tal-gass, għażla stramba li ukoll tqajjem mostoqsijiet ovvji;
21. Li l-NAO giddeb il-ġustifikazzjoni tal-Enemalta biex tmur għal soluzzjoni *offshore* bhala “*factually incorrect*”⁷ u sabet li sa mill-31 ta' Lulju 2013(8) il-Gvern u l-Enemalta kienu diġa hađu d-deċiżjoni biex imorru għal soluzzjoni ta' LNG *offshore*, li turi li l-għażla għal *offshore* kienet diġa *fait accompli*;
22. Li hemm diversi istanzi fejn l-NAO ma qabilx mal-marki mogħtija mill-*Evaluation Committee (Stage 3)* biex giet vantaġġjata l-*Electrogas*;
23. Li finalment, f'para 14.2.71 wara talba mingħand il-Kap tal-Oppożizzjoni ta' dak iż-żmien (Onor Simon Busuttil), l-NAO sab ukoll li hemm xebħ kbir bejn il-

⁶ “*On the other hand, the Chair RfP Evaluation Committee made reference to studies undertaken that considered the implications of offshore versus onshore storage facilities. Despite requests to this effect made to Enemalta, no such studies were made available.*”

⁷ “*Although the NAO acknowledges that the offshore solution was more readily achievable within the established timeframes, the various assertions made by Enemalta justifying resort to the offshore solution were factually incorrect*”

⁸ “*The decision to resort to an LNG offshore solution was already taken by 31 July 2013, when minutes of the Programme Review Board indicated that, “Further to last meeting’s actions, DNV KEMA were requested to draft an estimate regarding the costs to place the FSRU in an offshore location.”*”

proġett propost lill-partiti politiċi originarjament mill-investituri tal-power station qabel l-elezzjoni tal-2013 u l-proġett li effettivament inbena;

Illi l-esponenti iridu jagħtu din l-informazzjoni lill-Maġistrat Inkwirenti taħt ġurament biex il-Maġistrat Inkwirenti ikun f'pożizzjoni li jstabilixxi l-verita shiħa f'dan il-każ ta' reati jew attentat ta' reati ta' hasil ta' flus (li t-tentattiv tiegħu jgħorr l-istess responsabbilita kriminali skond Kap. 373), korruzzjoni, dikjarazzjonijiet foloz, assoċjazzjoni kriminali, l-għaqda ta' żewġ persuni jew aktar bil-ħsieb li jagħmlu reati kriminali, u tixhim, li jakkwista gravita partikolari meta tqis li l-id il-leminija tal-Prim Ministru Malti u l-Ministru tal-Energija kienu u huma responsabbli minn proġett ta' energija ta' madwar €500 miljun;

Għaldaqstant:

Il-fatti hawn fuq esposti jagħtu lok, ċertament fuq bażi ferm aktar minn sempliċi *prima facie* li huwa l-livell ta' prova rikjest għall-fini tal-art. 546(4A) tal-Kodiċi Kriminali biex issir il-prova tal-“*in genere*”, li l-Onor Konrad Mizzi, kif ukoll Keith Schembri, Brian Tonna, Karl Cini u Mario Pullicino jidher li kkommettew ksur tas-segweni, tal-anqas fuq bażi *prima facie*:

Ministru Konrad Mizzi:

- **Artiklu 3(1) tal-Kap.373; Artikli 18, 42, 48A, 83A, 106, 108, 115, 118, 119 u 141 tal-Kodici Kriminali:**

F'pagna 88/89 ta' DOK9 hemm ir-raġunijiet li tat l-FIAU biex tgiddeb jew tiskreditat dak li l-Ministru Konrad Mizzi kien qed iġhid meta ġie rinfaccjat b'dawn l-akkuzi ta' hasil ta' flus, u l-kontradizzjonijiet li inqabad fihom, liema raġunijiet l-FIAU wassluha tikkonkludi li hemm suspett raġjonevoli ta' hasil ta' flus, jew tentattiv tiegħu, da parti tal-Ministru Mizzi:

“3.10.1 Dr Konrad Mizzi’s declaration to the PANA Committee and the Independent Audit

These documents can be accessed through <http://www.independent-com.mt/articles/2017-02-20/local-news/Konrad-Mizzi-audit-presented-to-PANA-committee-says-no-bank-accounts-held-by-trust-company-6736170653>

In the declaration which Dr Konrad Mizzi presented to the PANA Committee a number of inconsistencies were noted.

i) “I realise that in setting up a family trust structure in New Zealand and a related company I exposed my family and myself to an unprecedented level of unfair criticism.”

When setting up a trust for the benefit of one’s family and to protect one’s assets, a company is not required as any assets held can be placed directly into the trust and administered by the trustees in accordance with the settlor’s wishes.

<http://money.cnn.com/pf/money-essentials-trusts/>

ii) “In 2015, based on advice I received, I set up a trust in New Zealand and I acquired a company registered in Panama, which I immediately settled into the Trust.”

iii) “The leader of the Opposition claimed that I opened the structure a few days after the 2013 general election. This is a clear lie, since all documentation show that I acquired a shell company in 2015.”

Communication between Mr Karl Cini of Nexia BT and Mossack Fonseca (Panama) dated 21st March and 25th March 2013 shows that enquiries in relation to a Panamanian company and trust were already being made. It was further noted that on 26th July 2013, Mr Karl Cini asked Mossack Fonseca (Panama) for an extension to complete paperwork in relation to the three reserved Panamanian compa-

nies. It is pertinent to note that Dr Konrad Mizzi was abroad at this time given his credit card places him in Qatar on 24th July 2013.

In addition to the above in an email dated 7th July 2015 between Mr Leon and Mr Cini, Mr Leon states; “Yes, Karl, they are the real UBOs, but the shares are currently held by a nominee shareholder (ATC ADMINISTRATORS).”

As has also been noted in the conclusions section of this report given the costs associated with the setup and maintenance of a trust, it would make no financial sense to the company service provider (in this case Nexia BT et al) to place a non-operative, shelf company in a trust for an indefinite period of time which is what was indicated in an email between Mr Karl Cini and Mr Luis Quiel in March 2013.

iv) “The prospective investments included the leveraging of our existing house in London and future investments,”

As per Dr Mizzi’s tax declarations for years ending 2013 and 2014, his rental income did not exceed EUR22,000 per year. In fact for the 2 years combined, Dr Mizzi’s total rental income was of EUR37,568.

<http://www.maltatoday.com.mt/news/nationalo/64254/konradmizzideclared37500rentalincomesince2013#.WL6XFW8rKpo>

As is noted in the conclusions section of this report, the costs associated with the incorporation of a company in one jurisdiction and having that company held under trust in another jurisdiction are far too high given that the underlying existing asset is only likely to generate a yearly income which does not exceed EUR22,000.

In addition to the lack of proportionality in the size of the asset and the structure set up to manage it, one also begs the question as to why the house in London was not placed into the structure immediately rather than leaving such a costly structure with no assets.

v) “The leaked documents make no reference to any funds held by me in the structure, because there were none. This confirms my version of events from the very beginning, which is that there are neither funds nor bank accounts held by these structures”

vi) “...Attempts made by the service provider to open a bank account, this was part of the service that was offered to the trust.”

These claims immediately raise the question as to the purpose of such a set up if not open a bank account for the company. Had there not been a company involved, one could hold a trust and populate it with

fixed assets however given that the trust was set up to hold the company, the company needed a bank account in order to operate.

Furthermore, Dr. Mizzi claimed that attempts were made by the service provider as part of the service offered, however email communication dated August 2015 between Mr Karl Cini and Mossack Fonseca (Panama) as well as Dr Mizzi's credit card activity confirmed that Dr Mizzi took the original documents relating to his Panamanian company to Dubai himself. Such activity is not in line with a "service that was offered to the trust."

vii) "But I did not sign any bank opening forms, nor did I give a power of attorney to the service provider to open an account. The service provider was only allowed to make enquiries."

This claim is not in line with an email dated 2nd December 2015 in which Mr Karl Cini gave instructions to Mr Adrian Dixon to "Go ahead to start the opening of the accounts for those 2 Panama companies."

In addition the FIAU obtained a copy of a Power of Attorney (Appendix 8.35) which was signed by Dr Konrad Mizzi on 16th June 2015.

Given the absolute discretionary powers granted to Mr Cini and Mr Tonna to carry out any actions necessary with the setup of the trust structure shows that contrary to Dr Mizzi's claims, he did in fact give a Power of Attorney to his company service provider enabling and authorizing then to set up a bank account for this structure. His lack of signatures on any bank opening forms is also understandable given that in accordance with the Power of Attorney both Mr Cini and Mr Tonna are authorized to sign all the necessary documentation.

viii) "\$1M per annum depositThis is a blatant lie, unsupported by any evidence or, indeed, any logic."

Mr. Karl Cini (ID 136975M) and/or Mr. Brian Tonna (ID 316764M) (hereinafter the "Attorney") of BTI Management Limited a company registered in Malta with Number C49892 and registered address at Suite 2, The Penthouse, Capital Business Centre, Entrance C, Triq taz-Zwejt San Gwann SGN 3000 Malta, as my/our special attorney with full power to act on my/our behalf for the purpose to take all steps necessary for and conducive to and/or desirable to set up a trust structure, including but not limited to, the signing of all necessary and/or related documentation and the doing of all such other acts which the Attorney may in his sole and absolute discretion deem to be necessary, conducive to and/ or desirable, ancillary to or connected with the setup of such trust structure. The undersigned hereby ratify and confirm the Attorney shall lawfully do or cause to be done by virtue hereof and undertaking to indemnify the Attorney against all claims, costs, expenses and liabilities of any nature or description whatsoever arising from the exercise in good faith of any of the power conferred by this Power of Attorney.

Information obtained by the FIAU dated 15th September 2015 indicates that 3 of the banks contacted required initial deposits of USD 1 million. In an email dated 17th September 2015, Mr Cini confirmed that the account will be the operating account of the Panamanian company and estimated yearly deposits will be of EUR350,000.

In a subsequent email dated 17 December 2015 (Appendix 8.7) from Mr Karl Cini to Juan Carlos Martinez, Mr Cini provided various details in relation to the operations of the Panamanian companies. In this communication Mr Cini stated that the companies are estimated to generate \$2million within a year and the monthly amount of the transactions was expected to be circa EUR150,000.

ix) “Commission on power station”

Dr Mizzi claimed that the Nationalist Party targeted each project he was involved in and alleged corruption on each project. The fact that Dr Mizzi set up his offshore asset concealing structures at a time when he was heavily involved in government deals does raise suspicion. Even more so when one considers that his children were born in 2007 and 2010 respectively however it seems Dr Mizzi took no measure to safeguard his family’s interests before 2015. Of further suspicion is the fact that, at the time when such measures were taken in relation to asset management, Dr Mizzi had moved away from the private sector which generated a higher level of income than his ministerial salary.

x) “On the 7 April 2016, the Malta Independent, an ICIJ media partner, prominently reported on its front page that I had divulged to Mossack Fonseca that I was a politician.”

Such allegations were not only made on local media but also on <http://www.afr.com/news/policy/foreign-affairs/the-panama-papers-new-twist-to-maltas-mossack-fonseca-bank-saga-20160418-go92hv>

Information obtained through this website indicates that Mossack Fonseca (New Zealand) was not aware that the clients being put forward by Mr Karl Cini were PEPs. As has been noted in the conclusions section of this report, the FIAU is not in receipt of a series of email exchanges between Mr Karl Cini and Mossack Fonseca (New Zealand) at some point between 16th May 2015 and 24th May 2015. On the basis of open source of information these emails contain communication relating to the introduction of a second client and the fact that both clients were PEPs.

xi) “The Malta Independent, the Times of Malta and other media controlled by the Nationalist Party created many contradictory and false

motivations for the setting up of the trust. These included inexistent commissions, millions allegedly earned before entering politics...”

A communication from Mr Karl Cini dated 5th November 2015 to Mossack Fonseca & Co. (New Zealand) states that “the UBO was also Partner and Head of the Energy and Infrastructure of the EMEA region (Europe, Middle East and Africa) with Pcubed, a global leader in projects delivery. He set up the practice and developed major accounts with personal revenue amounting to GBP 5 million.”

xii) “I have declared the trust and company, provided full disclosure and have requested the Inland Revenue Department to investigate my financial affairs. This level of openness and disclosure is unprecedented in Maltese politics. No Maltese member of parliament has ever requested a tax audit...”

As was noted in the preliminary report which was disseminated to the police on 7th April 2016 in the section titled “Document referred to in Annex II”, one may note that through the copies of due diligence questionnaires which were compiled by Mr Karl Cini on behalf of his clients, the ROTORUA TRUST was set up for purposes of confidentiality and privacy and instructions were also given not to have the trust audited.

In light of this information Dr Mizzi’s claims of exercising an unprecedented level of openness to the PANA Committee by subjecting his set up to an independent audit which was carried out by Crowe Horwath New Zealand does not subsist.”

- Ir-rapport tal-FIAU, anness DOK9, fil-konkluzjoni tiegħu jgħid hekk:

“In relation to the similarities between the structures belonging to Dr Konrad Mizzi and Mr Keith Schembri:

i) The suspicion is that Dr Konrad Mizzi and Mr Keith Schembri were setting up structures as a joint venture, the suspicion is further substantiated by the fact that the timing of the events indicates that the Panama/New Zealand structures created for Dr Mizzi and Mr Schembri were created simultaneously and both persons were working in tandem. This fact is in itself suspicious given that these structures are typically created on the basis of one’s individual circumstances and not with a one-size-fits-all approach.”

In relation to the attempts made at setting up bank accounts for HEARNVILLE INC:

- *i) Email communications indicates that Nexia BT first attempted opening accounts themselves for HEARNVILLE INC. and TILGATE INC, in the United Arab Emirates. Despite this, Mossack Fonseca & Co. (Panama) were still asked to assist in opening other accounts during the same time period. This indicates the intention of the companies to hold more than one account in different jurisdictions.*
- *ii) The communication from Mr Karl Cini dated 25th August 2015, stating that his client, in this case Dr Konrad Mizzi, will take documents directly in original format for the purpose of opening a bank account in Dubai to the respective bank. This communication is substantiated by Dr Konrad Mizzi's credit card activity which places him in Dubai on 27th August 2015.*
- *iii) The numerous attempts made to open bank accounts in various jurisdictions, all of which have very little nexus with the beneficial owner, are deemed to be suspicious especially when one considers that contact was made with various banks and the only preoccupation with each request was whether the respective bank is willing to accept a high risk client. In fact contact was made with less than 8 banks namely:*
 - *Bank in Dubai (exact bank unknown)*
 - *Bank of St Lucia International (BOSIL)*
 - *Winterbotham Bank (Bahamas)*
 - *Banco Itauv(Miami)*
 - *BSI Bank (Panama)*
 - *Brichell Bank (Miami)*
 - *Cidel Financial Group*
 - *FPB Bank (Panama)*
- *iv) In addition it was noted that the email communications trail relating to account opening never refers to any other feature or perks which the different accounts have to offer. This was also deemed suspicious due to the fact that people usually consider having the offshore accounts due to certain advantages such as beneficial interest rates.*
- *v) In an email dated 17th September 2015, Mr Cini confirmed that the account will be the operating accounts of the*

Panamanian company and estimated yearly deposits of €350,000. This warrants the question as to how a minister with an annual income of approximately €100,000 was to fund deposits of €350,000 to an account held in the name of his Panamanian company.

- *vi) It was noted that Mr Karl Cini was very timely in replying to communications from Mossack Fonseca & Co. Panama during the setting up of the companies as well as the arrangements to open bank accounts for the companies. Therefore it was deemed suspicious when a reminder was sent to him on 22nd September 2015 to provide information on the purpose of the bank accounts and the operations/activities of the companies and such information was then provided on the 17th December 2015.*
- *vii) The willingness to pay \$4,500 for a service that under normal circumstances can be obtained free of charge.*
- *viii) The reluctance of various banks in known high risk jurisdictions to open an account for a company whose ultimate beneficial owner is a PEP.*
- *ix) The fact that on the basis of information obtained by the FIAU the first time Mr Cini gave any indications that the Panamanian companies will be used as holding companies for operations conducted in the sectors of recycling and remote gaming was in October 2015. This coincides with the time when 3 different banks which were willing to consider opening accounts for these companies all requested an initial deposit of \$1million (15th September 2015). These events lead to the suspicion that Mr Cini mentioned the 2 sectors as being a source of funds given that both sectors and known to generate large sums of money. Whereas Dr Konrad Mizzi's statement of preservation of family assets would not justify the receipt of such large sums.*
- *x) The fact that in an email dated 15th December 2015 (Appendix 8.7) Mr Cini provided various details in relation to the operation of the Panamanian companies. In this communication Mr Cini stated that the companies are estimated to generate \$2 million within a year and that the monthly amount of transaction was expected at circa €150,000.*
- *xi) The numerous and lengthy discussions showing attempts at opening a bank account for the Panamanian company came to a swift halt once the initial adverse media reports were published on 22nd February 2016. According to information ob-*

tained from the FIAU, arrangements to set up these accounts were still being made on the 17th February 2016.

In relation to the various contracts and agreements that the Government of Malta entered into:

- *i) The fact that negotiations of a wind power plant in Montenegro commenced in July 2010 between the Government of Montenegro and a Spanish Consortium. Once the required building permit was issued in December 2014, the Spanish Consortium transferred its shares in the subsidiary company Mozura Wind Park d.o.o. to Enemalta plc on 2nd February 2015, with open sources citing the reason for the transfer being a failure in talks between the Government of Montenegro and the Spanish Consortium. This raises suspicion given that the Consortium had been involved in this agreement since 2010 and allegedly was removed/relinquished its interest just when all systems were in place for the works to commence. Of further suspicion is the fact that the Consortium still commenced construction works on the 15th February despite having transferred its shares to Enemalta plc on 2nd February 2015.*
- *ii) Re: NAO Report – The fact that, as was noted in the NAO report dated March 2015; “In the AFC meeting date 12 March 2014, no targets for Q3 and Q4 were set” as well as the fact that, “this is further corroborated through an email exchange between Committee member dated 20 March 2014...”*
- *iii) Re: NAO Report – The fact that the dates identified above, namely the 12th and 20th March 2014 coincide with the date in which the “Heads of terms agreement with Shanghai Electric power to partial sale of Enemalta” was drawn up and the date in which Dr Konrad Mizzi travelled to Beijing presumably on official business given that the credit card he used was his official card.*
- *iv) Re: NAO Report – The allegations made through open sources which state that in 2014 Enemalta Corporation entered into a hedging agreement with Socar Trading SA following “ministerial direction”, the corroboration of these allegations with the findings of the NAO report dated March 2015, as well as the FIAU’s determination that the deals which took place on the 1st and 2nd April 2014 warrant further questioning.*

- v) *Re: NAO Report/Appendix 8.28 – The fact that in relation to the hedging agreement which took place on the 1st April 2014 the Advisory and Finance Committee had agreed on a price on \$905/MT for the commodity being diesel, however the hedge deal was agreed with a price of \$910/MT.*
- vi) *The fact that the Petroleum Procurement Committee was informed of the “ministerial direction” exercised in the hedge deals between Socar Trading SA and Enemalta Corporation during a meeting held on 3rd April 2014 which is just 1 day after Dr Konrad Mizzi’s portfolio was changed to that of Minister for Energy and Health.*
- vii) *The fact that there seems to be no rationale as to why the Enemalta Corporation purchased a commodity for US-D14,720,000 in April 2014 when on the effective date which was 1st July 2014, the Corporation was be acquired by Enemalta plc.*
- viii) *Re: Appendix 8.28.8.29/8.30 – The fact that the confirmation letters did not provide details for payment.*
- ix) *Re: NAO Report - The fact that the findings of the NAO report dated March 2015, beg the question as to why agreements with Socar Trading SA have a number of inconsistencies when compared to other contracts entered into with 3rd parties.*
- x) *Re: Nao Report – The fact that the NAO Report dated March 2015 also noted that these deals with Trading SA corresponded to “100 per cent of Enemalta Corporation’s Q3 and Q4 unleaded petrol and diesel requirements.”*
- xi) *Re: NAO Report - The NAO’s conclusion that the hedging policy-related shortcomings identified in the 2013 Report, wherein the Office reviewed Enemalta Corporations hedging function, largely persisted. As at March 2015, the Corporations did not have a formally documented hedging policy against which the Corporation may subsequently set its strategic orientation. One notable manifested change in terms of hedging policy was the Corporation’s decision to extend hedging operations to include unleaded petrol and diesel. Enemalta Corporation and Enemed stated that the rationale motivating policy decision was driven by efforts an ensuring price stability while more generally adopted a risk averse approach;*
- xii) *The general lack of terms and figures relating to fees, costs and charges on the published agreements.*

- *xiii) Re Appendix 8.36/8.37 - The fact that there is a conflict in the dates relating to the subscription agreement of D3 Power Generation Limited.*
- *xiv) Re Appendix 8.36/8.37 - The tampering with published version of the document relating to the subscription agreement of D3 Power Generation Limited.*
- *xv) Re Appendix 8.36/8.37 - The fact that the copy of the Subscription Agreement which was obtained by the FIAU does not include Schedules 3, 4 and 5.*
- *xvi) Re Appendix 8.43/8.44 - The apparent lack of transparency in relation to the agreements involving Enemalta plc, Electrogas Malta Limited, Armada Floating Gas Storage Malta Limited and/or Armada Floating Gas Services Limited and the involvement of Mr Mario Pullicino in one of these companies.*

In relation to the various company incorporations and changes made to enable for investments in Enemalta Corporation:

- *i) The enactment of Chapter 536 of the Laws of Malta which came into force in August 2014 which inter alia was “to make provision for the transfer of all the assets, rights, liabilities and obligations of Enemalta Corporation to Enemalta plc...” and “to repeal the Enemalta Act...”*
- *ii) The powers conferred to the Minister of Energy in Chapter 536 of the Laws of Malta significantly outweigh the powers conferred to the same minister under Chapter 272 of the Laws of Malta.*
- *iii) The incorporation of 13 companies from May 2013 to December 2015 in order to enable the privitisation of the Enemalta Corporation and allow for the involvement of various local and foreign shareholders, namely;*
 - *· GEM Holding Limited*
 - *· Electrogas Malta Limited*
 - *· Tumas Energy Limited*
 - *· New Energy Supply Limited*
 - *· Petromal Company Limited*
 - *· Enemalta plc*

- · *Enemed Co. Limited*
- · *D3 Power Generation Ltd*
- · *SEP (Malta) Holding Ltd*
- · *Int. Renewable Energy Development Ltd*
- · *Armada Floating Gas Service Malta Ltd*
- · *Armada Floating Gas Storage Malta Ltd*
- · *Int. Energy Service Centre Ltd*

*(C60349) (C60775) (C64888) (C64971) (C65288) (C65836) (C66404)
(C66510) (C67784) (C68860) (C69888) (C69887) (C73682)*

*08/05/2013 12/06/2013 28/04/2014 02/05/2014 23/05/2014
01/07/2014 19/08/2014 29/08/2014 26/11/2014 02/02/2015
06/04/2015 06/04/2015 22/12/2015*

These points were deemed to be suspicious given that Cap 272, Art 16(1) enabled Enemalta Corporation to raise funds through debentures. This therefore raises the question as to why such an elaborate structure of companies as well as a thorough change in legislation was necessary in order to enable the Enemalta investment.

It has also been noted that seven of these companies were incorporated prior to the date of when chapter 536 came into force.”

Illi r-Rapport imsemmi tal-FIAU, fil-konklużjoni tiegħu biex issostni l-għala hemm suspett ragjonevoli ta’ hasil ta’ flus jew tentattiv tiegħu, ighid hekk fil-konfront tal-Ministru Konrad Mizzi:

“In relation to the various inconsistencies/suspicious circumstances noted in the case of Dr. Konrad MIZZI:

- *i) The inconsistency in the intended operations of the Panamanian Company HEARNVILLE INC. communications show the said activity to the range from preservation of family assets, management of inheritance, management consultancy and brokerage as well as being used as a holding company for operations conducted in sectors of Recycling and Remote Gaming.*
- *ii) Upon his return from Montenegro (ie. 16th June 2015) Dr. Mizzi signed the Source of Funds/Wealth Declaration Form. (Appendix 8.3). This declaration form identified Dr. Mizzi’s*

source of funds/wealth as being personal assets and proceeds from business trade.

- *iii) The time in which the UK Company GASOL, sold its interests in Electrogas Malta Ltd. (22/07/2015) coincides with the time when HEARNVILLE INC. was placed under trust and steps were being taken to open an offshore account/s for HEARNVILLE INC.*
- *iv) Dr. Mizzi's presence in Serbia in October, 2015 five days prior to the date an agreement was signed between the state of Montenegro State Consortium Fersa and Celebic, Mozura Wind Park d.o.o and Enemalta plc.*
- *v) Dr. Mizzi's presence in Montenegro in November 2015, which is just two days after an agreement was signed between the government of Montenegro and Enemalta plc. in relation to a 1.5 million Euro bank guarantee. Of further suspicion is the fact that the only transactions which appear to have been carried out using bank cards during this trip are on Dr. Mizzi's personal credit card and are only for 0.01 euros which means that these were carried out in order to ensure that the card is valid. This therefore raises the question as to why Dr. Mizzi refrained from using his official card during this trip.*

vi) Dr Konrad Mizzi's visit to Shanghai 2 days after the incorporation of SEP (Malta) Holding Limited in Malta, a company whose sole shareholder is Shanghai Electric Power and Energy Power and Energy Development Limited.

vii) On the basis of information obtained through Dr Konrad Mizzi's credit card activity, Dr Mizzi travelled to China 17 times during the period 10/09/2013 to 24/03/2016. It was noted that despite having family in China he stayed in hotels for at least 16 of these trips. This fact combined with the use of his official card indicates that these trips to China were State related visits. It was also noted that no transactions were noted on Mr Mizzi's accounts in relation to the purchase of flight tickets. The volume of trips to China at a time when Malta and China were already signing deals in relation to Enemalta raises suspicion.

viii) The reluctance to name the company carrying out the independent audit in relation to Dr Konrad Mizzi's offshore structures citing that the audit was still in progress when documentation shows that the audit was in fact completed two weeks prior to the statement being made.

ix) Email correspondence between Mr Karl Cini and Mossack Fonseca shows sudden and persistent attempts in setting up a bank account for HEARNVILLE INC. during 2015. This was deemed suspicious given that the company had been incorporated since 2013 and the only measures taken since then were to have the company placed under trust. This sudden persistence in opening a bank account for the Panamanian company at significant costs coincides with the time when the required domestic company corporations, deals and agreements in relation to the privatization of the Enemalta Corporation were nearing completion/completed.

x) The fact that the costs associated with setting up a structure involving a Panamanian company which is held under trust in New Zealand are not justified when one takes into consideration the fact that Dr Mizzi's 2014 declaration of assets consisted of:

- · A house in London which includes a garage (which has a potential rental value of GDP 20K per year)*
- · An apartment in Sliema (which still has an outstanding bank loan attached to it and therefore cannot be placed under trust or used to generate further income such as rent)*
- · Bank deposits totaling €310,279 (It is pertinent to note that the analysis carried out by the FIAU failed to corroborate this amount. Information obtained by the FIAU identified bank deposits totaling just over €92,000 which are held in joint accounts with Ms Sai Mizzi Liang);*
- · 4,000 shares in Malta International Airport plc (the dividends in these shares are being credited to Dr Mizzi's domestic accounts. It is interesting to note that the amount of dividends being paid out would be minimal and therefore not worth concealing in an offshore set up such as the one mentioned earlier). In addition to this information, it is worth noting that in Dr Mizzi's 2015 declaration, bank deposits of €389,440 were declared. Again this is not in line with the sums identified in this analysis.*
- The apparent lack of these bank deposits, which would be one of the most significant assets Dr Mizzi holds, further begs the questions as to why such a structure was required, given that the costs of setting up and maintaining such a structure would outweigh any financial benefit derived solely from the property in the UK.*

xiii) *The fact that Dr Konrad Mizzi's assets in Malta, namely the bank deposits as well as the apartment in Sliema (which has an outstanding bank loan attached to it and is therefore hypothecated in favour of BOV) are all assets which are held jointly with his wife Mrs Sai Mizzi Liang. In view of this Dr Mizzi would not be able to transfer any of these assets to a trust of which he alone is the settlor.*

xiv) *The fact that the passport numbers provided for the last 4 beneficiaries listed in the Trust Questionnaire and the Due Diligence Sheet are diplomatic passport numbers. This was deemed suspicious given that the document is not assigned to an individual on a permanent basis and should therefore not be used for personal affairs.*

xv) *Dr Konrad Mizzi's claims that he "did not sign any bank opening forms, nor did I give a Power of Attorney to the service provider to open an account." is not in line with the Power of Attorney he signed on 16th June 2015 in which he granted absolute discretionary powers to granted to Mr Cini and Mr Tonna to carry out any actions necessary with the set-up of the trust structure (which inter alia includes the Panamanian company and related bank account), including the authorization to sign all the necessary documentation.*

xi) *On the basis of the information available to the FIAU, this whole set-up cost Dr Mizzi at least:*

- *· €4,839.16 to BTI Management (as per K Mizzi's BOV bank statement)*
- *· USD 5,235 to set up Roturua Trust with the underlying company (as per independent audit).*

Such costs totaling approx. €9,700, which do not include the annual fee charged by the trust services provider, again show that such a setup is too costly to justify it being used simply to hold a property in the UK which is expected to generate rental income of approximately GBP 20K per year and average bank deposits of €92,000 which are not even held in Dr Mizzi's sole name.

It is also pertinent to note that other fees may have been due to Mossack Fonseca & co. (Panama) for the services provided since 2013 as is evidenced in the lengthy communications with Mr Karl Cini. The FIAU does not have any information which may indicate the cost of said fees except that the cost to open a bank account was USD4,500 per account.

In addition, it has also been noted that during the stage were account were being made to set up a bank account for HEARNVILLE INC., Dr Konrad Mizzi personally travelled to Dubai in order to present the bank with the relevant documentation. The FIAU is also unaware of the costs incurred during this trip.

xii) In addition to the lack of proportionality to in the size of the asset and the structure set up to manage it, one also begs the question as to why the house in London was not placed in the trust immediately rather than leaving such a costly structure with no assets.

xiii) The fact that Rotorua Trust was initially set up for purposes of confidentiality and privacy and instruction were given not to have the trust audited (Appendix 8.8). This is not in line with Dr Konrad Mizzi's subsequent claim to the PANA Committee that he had subjected his set-up to an independent audit which was an unprecedented level of openness.....

Finally, and most importantly, an explanation will need to be provided for:

- i) The fact that Dr Konrad Mizzi, who claims to be a well-off individual looking to safeguard his assets, opted to set up a complex structure shortly after he was appointed as a government minister, a role which carried a financial package that was significantly less than his previous employment;*
- ii) The fact that the set-up of these structures also coincided with the time when the Government of Malta was entering into numerous agreements directly concerning Dr Konrad Mizzi's ministry. This is suspicious given that, in the event that Dr Konrad Mizzi wished to protect his assets for his family's benefit, it would have been logical to do so shortly after the birth of his children in 2007 and 2010 respectively, and during a time when he was earning significantly higher salaries as well as living in a country which is known to have a higher tax rate than Malta. ...*

In view of the above circumstances, the information available to the FIAU is deemed to be sufficient to conclude that a reasonable suspicion of money laundering and/or the existence of proceeds of crime subsists. It is therefore being recommended that this report be transmitted to the Police in terms of Article 31 (1) of the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) for any action the police may consider appropriate."

Illi l-istess Rapport tal-FIAU ikkonkluda f'paġna 66 li kien hemm **“joint venture”** bejn il-Ministru Konrad Mizzi u Keith Schembri, Chief of Staff tal-Prim Ministru Joseph Muscat, f'dak li hu każ ċar ta' kompliċita u kongura u parteċipazzjoni attiva f'assoċjazzjoni kriminali:

*“Given that Mr Keith Schembri is the one with the more experience in the aforementioned industries, one is lead to believe that **Dr Konrad Mizzi and Mr Keith Schembri were setting up the structures as a joint venture.** This suspicion is further substantiated by the fact that the timing of the events indicate that the Panama/New Zealand structures created for Dr Mizzi and Mr Schembri were created simultaneously and both persons were working in tandem. This fact is in itself suspicious given that these structures are typically created on the basis of one's individual circumstances and not with a one-size-fits-all approach.*

Information being obtained through <http://www.afr.com/news/policy/foreign-affairs/the-panama-papers-new-twist-to-maltas-mossack-fonseca-bank-saga-20160418-go92hv> further states that “On October 17 Mr Cini reported that TILLGATE and HEARNVILLE would have a ‘part stake’ in recycling and remote gaming companies. Mr Cini gave no details as to who their partners would be in these ventures.”

Furthermore, it is interesting to note that on the basis of the information obtained by the FIAU this is the first time Mr Cini have any indications that the Panama companies will be used ad holding companies for operations conducted in the sectors of recycling and remote gaming with no mention of personal assets.

This coincides with the time 3 different banks were willing to consider opening accounts for these companies all requested an initial deposit of \$1M (15th September 2015). These events lead to the suspicion that Mr Cini mentioned these 2 sectors as being the source of funds given that both are known to generate large sums of money, whereas Dr Mizzi's statement of preservation of family assets would not justify the receipt of such large sums.”

Illi f'paġna 100 tar-Rapport tal-FIAU jingħad ukoll illi:

“In relation to the attempts made at setting up bank accounts for HEARNVILLE INC:

- i) *Email communications indicates that Nexia BT first attempted opening accounts themselves for HEARNVILLE INC. and TILLGATE INC, in the United Arab Emirates. Despite this, Mossack Fonseca & Co. (Panama) were still were still asked to assist in opening other accounts during the same time period.*

This indicates the intention of the companies to hold more than one account in different jurisdictions.

- *ii) The communication from Mr Karl Cini dated 25th August 2015, stating that his client, in this case Dr Konrad Mizzi, will take documents directly in original format for the purpose of opening a bank account in Dubai to the respective bank. This communication is substantiated by Dr Konrad Mizzi's credit card activity which places him in Dubai on 27th August 2015.*

Illi konferma ulterjuri tad-delitt ta' komplicita fit-tentattiv ta' hasil ta' flus, tixhim u kongura u assoċjazzjoni kriminali li fiha sija Karl Cini, Brian Tonna, Keith Schembri u Konrad Mizzi kienu parteċipi. Dan hu fil-forma ta' delitt kontinwat (art.18 tal-Kodici Kriminali).

Illi f'pagna 101 tar-Rapport tal-FIAU insibu hekk:

- *“v) In an email dated 17th September 2015, Mr Cini confirmed that the account will be the operating accounts of the Panamanian company and estimated yearly deposits of EUR350,000. This warrants the question as to how a minister with an annual income of approximately EUR100,000 was to fund deposits of EUR350,000 to an account held in the name of his Panamanian company.”*

Illi dan kollu jkompli jsaħħaħ is-suspett raġjonevoli, anzi l-probabilita', li l-Ministru Konrad Mizzi kien qed jiehu sehem, bhala komplici, f'kongura u assoċjazzjoni kriminali li fiha u permezz tagħha kien ser jaħsel flus gejjin mit-tixhim.

Illi tant hu hekk, illi diversi sentenzi tal-Qorti tal-Appell Kriminali tagħna f'kawzi dwar akkużi ta' hasil ta' flus enunċjaw il-prinċipju li fejn ma tkun ingabet ebda prova dwar dan ix-xogħol, la xi klijent u lanqas xi riċevuta biex tissostanzja dak li jgħid l-imputat, dan jassumi rilevanza meta tiġi kkunsidrata li f'dawn il-proċedimenti meta l-prosekuzzjoni ggib prova li l-imputat jew akkużat **ma jkun ta ebda spjegazzjoni raġjonevoli kif ġab il-flus, proprjetà jew rikavat, allura l-oneru li jipprova l-provenjenza leċita ta' dawk il-flus, proprjetà jew rikavat tkun tinkombi fuq il-persuna imputata jew akkużata.** Hu fatt inkonfutabbli li s-sitwazzjoni finanzjarja ta' Konrad Mizzi u Keith Schembri u l-pożizzjoni tagħhom f'karigi pubbliċi ma kienux kompatibbli ma' l-ammont ta' flejjes li hemm prova iswed fuq l-abjad li riedu jiddepożitaw f'kontijiet sigrieti barra minn Malta;

Illi minbarra diversi dikjarazzjonijiet inveritjieri li għamel fil-pubbliku, Konrad Mizzi għamel ukoll diversi dikjarazzjonijiet inveritjieri fil-Qorti taht ġurament. Per eżempju, meta kien qed jixhed quddiem il-Qorti tal-Magistrati (sede Civili) (per Magistrat Dr Francesco Depasquale) fil-kawzi Rikors Numru 79/2016 FDP fl-ismijiet: Mizzi Dr. Konrad vs Busuttil Dr. Simon fis-seduta mizmuma il-Hamis, 10 ta' Jannar 2019, Konrad Mizzi in kontro eżami u bil-ġurament qal hekk:

“Jiena la qatt kelli u lanqas ghandi relazzjoni ma’ MacBridge. U m’ghandix informazzjoni fuqha. (paġna 9)”

Dan ma jistax ikun veru għax ma jistax ikun li Konrad Mizzi kien se jirċievi €5,000 kuljum minghand din il-kumpanija mingħajr ma kien jaf ta’ min hi.

“Jiena l-ewwel darba li rajt l-ismijiet ta’ dawn il-kumpaniji, nahseb kif anke rajthom inti, kienu minn fuq Blogs qabel l-elezzjoni tal-2017, ma niftakarx ix-xahar; probabbilment f’Mejju if I recall, but before the election, in the middle of an election campaign. Kien hemm anke artiklu fuq gazzetti lokali dwar l-istess affarijiet, dwar din l-email, ma kenitx giet published l-email in its entirety kif giet published wara, jew dan id-dokument ha nghid hekk, għax ma nafx jekk hijiex email jew otherwise, pero’ praktikament sirt naf dwar dawn il ... dawn ir-reports from the media or from blogs bhal haddiehor. Igifieri din kienet l-ewwel darba. Ha nkun car. Imbagħad post election, hafna xhur wara, jekk ma nkunx ... jekk m’inhix skorrett, giet published ukoll emm ... din ... dan id-dokument on the local media, ma nafx liema local media ma niftakarx ezattament but it was published and it was quite spread all over the media biex inkun car. (paġna 11)”

Dan ma jistax ikun vera għax ma jistax ikun li Konrad Mizzi sar jaf mill-media dak li kien ikixef fuqu stess. Fil-fatt, Mizzi stess kien ammetta li l-kumpanija fil-Panama u t-trust fi New Zealand kienu tiegħu. Ma jistax mela ma jammettix li kien minnu wkoll dak li nkixef dwar x’kien l-iskop ta’ dawn il-kumpaniji meta dan l-iskop inkixef permezz tal-email tas-17 ta’ Diċembru 2015 miktuba minn Karl Cini. La darba dak li nkixef kien dwaru u kien dokumentat, ma jistax jiċhdu, jekk mhux billi jigdeb. Jekk jiċhdu ikun qed imeri s-sewwa magħruf u jigdeb.

“Kellimna lil Mr Brian Tonna. Tlabnieh clarification dwar din il-particular email u Mr Tonna reiterated the same thing li I have ... li this email, it does not relate to me. (paġna 12)”

Mizzi ma jistax jitwemmen meta jgħid li talab kjarifika mgħand Brian Tonna dwar x’inhil email li kienet tikxef l-iskop tal-kumpanija tiegħu stess. Bhal dak li qallu, Tonna u Cini kienu se jifthu kumpanija għal Mizzi bla ma kien jaf Mizzi stess.

“Jiena tlabt fuq il-kontenut on those companies involved ... qalli there is no ... ma ddiskutejniex ... huwa spjegali li I have no relationship with those companies, I never did, spjegali that they were communicating in bulk on multiple companies kif jidher car mill-email ... and it is very clear in this document li qed jirreferu għal companies u mhux company in the documentation. (paġna 14/15).”

Dan mhux veru. L-email ta’ Cini hija ċarissima u tirreferi biss għall-iskop li għalih infethu l-kumpaniji ta’ Konrad Mizzi u Keith Schembri, *Hearnville Inc* u *Tillgate Inc* rispettivament. Difatti, iż-żewġ kumpaniji jissemmew fis-*subject matter* tal-email stess u allura huwa evidenti li l-email tirreferi għalihom u għalihom biss.

“Jiena ghidtlu li there are things on the media. Hemm dokument on the media li qed jirreferi, li pratikament qed jirreferi ghal diversi affarijiet, u jidher li hu confused document ukoll emm ... hemm referenza ghal multiple companies in it as well u qalli li it has nothing and no relation with your ... qalli Konrad you have nothing to worry about, qalli the absolutely there is no link to those companies. (paġna 15/16)”

Konrad Mizzi minghalih irid jilgħabha tal-iblaħ billi jfarfar kull responsabbilita’ fuq Brian Tonna. Izda l-kumpanija ġiet reġistrata **ghalih**. It-trust ġiet reġistrata **ghalih**. L-email ta’ Cini inkitbet **f’ismu**. L-email ta’ Cini kienet titratta l-iskop tal-kumpanija **tieghu**. L-email inkitbet **ghalih**. Mela r-responsabbilita’ hija **tieghu** u inutli jipprova jfarfarha fuq haddiehor.

“Yes hu qalli there is no relation with yourself with those companies. There is nothing to discuss further, igifieri m’ghandix involviment. (paġna 16)” Din hija gidba. Altru li għandu involviment Konrad Mizzi. Il-kumpanija hija **tieghu**. It-trust hija **tieghu**. L-email titratta l-kumpanija **tieghu**. Mela l-involviment huwa **tieghu** u ta’ hadd aktar.

“M’hemmx ... igifieri mhux nara referenzi illi ... li ... li never ever I was going to receive any money. Igifieri that is number one. Imkien. Igifieri dik number one. Step number two I think which is quite important, the email is not related, the content is not related to myself u ... (paġna 18)”

Żewġ gideb sfaċċati. L-email tikxef li l-kumpanija ta’ Konrad Mizzi kienet se tircievi €5,000 KULJUM. Bl-ebda mod ma jista’ Konrad Mizzi jiċhad dan għax ikun qed imeri s-sewwa magħruf. U l-kontenut kien relatat **MIEGHU**. Il-kumpanija Hearnville kienet se tircievi €5,000 kuljum. Il-kumpanija Hearnville hija **tieghu**. Mela l-flus kien se jirċwviahom **hu**. U inutli jilgħabha tal-iblaħ qisu ma jaf xejn.

“Ifhem ukoll li I have been consistent on that li I have no relationship direct or indirect with the companies mentioned here. Jiena tlabt clarification from Nexia BT. Nexia BT infurmawni kif diga’ spjegajt li I have no relation on that context. Jiena .. għalxejn ... (paġna 19)”

Huwa minnu li Konrad Mizzi kien konsistenti. Kien konsistenti fil-gideb tieghu. Izda li tirrepeti gidba ma tagħmilx gidba verita’.

“Il-kumpanija tieghi qatt ma kienet se tircievi xejn from what is being said, il-clarification hija cara. I have no relationship with the companies being mentioned there and that has been consistent and I’ll keep obviously saying that cause that is the truth. (paġna 20)”

Din hija gidba hoxna taht gurament. Il-kumpanija *Hearnville INC* kienet se tircievi €5,000 kuljum. Il-kumpanija Hearnville hija **tieghu**. Mela l-flus kien se jirċeviahom **hu**. Terġa, il-flus kienu ġejjin mgħand *17 Black Ltd* (ta’ Yorgen Fenech) u *Macbridge Ltd* (ta’ xi hadd li għadu mhux magħruf). Mela jsegwi bilfors li la kien se jirċievu flus mgħand Yorgen Fenech, Konrad Mizzi kellu relazzjoni miegħu.

Illi f'hin minnhom ix-xiehda ssegwi hekk, fejn Konrad Mizzi, taht gument, jichad li jaf min hu sid il-kumpanija *17 Black Ltd* li, jekk ma tridx, kien se jircievi minghandha €5,000 kuljum:

Dr Peter Fenech:

Il-kumpanija 17 Black taf ta' min hi?

Ix-Xhud (Konrad Mizzi):

No ma nafx.

Dr Peter Fenech:

Ma tafx ta' min hi?

Ix-Xhud (Konrad Mizzi):

No.

Dr Peter Fenech:

Il-kumpanija 17 Black ... issa jekk nghidlek li kienet pubblika ta' min hi s-17 Black ma ... ma gietx a konoxxenza tieghek?

Ix-Xhud (Konrad Mizzi):

Jiena naqra r-rapporti fix-xandir bhal ma taqrahom inti. Pero' ma nafx ta' min hi le. Ma nafx ghandekx dokumenti li juru ta' min hi, pero' ma nafx ta' min hi, u lanqas kieku, hi ta' min hi jien m'ghandix relazzjoni maghha. (pagna 20/21)

... Il-Qorti:

Ok. Allright ... issa igifieri fuq 17 Black u MacBridge, inti taf xi haga?

Ix-Xhud:

Nothing what so ever. Igifieri l-unika informazzjoni li ghandi huwa dak li naqra mix-xandir.

(pagna 22)

Dr Peter Fenech:

Mela, naghmel il-mistoqsija ... 17 Black ... hemmhekk tissemma' 17 Black u ma kien hemm l-ebda cahda pubblika ta' dil-kumpanija 17 Black li ma kenitx se thallas il-150,000 euro fix-xahar. Inti hadt mizuri in vista illi ma kien hemm xejn pubblikata l-ebda cahda?

Ix-Xhud:

Diga' spjegajtlek li hadt il-clarifications li kelli bzonn minghand Brian Tonna.

Il-Qorti:

Minghand Brian Tonna.

Ix-Xhud:

Yes. And I have no relationship direct or indirect with the companies mentioned there, huma ta' min huma. Jien ma nafx ta' min huma, naqra biss mill-mezzi tax-xandir pero' ma nafx ta' min huma u that's about it.

(pagani 24/15)

Illi Konrad Mizzi ma jistax jitwemmen meta jghid li ma jafx ta' min hi *17 Black Ltd*. Kif qatt jista xi hadd jitwemmen meta jghid li ma jafx mgħand kien se jithallas €5,000 kuljum? Li nemmnu gidba hoxna bhal din tkun daqqa mortali għall-principju tal-verita' u l-integrita.

U aktar ...

“Dejjem spjegajt illi l-istruttura was meant to be a family trust for family assets and investments. (pagina 28)”

Din hija gidba għax hemm biżżejjed prova ċari fl-assjem tal-emails li ħargu minn PanamaPapers kif spjegat fid-dettall u b'mod dokumentat aktar 'il fuq li juru li Konrad Mizzi kien qed jahdem, *in tandem*, ma' Keith Schembri, iċ-Chief of Staff tal-Prim Ministru. B'mod partikolari, izda mhux biss, l-*email* ta' Karl Cini tas-17 ta' Dicembru 2015.

“Allright ... fair enough. L-istruttura, kont diga' spjegajt li kont hadt ... I sought advice and they had recommended a New Zealand Trust. New Zealand is part of the OECD, they share information kif taf inti wkoll. Kienu rrakkomandawli New Zealand, jiena għandi International Family kif taf inti and I decided for those reasons to do that. (pagina 29)”

Mela hekk sew. Lill-*'international families'* inhegguhom jigu Malta, jinvestu Malta, jghixu Malta, jixtru saħansitra passaport Malti. Izda Ministru ewlieni tal-Gvern irid ibellagħhilna li mar jiftaħ kumpanija fil-Panama u trust fi New Zealand għax għandu *'international family'*. Din hija gidba għax issa kulhadd jaf li kien qed jiftaħ kollox flimkien ma' Keith Schembri għal skopijiet differenti u altru milli biex ipoggi l-beni tal-familja.

Illi fil-media, minn żmien għal żmien, Konrad Mizzi għamel ukoll diversi dikjarazzjoni qarrieqa jew addirittura foloz. Fosthom insibu illi f'*The Malta Independent* fit-22 ta' Lulju tal-2018 gie rappurtat jgħid illi "*He said that some people maliciously lied about him and others to gain political advantage. These persons, Mizzi said, twisted facts and invented lies to win an election. These people, at the time holding top positions in the PN, worked hand in hand with some journalists who agreed with them.*" (<http://www.independent.com.mt/articles/2018-07-22/local-news/I-never-did-anything-wrong-Konrad-Mizzi-6736193822>)

Issa jirrizulta ċar li hadd ma kien qed jigdeb fuq Konrad Mizzi, imma li semmai huwa Konrad Mizzi li kien qed jigdeb.

Illi f'*OneNews*, fis-27 ta' Mejju tal-2017 gie rappurtat illi Konrad Mizzi qal illi "*The co-ordinated story published by The Malta Independent is a blatant lie. It represents the latest attempt by Busuttil to win an election via the back-door of fear and smear. The allegation of alleged kickbacks and the allegation that funds related to bribes were transferred into Hearnville Inc are blatant lies.*" (<http://www.one.com.mt/news/2017/05/27/konrad-mizzi-jichad/>)

Anki dan issa hareġ bħala gidba ċara m'caħħda mill-verita' tal-fatti.

Illi f'*MaltaToday* tal-20 ta' Frar tal-2017, Mizzi gie rappurtat jgħid illi "*He described allegations made by PN leader Simon Busuttil of plans to deposit a million dollars every year as fabricated. "This is a blatant lie... he covered under parliamentary protection."*" (https://www.maltatoday.com.mt/news/national/74610/watch_trust_was_always_about_family_estate_planning_konrad_mizzi_tells_meps#.XGQLtlxKjcs)

Anki dan issa gie ppruvat li kienet gidba, falza u qarrieqa ta' Konrad Mizzi u ta' hadd aktar.

Illi l-esponenti għalhekk huma tal-fehma li abbażi tal-fatti hawn fuq esposti l-Ministru Konrad Mizzi xjentement u konsapevolment kkommetta, bħala awtur jew komplici, it-tentattiv ta' riċiklar ta' flejjes ta' provenjenza illeċita, jew irriċikla flejjes ta' provenjenza illeċita, flimkien mad-delitt (attentat jew ikkunsmat) ta' tixhim, li ħa sehem f'kongura u li kien parteċipi f'għaqda għal skopijiet kriminali, flimkien mar-reat ikkunsmat ta' ġurament falz u sperġur, u b'hekk jeżistu l-prerekwiziti fil-liġi biex tiskatta inkjesta *in genere* sabiex jiġi ppreservat is-suġġett materjali tar-reat imsemmi;

Illi finalment, japplika għall-Ministru Konrad Mizzi l-artiklu 141 tal-Kodiċi Kriminali għax huwa, bħala Ministru, huwa uffiċjal pubbliku.

Keith Schembri

Artiklu 3(1) tal-Kap.373; Artikli 18, 42, 48A, 83A, 115, 119 , 120, 141 tal-Kodiċi Kriminali:

Illi f'pagna 12/13 tar-Rapport tal-FIAU jinghad illi:

“In light of the information obtained from the email correspondence dated 17th June 2013 and the fact that, of the 2 companies, only one was retained for the benefit of Mr Brian Tonna, raises the suspicion that WILLERBY TRADE INC. was the company for which the Panamanian Bank account was intended. The statement that “if it works, will ask to open others in future” further raises suspicion beyond any reasonable doubt that WILLERBY TRADE INC. was being used as a test prior to setting up the Panamanian companies and respective bank accounts for Dr Konrad Mizzi and Mr Keith Schembri amongst possible others.

Of further suspicion is the fact that for reasons which are unknown to the FIAU, the account opening process in Panama for WILLERBY TRADE INC. was seemingly not pursued. Instead the decision was taken to open a bank account with Pilatus Bank plc, a bank which applied for its credit license in October 2013 and was finally incorporated on 6th December 2013.

In light of this, the choice of Pilatus Bank plc was deemed suspicious given that a client such as WILLERBY TRADE INC. was not in line with the profile of the bank, whose business model is that of a private bank that mainly services high net-worth foreign individuals. Of further suspicion are the unconfirmed links between the bank's main shareholder and Mr Keith Schembri.

19th July 2013 – The Mossack Fonseca & Co. Corporations Department sent an email to Mr Karl Cini, who is partner at Nexia BT, confirming 3 companies have been reserved until 16th July 2013. The following is an overview of the respective companies:

Company Registration Number	C 62995
Company Name	PILATUS BANK PLC
Registration Date	Dec 06, 2013
Registered Office	WHITEHALL MANSIONS, LEVEL 2, TA' XBIEX WHARF,
City/Locality	TA' XBIEX XBX 1026
Country	MALTA

Jurisdiction	Company	Registered on	Period	Type of M&AA
Panama	Egrant Inc.	08/07/2013	II	Bearer/Registered Shares
Panama	Hearnville Inc.	09/07/2013	II	Bearer/Registered Shares
Panama	Tillgate Inc.	15/07/2013	II	Bearer/Registered Shares

This correspondence also covered applicable fees. Although a specific currency wasn't mentioned, the total costs due to Mossack Fonseca & Co. (Panama) for the acquisition and registration of each company was quoted at 1,525.

This information also disproves claims made by Nexia BT and Dr Konrad Mizzi in that the companies were shelf companies which were purchased by Nexia BT and subsequently 2 of which were sold to Dr Konrad Mizzi and Keith Schembri respectively.

In the event that Nexia BT had been purchasing these companies as shelf companies which were sold on at a later date, one would expect Mr Cini to proceed immediately with the purchase of these companies. Instead Mr Cini asked that the 3 companies be reserved for a number of days and subsequently also asked for an extension on this reservation. This indicates that Mr Cini likely needed time to communicate with the actual beneficial owners of the companies and therefore could not take certain decisions himself.

The suspicion is further substantiated by the fact that when purchasing the BVI registered companies, WILLERBY TRADE INC. and TORBRIDGE SERVICES INC. Mr Cini gave the go ahead himself on the purchase of these companies without any need for reservations or extensions. This is understandable given that WILLERBY TRADE INC. was intended to for Mr Brian Tonna while TORBRIDGE SERVICES INC. was in fact purchased as a shelf company which was then sold on later.

MR KONRAD MIZZI
MINISTRY FOR ENERGY AND THE
CONSERVATION OF WATER
AUBERGE DE CASTILLE
VALLETTA

HSEC Advance VISA Account

Credit Limit	EUR	6000.00
Previous Balance	EUR	294.30
Transactions	EUR	513.74
Payments	EUR	294.30CA
New Balance	EUR	513.74
Debit Interest Rate	Purch 8.75%	Cash 8.75%

Statement Date : 14.08.2013

Card Account Number : 4035710036028657

Page : 1/1

Received By Us	Transaction Date	Transaction Type	Details	Transaction Amount	Exchange Rate	Euro Amount
CARD TRANSACTIONS - 403571*****8657 - KONRAD MIZZI						
	25.07.13	24.07.13	PURCH RITZ-CARLTON DOHA DOHA	2227.00	QAR 4.8034	463.63
			CHRG CURRENCY CONVERSION FEE	8.11	EUR	8.11
	26.07.13	25.07.13	PURCH SOTTOVENTO VITTORIOSA	42.00	EUR	42.00
	09.08.13	09.08.13	DEPST PAYMENT RECEIVED - THANK YOU	294.30	EUR	294.30CA
Points Summary for the month Points expire within 24 months. Redeem them and benefit from various offers.						
Previous Balance	Earned	Redeemed	Adjustment	Expired	New Balance	
675	252	0	0	0	925	
You may use our Internet or Phone Banking Services to settle your credit card account. For further information, please phone our Call Centre on tel. no. (+356) 21 489101.						
Minimum amount due for month EUR 25.69 by 08.09.2013 You can pay your monthly bill by using our free Direct Debit service.						
Use your HSEC Credit Cards to pay for a large purchase, such as a dream holiday or a luxury item, and you can spread the payment over a longer period.						

Illi b'mod mill-aktar ċar jingħad f'paġna 54 tar-Rapport tal-FIAU illi:

“The communication shows attempts made by Nexia BT to conceal from the FIAU the fact that the companies belonged to Dr Konrad Mizzi and Mr Keith Schembri from the start as is indicated in the email between Mr Daniel Leon and Mr Karl Cini on 7th July 2015.”

Illi huwa ċar minn hawn li Nexia BT, u allura Brian Tonna u Karl Cini, ż-żewġ amministratturi u rappreżentanti ta' Nexia BT, li ħbiet mill-FIAU informazzjoni mitluba fl-investigazzjoni tal-ħasil ta' flus li setgħu (anzi, probabbilment) wettqu Konrad Mizzi u Keith Schembri. Jaħbi min għandu x'jaħbi.

Illi aktar ħabi minn Nexia BT biex jinħeba d-delitt kommess minn Keith Schembri nsibuh f'paġni 98 u 99 tar-Rapport:

“The acknowledgment by Mr Karl Cini that “from a commercially sensitive perspective they cannot appear as direct shareholders” however in the same email Mr Cini states that “under our legislation, PEPs are openly allowed to hold shareholdings in other businesses.” This therefore begs the question as to why the need for secrecy given that under Maltese legislation, PEPs are openly allowed shareholdings.

vi) The attempts made by Nexia BT to conceal from the FIAU the fact that the companies belonged to Dr Konrad Mizzi and Mr Keith Schembri from the start as is indicated in the following emails:

- *Mr Karl Cini and Mr Luis Quiel dated 21st March 2013*
- *Mr Karl Cini and Ms Cristina Rios dated 25th March 2013*

- *Mr Kark Cini and Mossack Fonseca dated 28th July 2014*
- *Mr Karl Cini and unidentified 3rd party dated 8th August 2014*
- *Mr Daniel Leon and Mr Karl Cini dated 23rd October 2014*
- *Mr Karl Cini and Mossack Fonseca (NZ) dated 16th May 2015*
- *Mr Karl Cini and Mossack Fonseca (NZ) dated 23rd May 2015*
- *Mr Karl Cini and Mossack Fonseca (NZ) dated 16th May 2015*
- *Mr Daniel Leon and Mr Karl Cini dated 7th July 2015*
- *Mr Karl Cini and Mossack Fonseca (NZ) dated 17th October 2015*

Illi dan il-ħabi eżerċitat minn Karl Cini għan-nom u fl-interess ta' Keith Schembri u Konrad Mizzi huwa elementi vitali tad-definizzjoni ta' money laundering, tant li fl-artiklu 2 tal-Kap.373, insibu din id-definizzjoni:

“Money laundering” tfisser:

(i) il-konversjoni jew trasferiment ta' proprjetà meta wiehed ikun jaf jew jissuspetta li dik il- proprjetà tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta', attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali, għall-iskop ta' jew skopijiet ta' ħabi jew wiri haġa b'ohra tal-origini tal-proprjetà jew ta' għoti ta' għajjnuna lil xi persuna jew persuni involuti jew konċernati f'attività kriminali;

(ii) il-ħabi jew wiri haġa b'ohra tal-veri xorta, provenjenza, lok, dispożizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjetà, meta wiehed ikun jaf jew jissuspetta li dik il-proprjetà tkun inkisbet direttament jew indirettament minn attività kriminali jew minn att jew atti ta' parteċipazzjoni f'attività kriminali;”

Illi f'pagna 98 tal-imsemmi Rapport insibu hekk:

“The fact that, of the 2 BVI shelf companies purchased in June 2013, only one was retained for the benefit of Mr Brian Tonna which raises suspicion that WILLERBY TRADE INC. was the company for which the Panamanian bank account was intended. This in turn raises the suspicion beyond any reasonable doubt that WILLERBY TRADE INC. was being used as a test prior to setting up the Panamanian compa-

nies and respective bank accounts for Dr Konrad Mizzi and Mr Keith Schembri amongst possible others. This suspicion is substantiated further by the fact that email communication with references to HEARNVILLE INC., amongst others, commenced in July 2013.”

Illi f’pagna 99 ikompli hekk:

“The fact that Mr Karl Cini, in his capacity as MLRO, withheld information from the FIAU which shows his clients’ reluctance to inform domestic banks of their foreign structures and as a result were unable to 2 bank reference letters as requested by Mossack Fonseca & Co. (New Zealand).”

Illi l-ħabi huwa ċar u jindika l-oppost tal-*bona fede*. Jaħbi min għandu x’jaħbi għax għandu l-faħam miblul. Nexia BT ħbiet għax kienet taf ben tajjeb li kienet qed taġevola it-tnejn ta’ attivita illegali;

Illi l-esponenti għalhekk huma tal-fehma li abbażi tal-fatti hawn fuq esposti Keith Schembri xjentement u konsapevolment kkommetta, bħala awtur jew bħala kompliċi, it-tentattiv ta’ riċiklar ta’ flejjes ta’ provenjenza illeċita, jew irriċikla flejjes ta’ provenjenza illeċita, flimkien mad-delitt (attentat jew ikkonsmat) ta’ tixhim, li ħa sehem f’kongura u li kien parteċipi f’għaqda għal skopijiet kriminali u b’hekk jeżistu l-prerekwiżiti fil-liġi biex tiskatta inkjesta in genere sabiex jiġi ppreservat is-sugġett materjali tar-reat imsemmi;

Illi finalment, japplika għal Keith Schembri ukoll l-artiklu 141 tal-Kodiċi Kriminali għax huwa, bħala Chief of Staff tal-Prim Ministru, huwa ufficjal pubbliku.

Brian Tonna u Karl Cini

Artiklu 3(1) tal-Kap.373; Artikli 18, 42, 48A, 83A, 120, u minhabba r-rappreżentanza u s-sehem tagħhom ta' Nexia BT, l-Artiklu 121D tal-Kodiċi Kriminali u minhabba r-rappreżentanza tagħhom ta' BTI Management, l-Artikoli 183, 184, 185(2), 186, 187, 188 u 189 tal-Kodiċi Kriminali:

Illi f'pagna 91 tar-Rapport tal-FIAU, instabet evidenza dokumentarja illi:

“In a subsequent email dated 17 December 2015 (Appendix 8.7) from Mr Karl Cini to Juan Carlos Martinez, Mr Cini provided various details in relation to the operations of the Panamanian companies. In this communication Mr Cini stated that the companies are estimated to generate \$2 million within a year and the monthly amount of the transactions was expected to be circa €150,000.”

Illi dan waħdu hu prova inkonfutabbli ta' tentattiv ta' hasil ta' flus u parti mill-layering li kien qed jinħema minn Nexia BT biex jinħbew il-flejjes li kienu ser jiġu mit-tixhim ta' Keith Schembri u Konrad Mizzi ammontanti għal xejn anqas minn €5,000 kuljum jew €150,000 fix-xahar mingħand il-kumpanija *17 Black Ltd*, li hija proprjeta' ta' wiehed mis-sidien tal-power station il-ġdida, Yorgen Fenech, kif ukoll ta' tixhim, apparti r-reati ta' komplicita, kongura, assoċjazzjoni kriminali ta' Karl Cini u responsabilita' kriminali ta' korp ġuridiku, Nexia BT.

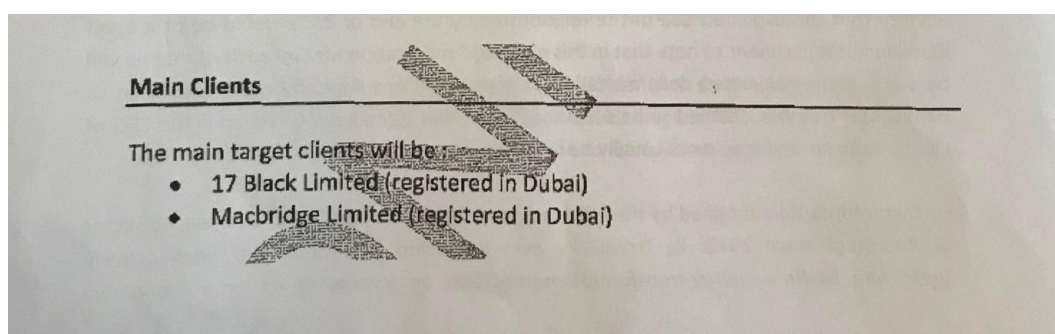
Illi f'pagna 95 tal-istess Rapport jingħad illi:

“5.2 Information relating to 17 BLACK LIMITED and MACBRIDGE LIMITED

*The FIAU obtained correspondence between Mr Karl Cini, Mr Juan Carlos Martinez and Mr Luis Quiel dated 10th December 2015 and 17th December 2015 respectively. In this communication, **Mr Cini was asked to provide various information in relation to the Panamanian companies belonging to Dr Konrad Mizzi and Mr Keith Schembri.** This information included the main clients of the companies TILGATE INC. and HEARNVILLE INC. to which Mr Cini advised that the target clients will be “17 Black Limited (registered in Dubai) and Macbridge Limited (registered in Dubai)”. (Appendix 8.6).*

The FIAU obtained information which indicate that the IBAN pertaining to 17 BLACK LIMITED is AE600520000110682060036. It is pertinent to note that transactions concerning 17 BLACK LIMITED were identified by the FIU of the United States as possible “shell company activity, suspicious wire transfers and money laundering”.

The FIAU is further informed that two transactions were also identified in favour of 17 BLACK LIMITED. These transactions were carried out on 19th and 26th November 2015 respectively for a total of 1,404,681. Although the FIAU does not hold the currency of this amount, the FIAU is informed that the USD equivalent of this sum is \$1,495,203. The remitter of these transactions was MAYOR TRANS LIMITED, a company registered in the Seychelles which holds a bank account with ABLV Bank in Latvia. The ultimate beneficial owner of MAYOR TRANS LIMITED is Rufat Baratzada. These payments which were both made in favour of 17 BLACK LIMITED's account at Noor Islamic Bank, Dubai carried the following payment details: "Partial Payment to the Commercial Invoice No. 009/2015 DD. Dubai 17th November 2015 for financial advisory services."



Illi terġa, f'pagna 98 tal-imsemmi Rapport jingħad illi:

"The fact that, of the 2 BVI shelf companies purchased in June 2013, only one was retained for the benefit of Mr Brian Tonna which raises suspicion that WILLERBY TRADE INC. was the company for which the Panamanian bank account was intended. This in turn raises the suspicion beyond any reasonable doubt that WILLERBY TRADE INC. was being used as a test prior to setting up the Panamanian companies and respective bank accounts for Dr Konrad Mizzi and Mr Keith Schembri amongst possible others. This suspicion is substantiated further by the fact that email communication with references to HEARNVILLE INC., amongst others, commenced in July 2013."

Illi dan waħdu juri l-livell ta' komplicita ta' Brian Tonna u Karl Cini fit-tentattiv tal-ħasil ta' flus ġejjin mill-korruzzjoni, pari passu mal-kongura u l-assoċjazzjoni għal skopijiet kriminali li kienu parteċipi fiha.

Illi element importanti ħafna li jindika l-ħsieb kriminuz da parti ta' Karl Cini huwa l-ħabi u l-qerq li huwa wera fil-korrispondenza tiegħu. Dan l-aspett daħal fih ir-Rapport tal-FIAU diversi drabi, per eżempju f'pagna 92:

“As was noted in the preliminary report which was disseminated to the police on 7th April 2016 in the section titled “Document referred to in Annex II”, one may note that through the copies of due diligence questionnaires which were compiled by Mr Karl Cini on behalf of his clients, the ROTORUA TRUST was set up for purposes of confidentiality and privacy and instructions were also given not to have the trust audited”

Illi dan ifisser li Cini u Tonna mhux biss kienu jafu b’kollox, iżda kienu huma stess personalment involuti sabiex jorganizzaw kollox meta, skont il-ligi, messhom irrap-purtaw lill-awtoritajiet li żewġ esponenti importanti tal-gvern, cioe’ Ministru ewlieni u c-Chief of Staff tal-Prim Ministru, riedu jhejju struttura sabiex fiha jpoġġu r-rikavat ta’ attivita’ illeċita. Dan juri li Tonna u Cini kienu parti mill-istorja mill-bidu nett.

Illi f’pagna 9 tar-Rapport tal-FIAU, ikompli:

“Of further suspicion is the fact that this email was one of those which was not included in the emails to the FIAU following the FIAU’s request to be provided with these documents.

25th March 2013 – Mr Karl Cini sent an email to Ms Cristina Rios stating the following:

It is pertinent to note that at this point in time no reference had yet been made to the 3 Panamanian companies as these were ultimately set up in July 2013. This email therefore indicates that the initial plan was to set up one company in Panama and have it held under trust, with details of the ultimate beneficial owner being provided over Skype to ensure a higher level of confidentiality.”

Illi dan jindika li aktarx, għall-ewwel, l-intenzjoni kienet li tinfetaħ kumpanija waħda biss fil-Panama u *trust* waħda biss fi New Zealand. Iżda eventwalment ittiehdet id-deċiżjoni li jinfethu tlieta, mhux waħda, li tnejn minnhom sirna nafu li huma ta’ Konrad Mizzi u Keith Schembri rispettivament, filwaqt li fuq it-tielet waħda, suspetti biss jista’ jkollna;

Illi dan il-ħabi eżerċitat minn Karl Cini għan-nom u fl-interess ta’ Keith Schembri u Konrad Mizzi huwa elementi vitali tad-definizzjoni ta’ money laundering, tant li fl-artiklu 2 tal-Kap.373, insibu din id-definizzjoni:

“money laundering” tfisser:

(i) il-konversjoni jew trasferiment ta’ proprjetà meta wiehed ikun jaf jew jissuspetta li dik il- proprjetà tkun direttament jew indirettament inkisbet minn, jew mir-rikavat ta’, attività kriminali jew minn att jew atti ta’ partecipazzjoni f’attività kriminali, għall-iskop ta’ jew skopijiet ta’ ħabi jew wiri haġa b’oħra tal-origini tal-proprjetà jew ta’

ghoti ta'ghajjnuna lil xi persuna jew persuni involuti jew konċernati f'attività kriminali;

(ii) il-ħabi jew wiri ħaġa b'oħra tal-veri xorta, provenjenza, lok, dispożizzjoni, moviment ta' jeddijiet rigward, fi jew fuq proprjetà, meta wieħed ikun jaf jew jissuspetta li dik il-proprjetà tkun inkisbet direttament jew indirettament minn attività kriminali jew minn atti jew atti ta' parteċipazzjoni f'attività kriminali;"

Illi l-konklużjoni tar-rapport tal-FIAU Anness tghid hekk:

“After having reviewed the information available to the FIAU, the following facts are considered to be of relevance in the determination as to whether a reasonable suspicion of money laundering subsists in this case:

In relation to the involvement of Nexia BT, BT International Ltd, BT Advisory Service Ltd, Nexia BT Consulting Ltd, BTI Management Ltd, Mr Karl Cini and Mr Brian Tonna in the setting up of financial structures in offshore jurisdictions, which are known for their high levels of secrecy for the benefit of politically exposed persons:

- i) The email between Mr Karl Cini and Mr Luis Quiel in March 2013, in relation to details relating to a Panama company and possibly a trust. This information in this email is not in line with claims made during 2016/2017, that the companies which were sold at a later date. Given the costs associated with the setup and maintenance of a trust, it would make no financial sense to the company service provider (in this case Nexia BT et al) to place a non-operative, shelf company in a trust for an indefinite period of time.*
- ii) The fact that, of the 2 BVI shelf companies purchased in June 2013, only one was retained for the benefit of Mr Brian Tonna which raises suspicion that WILLERBY TRADE INC. was the company for which the Panamanian bank account was intended. This in turn raises the suspicion beyond any reasonable doubt that WILLERBY TRADE INC. was being used as a test prior to setting up the Panamanian companies and respective bank accounts for Dr Konrad Mizzi and Mr Keith Schembri amongst possible others. This suspicion is substantiated further by the fact that email communication with references to HEARNVILLE INC., amongst others, commenced in July 2013.*

- *iii) The decision not to pursue the opening of a bank account in Panama for WILLERBY TRADE INC. and to use the recently incorporated domestic credit institution Pilatus Bank plc instead for both WILLERBY TRADE INC. and TORBRDIGE SERVICES INC.*
- *iv) The fact that Mr Cini asked for the 3 companies to be reserved for a number of days and subsequently also asked for an extension on this reservation. This indicates that Mr Cini likely needed time to communicate with the actual beneficial owners of the companies and therefore could not take certain decisions*
 - *himself, which would have been the case had Nexia BT been purchasing these companies as shelf companies which would have then been sold at a later date (as was the case with TORBRDIGE SERVICES INC.).*
- *v) The acknowledgment by Mr Karl Cini that “from a commercially sensitive perspective they cannot appear as direct shareholders” however in the same email Mr Cini states that “under our legislation, PEPs are openly allowed to hold shareholdings in other businesses.” This therefore begs the question as to why the need for secrecy given that under Maltese legislation, PEPs are openly allowed shareholdings.*
- *vi) The attempts made by Nexia BT to conceal from the FIAU the fact that the companies belonged to Dr Konrad Mizzi and Mr Keith Schembri from the start as is indicated in the following emails:*
 - *Mr Karl Cini and Mr Luis Quiel dated 21th March 2013*
 - *Mr Karl Cini and Ms Cristina Rios dated 25th March 2013*
 - *Mr Kark Cini and Mossack Fonseca dated 28th July 2014*
 - *Mr Karl Cini and unidentified 3rd party dated 8th August 2014*
 - *Mr Daniel Leon and Mr Karl Cini dated 23rd October 2014*
 - *Mr Karl Cini and Mossack Fonseca (NZ) dated 16th May 2015*
 - *Mr Karl Cini and Mossack Fonseca (NZ) dated 23rd May 2015*
 - *Mr Karl Cini and Mossack Fonseca (NZ) dated 16th May 2015*

- *Mr Daniel Leon and Mr Karl Cini dated 7th July 2015*
- *Mr Karl Cini and Mossack Fonseca (NZ) dated 17th October 2015*
- *vii) The alleged lack of email correspondence between Nexia BT, BT International Ltd, BT Advisory Services Ltd, Nexia BT Consulting Ltd and BTI Management Ltd, and the Clients and hence the claim that “All instruction and discussions with the Clients were verbal” is deemed to be suspicious given that when providing such a service, both the client and the provider are likely to resort to emails at least for parts of the process.*
- *viii) The fact that the Engagement Letter issued by BTI Management on 5th May 2015 indicates that this document may have been fabricated to coincide and substantiate requests and claims made following the revelations of the Panama Papers. This suspicion is raised given that by his admittance, Dr Konrad Mizzi claimed that he sought asset management advice in 2014 and an email communication dated 23rd October 2014 shows Mr Karl Cini communicating with Mossack Fonseca (New Zealand) with references being made to a sample trust deed and information relating to the opening of a bank account.*
- *ix) The fact that Mr Karl Cini, in his capacity as MLRO, withheld information from the FIAU which shows his clients’ reluctance to inform domestic banks of their foreign structures and as a result were unable to 2 bank reference letters as requested by Mossack Fonseca & Co. (New Zealand).*
- *x) Of further suspicion is the fact that Mr Karl Cini informed Mossack Fonseca & Co. (NZ) that “it is not common to have more than one bank” which is not the case, given that most people in Malta tend to bank at least 2 different credit institutions. So much so Dr Konrad Mizzi had been a long standing customer of 2 banks in Malta namely HSBC and BOV.*
- *xi) The incorporation of Mossack Fonseca & Co. (Malta) Limited in Malta in May 2013 through Brain Tonna company BT international. The firm Mossack Fonseca was later cited to be “a potential criminal organization that concealed and removed evidence related to criminal activity” by Panama’s Attorney General.*

- *xii) The overall lack of fees payable to Nexia BT et al from Dr Konrad Mizzi for the services provided until June 2016 when a payment of EUR4345.44 was made.*
- *xiii) The payment of €493.72 which was transferred from Dr Konrad Mizzi to BTI Management on 23rd August 2016 with reference to a letter dated 23rd August 2016.*

In relation to the suspected ease with which documents were amended/ altered:

i) Following an error made on the 1st share certificate dated 22nd July 2015, a subsequent share certificate and board meeting declaration were drawn up and both backdated to 21st July 2015. The ease with which documentation was amended and backdated is considered to be suspicious.

ii)

... In relation to the UAE company 17 Black Limited:

i) The provision of “consultancy services” by 17 Black Limited, a company registered in the United Arab Emirates coupled with Mr Karl Cini’s claim that this company together with Macbridge Limited, another company registered in the United Arab Emirates, are the target clients of Tillgate Inc. and Hearnille Inc.

ii) The involvement of Mr Mario Pullicino as company secretary to Armada Floating Gas Services Limited, a company which was incorporated 3 months prior to the transaction from Orion Engineering Group to 17 Black Limited.

iii) The difference in the references for the transaction which was attempted on 10th July 2015 and the transaction which was carried out successfully on 23rd July 2015.

iv) The inconsistencies in alleged business activity of 17 Black Limited with one source stating that the company provides man power, whereas information obtained indirectly from Noor Islamic Bank Dubai states that the company provides consultancy services.

In relation to the BVI company Torbirdge Services Inc:

- *i) The fact that Mr Karl Cini advised that he will be sending the requested documentation in relation to Torbridge Servics Inc in a separate envelope, by hand, addressed to Hamidreza, who being the CEO of Pilatus Bank would not usually be involved in any account opening procedures.*

- *ii) The fact that Mr Cini advised that the initial funding to the account of Torbridge Services Inc was expected in August 2015 and that the expected size of the relationship by end of 2015 would be around €1million, however following initial adverse media reports in February 2016, no such activity ever took place on the account. “*

Illi f’paġna 100 tar-Rapport tal-FIAU jingħad ukoll illi:

“In relation to the attempts made at setting up bank accounts for HEARNVILLE INC:

- *i) Email communications indicates that Nexia BT first attempted opening accounts themselves for HEARNVILLE INC. and TILLGATE INC, in the United Arab Emirates. Despite this, Mossack Fonseca & Co. (Panama) were still asked to assist in opening other accounts during the same time period. This indicates the intention of the companies to hold more than one account in different jurisdictions.*
- *ii) The communication from Mr Karl Cini dated 25th August 2015, stating that his client, in this case Dr Konrad Mizzi, will take documents directly in original format for the purpose of opening a bank account in Dubai to the respective bank. This communication is substantiated by Dr Konrad Mizzi’s credit card activity which places him in Dubai on 27th August 2015.*

Illi konferma ulterjuri tad-delitt ta’ komplicita fit-tentattiv tal-ħasil ta’ flus, it-tixhim u l-kongura u l-assoċjazzjoni kriminali li fiha sija Karl Cini, Brian Tonna u Konrad Mizzi kienu parteċipi (fil-forma ta’ delitt kontinwat (art.18 tal-Kodici Kriminali) narawha f’paġna 101 tar-Rapport tal-FIAU fejn jingħad ukoll illi dawn il-fatti komplew isahħu l-fehma tal-FIAU li si trattava ta’ tentattiv ta’ ħasil ta’ flus:

- *“The numerous attempts made to open bank accounts in various jurisdictions, all of which have very little nexus with the beneficial owner, are deemed to be suspicious especially when one considers that contact was made with various banks and the only preoccupation with each request was whether the respective bank is willing to accept a high risk client. In fact contact was made with no less than 8 banks namely:*
 - *Bank in Dubai (exact bank unknown)*
 - *Bank of St Lucia International (BOSIL)*
 - *Winterbotham Bank (Bahamas)*
 - *Banco Itauv(Miami)*

- *BSI Bank (Panama)*
 - *Brichell Bank (Miami)*
 - *Cidel Financial Group*
 - *FPB Bank (Panama)*
- *iv) In addition it was noted that the email communications trail relating to account opening never refers to any other feature or perks which the different accounts have to offer. This was also deemed suspicious due to the fact that people usually consider having the offshore accounts due to certain advantages such as beneficial interest rates.*
 - *v) In an email dated 17th September 2015, Mr Cini confirmed that the account will be the operating accounts of the Panamanian company and estimated yearly deposits of €350,000. This warrants the question as to how a minister with an annual income of approximately €100,000 was to fund deposits of EUR350,000 to an account held in the name of his Panamanian company.*
 - *vi) It was noted that Mr Karl Cini was very timely in replying to communications from Mossack Fonseca & Co. Panama during the setting up of the companies as well as the arrangements to open bank accounts for the companies. Therefore it was deemed suspicious when a reminder was sent to him on 22nd September 2015 to provide information on the purpose of the bank accounts and the operations/activities of the companies and such information was then provided on the 17th December 2015.*
 - *vii) The willingness to pay \$4,500 for a service that under normal circumstances can be obtained free of charge.”*

Illi l-esponenti għalhekk huma tal-fehma li abbażi tal-fatti hawn fuq esposti Karl Cini u Brian Tonna, xjentement u konsapevolment kkommettew, bħala awturi jew bħala kompliċi, it-tentattiv ta' riċiklar ta' flejjes ta' provenjenza illeċita, jew irriċiklaw flejjes ta' provenjenza illeċita, flimkien mad-delitt (attentat jew ikkonsmat) ta' tixhim, li ħadu sehem f'kongura u li kienu parteċipi f'għaqda għal skopijiet kriminali, bl-applikazzjoni tal-artiklu 18 tal-Kodici Kriminali, u b'hekk jeżistu l-prerekwiziti fil-ligi biex tiskatta inkjesta in genere sabiex jiġi ppreservat is-sugġett materjali tar-reat msemmi;

- Artiklu 15 tal-A.L. 373.01 (obbligi tal-Money Laundering Reporting Officer(9) fil-konfront ta' Karl Cini li fi kliem ir-rapport tal-FIAU anness fil-konkluzjoni tiegħu jgħid hekk:

- *“The fact that Mr Karl Cini, in his capacity as MLRO, withheld information from the FIAU which shows his clients’ reluctance to inform domestic banks of their foreign structures and as a result were unable to 2 bank reference letters as requested by Mossack Fonseca & Co. (New Zealand).” (vide wkoll pagna 66 u 70 tal-anness rapport tal-FIAU)*

Illi dan il-paragrafu f’pagna 99 tal-imsemmi Rapport jindika ċar id-delitt tal-falsifikazzjoni¹⁰ u l-esponenti jemmnu li dan sar minn BTI Management li hija proprjeta u amministrata ukoll minn Brian Tonna u Karl Cini:

“The fact that the Engagement Letter issued by BTI Management on 5th May 2015 indicates that this document may have been fabricated to coincide and substantiate requests and claims made following the revelations of the Panama Papers. This suspicion is raised given that by his admittance, Dr Konrad Mizzi claimed that he sought asset management advice in 2014 and an email communication dated 23rd October 2014 shows Mr Karl Cini communicating with Mossack Fonseca (New Zealand) with references being made to a sample trust deed and information relating to the opening of a bank account.”

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⁹ Pagna 54 tar-Rapport tal-FIAU: *“Furthermore, the FIAU requested information on 2 March 2016 whereby Nexia BT, BT International Ltd, BT Advisory Services Ltd, Nexia BT Consulting Ltd and BTI Management Ltd, namely Mr Karl Cini in his capacity as Money Laundering Reporting Officer....”*

¹⁰ Li jagħti lok għal ksur tal-artikoli 183, 184, 185(2), 186, 187, 188 u 189 tal-Kodiċi Kriminali.

Mario Pullicino

Artiklu 3(1) tal-Kap.373; Artikli 18, 42, 48A, 83A, 119, 120, tal-Kodiċi Kriminali:

Illi r-rapport tal-FIAU f'pagna 56 sab li s-soċjeta li tagħha Mario Pullicino huwa r-rappreżentant, għaddiet hlas altament suspettuż lis-soċjeta sigrieta 17 Black f'Dubai fl-ammont ta' €200,000:

“23rd July 2015 – The transfer of €200,000 (USD 181,851.25) which was attempted on 10th July 2015 was successfully carried out by Orion Engineering Group in favour of the UAE registered company 17 BLACK LIMITED. The correspondent bank used in this transaction was Bank of America. ... It is interesting to note that the transaction which was attempted on 10th July 2015 bore a reference to “manpower for Q4002”, however, the transaction which was carried out on 23rd July 2015 simply bore the reference of an invoice number 20151001.”

Illi r-rapport indikat tal-FIAU stess jghid hekk f'pagna 96:

“5.3 Information relating to the ORION ENGINEERING GROUP LIMITED

The FIAU obtained information from Mr Mario Pullicino, holder of ID card number 43065M. The latter is the ultimate beneficial owner of the Maltese registered company ORION ENGINEERING GROUP LIMITED. Due to the aforementioned transaction which was identified by the FIAU, Mr Pullicino was asked for further information in relation to the purpose of this payment. Mr Pullicino claimed that the payment was due to 17 BLACK LIMITED for the provision of manpower.

The FIAU subsequently noted that Mr Mario Pullicino is the company secretary to the Maltese registered company, Armada Floating Gas Services Malta Limited. It was further noted that this company which was incorporated on 6th April 2015 entered into an agreement with Electrogas Malta Limited for the chartering of the LNG Tanker MV Armada Mediterrana. This vessel which bears IMO 8125868 was formerly flagged in the Bahamas and called “Wakaba Maru”.

It is pertinent to note that the transaction which took place between Mr Pullicino's company ORION ENGINEERING GROUP LIMITED and 17 BLACK LIMITED (23rd July 2015) was carried out 3 months following the incorporation of Armada Floating Gas Services Malta Limited. The date of the transaction also coincides with the time when

Mr Karl Cini was trying to open a bank account for HEARNVILLE INC. as well as Dr Mizzi's trip to Dubai on 27th August 2015.

Illi imbghad, f'pagna 104 jinghad illi:

"The apparent lack of transparency in relation to the agreements involving Enemalta plc, Electrogas Malta Limited, Armada Floating Gas Storage Malta Limited and/or Armada Floating Gas Services Limited and the involvement of Mr Mario Pullicino in one of these companies. "

Illi f'pagna 108 l-istess rapport tal-FIAU juri għala l-involvement ta' Mario Pullicino jwassal għal suspett raġjonevoli ta' involvement f'kongura ta' tentattiv ta', jekk mhux saħansitra r-reat ikkonsmat ta', hasil ta' flus u tixhim:

"In relation to the UAE company 17 Black Limited:

i) The provision of "consultancy services" by 17 Black Limited, a company registered in the United Arab Emirates coupled with Mr Karl Cini's claim that this company together with Macbridge Limited, another company registered in the United Arab Emirates, are the target clients of Tillgate Inc. and Hearnille Inc.

ii) The involvement of Mr Mario Pullicino as company secretary to Armada Floating Gas Services Limited, a company which was incorporated 3 months prior to the transaction from Orion Engineering Group to 17 Black Limited.

iii) The difference in the references for the transaction which was attempted on 10th July 2015 and the transaction which was carried out successfully on 23rd July 2015.

iv) The inconsistencies in alleged business activity of 17 Black Limited with one source stating that the company provides man power, whereas information obtained indirectly from Noor Islamic Bank Dubai states that the company provides consultancy services.

Illi f'pagna 54 jinghad hekk:

"10th July 2015 – a transfer of €200,000 (\$179,243.59) was attempted on 10th July 2015 by Orion Engineering Group in favour of the UAE registered company 17 BLACK LIMITED. This transaction was not successful due to the transaction not being in line with the correspondent's bank internal policies. The correspondent bank used in this transaction was Deutsche Bank Trust Company Americas. More in-

formation in relation to these companies is provided in sections 5.2 and 5.3 of this report.”

Illi l-esponenti għalhekk huma tal-fehma li abbażi tal-fatti hawn fuq esposti Mario Pullicino xjentement u konsapevolment kkommetta, bħala awtur jew kompliċi, it-tentattiv ta' riċiklar ta' flejjes ta' provenjenza illeċita, jew irriċikla flejjes ta' provenjenza illeċita, flimkien mad-delitt (attentat jew ikkonsmat) ta' tixhim, li ha sehem f'kongura u li kien parteċipi f'għaqda għal skopijiet kriminali (bl-applikazzjoni tal-art.18 tal-Kodici Kriminali) u b'hekk jeżistu l-prerekwiżiti fil-Liġi biex tiskatta inkjesta in genere sabiex jiġi ppreservat is-sugġett materjali tar-reat msemmi;

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Illi għal kull bon fini u għall-kompletezza, anke jekk mhux rikjest mill-ligi, l-esponenti ser jissenjalaw l-insenjament fil-qosor ta' dak li l-Qrati tagħna qalu meta ġew biex jiġġudikaw kawzi kriminali fejn kien hemm akkuza ta' hasil ta' flus u anke dwar id-delitt ta' korruzzjoni.

Dan ser jingħad b'riferenza għat-talba tal-esponenti biex il-Maġistrat Inkwirenti jiskatta Inkjesta Maġisterjali dwar is-suspett raġjonevoli li l-persuni suspettati hawn fuq imsemmija (Ministru Konrad Mizzi, Keith Schembri, Karl Cini, Brian Tonna, Mario Portelli) ikkomettew id-delitt ta' tentattiv ta' hasil ta' flus jew hasil ta' flus fil-forma konsumata, kif ukoll ikkomettew id-delitt ta' tentattiv ta' korruzzjoni jew id-delitt ikkonsmat ta' korruzzjoni.

Illi, per eżempju, fis-sentenza tal-Qorti tal-Maġistrati (Malta) bhala Qorti ta' Ġudikatura Kriminali per Maġistrat Dr Donatella Frendo Dimech nhar l-14 ta' Gunju 2017 fl-ismijiet Il-Pulizija vs Brian Buttigieg et, insibu hekk:

“Illi dwar l-ewwel imputazzjoni addebitata lill-imputati issir riferenza għad-deċiżjoni fl-ismijiet *The Police vs Omissis and Vladimir Omar Fernandez Delgado*. F'din id-deċiżjoni l-Qorti għamlet analiżi funditus dwar ir-rekwiżiti legali tar-reat ta' riċiklaġġ, jew kif inhu aħjar magħruf dak ta' money laundering previst bl-artikolu 3 tal-Kapitolu 373 tal-Liġijiet ta' Malta fejn l-attività tal-akkuzat trid tiffigura f'waħda jew iżjed miċ-ċirkostanzi deskritti fil-paragrafi (i) sa (vi) tal-artikolu 2 tal-istess Kapitolu:

“Our Money Laundering Act, though a copious piece of legislation, does not give us a concise definition of the crime under issue. It does pronounce a number of instances which would constitute this crime, its attempt or complicity.

Reference is made to Archbold 2012 where one finds that this offence is described and defined as:

“The explanatory notes to the PCA (Proceeds of Crime Act 2002) define money laundering as “the process by which the proceeds of crime are converted into assets which appear to have legitimate origins, so that they can be retained permanently or recycled into further criminal enterprises.” (Archbold: Criminal Pleading, Evidence and Practice, 2012, page 2475).

The Law Society Anti-Money Laundering Practice Notes October 2013 (Supporting Solicitors) defines this crime as follows: “Money laundering is generally defined as the process by which the proceeds of crime, and the true ownership of those proceeds, are changed so

that the proceeds appear to come from a legitimate source. Under POCA the definition is broader and more subtle. Money laundering can arise from small profits and savings from relatively minor crimes, such as regulatory breaches, minor tax evasions or benefit fraud. A deliberate attempt to obscure the ownership of illegitimate funds is not necessary.”

Adds: “There are three acknowledged phases to money laundering placement, layering and integration. However, the broader definition of money laundering offences in POCA includes even passive possession of criminal property as money laundering.” (page 9)

In examining this offence, our Courts have also established that the three elements – placement, layering and integration, are not per se sine qua non elements necessary for the crime to exist, establishing that these stages were but a general description of the crime in question, for better understanding of the lay person sitting in a Trial by Jury. The Criminal Court reiterated further that thus the Prosecution need not, according to Law, prove the intention in each and every one of these stages.

This short summary reflects the main points raised by the Court of Appeal in the judgment “Police (Insp Angelo Gafa’) vs Carlos Frias Mateo”, dated 19th January, 2012, wherein the Court is here cited to have said this:

“Kif ben tajjeb qalet l-Ewwel Qorti diversi awturi jaqsmu l-proċess tal-ħasil ta’ flus fit-tliet stadji imsejha “placement”, “layering” u “integration”. Dawn l-istadji ġew imfissra b’mod konċiż mill-Qorti tal-Maġistrati. Pero` mill-bidunett ta’ min jippreciza, li dawn l-istadji huma biss deskrizzjoni ġenerali tal-proċess tal-ħasil tal-flus. Hija skola ta’ tagħlim li nholqot sabiex ġurija tkun f’pożizzjoni aktar felici sabiex tifhem l-intriċċi u l-kumplikazzjonijiet li jinvolvu dawn it-tip ta’ reati. Għalhekk il-qasma tal-proċess tal-ħasil ta’ flus f’dawn it-tliet stadji hija waħda ġenerali u bl-ebda mod dogmatika. Fil-fatt awturi oħrajn jikkritikaw din il-klassifikazzjoni minħabba li tissimplifika wisq is-sitwazzjoni u f’ħafna każijiet ma hiex riflessjoni veritjiera ta’ dak li realment ikun qed jiġri. Għalhekk dawn l-istadji għandhom jittieħdu biss bħala punto di partenza u bħala deskrizzjoni ġenerali tal-proċess tal-“money laundering” b’mod flessibbli tant li ma hux rikjest li l-prosekuzzjoni trid tipprowa l-intenzjoni f’kull wieħed u waħda minn dawn l-istadji. Dan qiegħed jingħad fid-dawl tad-definizzjoni ta’ “money laundering” li nsibu fit-tieni artikolu tal-Kap. 373 kif ukoll ir-reati kkontemplati fl-artikolu 327, 328 u 329 tal-Att tal-Parlament Ingliż “Proceeds of Crime Act 2002” fejn analiżi tagħhom ma tirrikjedix

li l-prosekuzzjoni tipprova li l-imputat kellu l-intenzjoni li jikkommetti “placement”, “layering” u “intergration” bil-proprjeta’.”¹¹

Furthermore, as justly pointed out by Defence Counsel in the note of submissions, our Courts have advised caution in dealing and assessing this case, as well explained in another judgment handed down by the Criminal Court in the case “Republic of Malta vs John Vella” decided on the 9th November, 2007: “L-Avukat Generali jista’ jakkuza persuna bir-reat ta’ money laundering mingħajr ma jkollu sentenza ta’ kundanna ta’ dak li jkun qed jiġi allegat li huwa l-attivita’ kriminali sottostanti. Ċertament pero, ikun x’ikun il-każ, jekk l-Avukat Ġenerali jiddeciedi li jakkuza lil xi ħadd b’money laundering irid jindika n-ness bejn l-attivita’ kriminali sottostanti partikolari li jkun qed jallega. Mhux kull akkwist, mhux kull konverżjoni ta’ trasferiment ta’ proprjeta’, mhux kull ħabi jew wiri ta’ proprjeta’ neċessarjament jammonta għal money laundering.

Din hi Liġi straordinarja li tintroduċi kuncett radikali fis-sistema nostrana u li tirrikjedi applikazzjoni bl-akbar skuplu u attenzjoni biex ma tigix reża fi strument ta’ ingustizzja, iktar reminixxenti taż-żminijiet tal-inkwizizzjoni minn dawk tal-era moderna tad-drittijiet tal-bniedem.”

Further considers, that as said our Law does not give a comprehensive definition of this crime, opting instead to delineate various instances which would constitute the crime of Money Laundering or its attempt or complicity. Section 2(1)(i) of the said Chapter defines the crime of money laundering as being constituted in any one or more of the instances as reflected in the charge sheet.

Whilst the actus reus of this crime should present no problems to comprehend, it is immediately obvious that the mental formal elements involved range from the actual knowledge that the proceeds laundered had a criminal provenance, to even the suspicion thereof. The Law as amended uses the words “knowing” or “suspecting”. [(Section 2(1)(i)]. The element of knowledge should present no difficulties to proof in a Court of Law, knowledge is what it is. It clearly means that one has a good understanding, knowhow, command, and comprehension of a situation. The term suspicion on the other hand can present and lend itself to a myriad of difficulties and is deserving of more exploration.

Guidance is here sought by reference to Money Laundering Offences: The Law Society, Chapter 5, 2013, October Practice Notes. This extract refers to the P.O.C.A. It can help us understand the mental ele-

¹¹ Court of Magistrates (Malta) As a Court of Criminal Judicature, per Hon. Magistrate Dr Miriam Hayman; 29th April, 2015, Crim. Proc. No. 457/2013.

ments necessary under our Legislation. To keep in mind is that our Chapter 373 speaks only of knowledge and suspicion, whereas the POCA speaks of three elements including that of “reasonable grounds for suspicion”, this within the limitations hereunder outlined:

“5.3 Mental elements

The mental elements which are relevant to offences under Part 7 of POCA are:

- knowledge*
- suspicion*
- reasonable grounds for suspicion*

These are the three mental elements in the actual offences, although the third one only applies to offences relating to the regulated sector. There is also the element of belief on reasonable grounds in the foreign conduct defence to the money laundering offences. A person will have a defence to a principal offence if they know or believe on reasonable grounds that the criminal conduct involved was exempt overseas criminal conduct.

For the principal offences of money laundering the prosecution must prove that the property involved is criminal property. This means that the prosecution must prove that the property was obtained through criminal conduct and that, at the time of the alleged offence, you knew or suspected that it was.

For the failure to disclose offences, where you are acting in the regulated sector, you must disclose if you have knowledge, suspicion or reasonable grounds for suspicion; while if you are not in the regulated sector you will only need to consider making a disclosure if you have actual, subjective knowledge or suspicion.

These terms for the mental elements in the offences are not terms of art; they are not defined within P.O.C.A and should be given their everyday meaning. However, case law has provided some guidance on how they should be interpreted.

5.3.1 Knowledge

Knowledge means actual knowledge. There is some suggestion that wilfully shutting one's eyes to the truth may amount to knowledge.

However, the current general approach from the criminal courts is that nothing less than actual knowledge will suffice.

5.3.2 Suspicion

The term 'suspects' is one which the court has historically avoided defining; however because of its importance in English criminal law, some general guidance has been given.

In the case of Da Silva [1996] EWCA Crim 1654, which was prosecuted under the previous money laundering legislation, Longmore LJ stated:

'It seems to us that the essential element in the word 'suspect' and its affiliates, in this context, is that the defendant must think that there is a possibility, which is more than fanciful, that the relevant facts exist. A vague feeling of unease would not suffice.'

There is no requirement for the suspicion to be clear or firmly grounded on specific facts, but there must be a degree of satisfaction, not necessarily amounting to belief, but at least extending beyond speculation.

The test for whether you hold a suspicion is a subjective one. If you think a transaction is suspicious, you are not expected to know the exact nature of the criminal offence or that particular funds were definitely those arising from the crime. You may have noticed something unusual or unexpected and after making enquiries, the facts do not seem normal or make commercial sense. You do not have to have evidence that money laundering is taking place to have suspicion."

(P.O.C.A Proceeds of Crime Act 2002 (U.K).

This therefore is the level that the Prosecution must reach to prove the mental element of this crime, knowledge or suspicion as here explained, beyond reasonable doubt, on the part of the offender of the illegal provenance of the proceeds.

It is obviously only after an acute examination of all the facts of the case presented to the Court, that one of these elements can be proved. Obviously knowledge transcends any suspicion.

The proof of the underlying offence is regulated by Article 2(2)(a) of Chapter 373 that reads:

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

on the basis of circumstantial or other evidence without it being incumbent on the prosecution to prove a conviction in respect of the underlying criminal activity and without it being necessary to establish precisely which underlying activity.”

Therefore, the Prosecution are aided, to a degree, in proving the necessary crime originator of the questioned laundered proceeds by direct evidence where available, or by circumstantial evidence or any other evidence, and need not necessarily produce an actual conviction that establishes the underlying offence. Neither does the Law require them to proof with precision the nature of the crime involved.

Therefore the launderer need not be knowledgeable of the precise nature of the crime whose proceeds he is helping to convert into unsuspecting clean property. Suffice that he has knowledge or a suspicion that these proceeds might have a dubious origin.

Applied to the case in question this therefore means that the Prosecution need not proof John Joseph Evans' guilt but the nature of his operations, in his instance drug trafficking or that something appeared amiss at a stage in time to the accused.

Yet another exception arises in this Chapter concerning the level of proof and or the burden thereof. This emanates from Section 3(3) of Chapter 373 which refers directly to a shift in the burden of proof found entrenched in Chapter 101 of the Laws of Malta.

Fil-fatt l-Artiklu 3(3) tal-Kapitolu 373, Ligijiet ta' Malta, li għa saret riferenza għalih jipprovdi:

(3) Fi proċeduri dwar reat ta' money laundering taħt dan l-Att id-disposizzjonijiet tal-artikolu 22(1C)(b) tal-Ordinanza dwar il-Mediċini Perikolużi., għandhom ikunu mutatis mutandis japplikaw.

Fl-artikolu 22(1C)(b) tal-Ordinanza msemmija nsibu:

(b) Fi proċedimenti għal reat taħt il-paragrafu (a), meta l-prosekuzzjoni għib prova li l-imputat jew akkużat ma jkun ta ebda spjegazzjoni ragonevoli li turi li dawk il-flus, proprjetà jew rikavatma kenux flus, proprjetà jew rikavat kif deskritti fl-imsemmi paragrafu, l-oneru li jipprova l-provenjenza leċita ta' dawk il- flus, proprjetà jew rikavat tkun tinkombi fuq il-persuna imputata jew akkużata.

Il-Qorti fil-każ ċitat kompliet:

Obviously this last quoted Section deals with proceeds of crimes dealt with under Chapter 101. This presumption is however applicable to all predicate offences and their proceeds as regulated by Chapter 373.

It therefore transpires that for a charge of money laundering to be proven successfully, the Prosecution must prove the nexus between the criminal activity and the questioned dubious proceeds, but it lies with the charged or accused, failing a reasonable explanation thereof to prove, now to a level of probability, the lawful origin of the monies in question.

In this regard, for a better understanding of the level of proof the Prosecution has to reach to establish the underlying offence and that necessitated by the accused as rebuttal of the illegal knowledge of the proceeds, the Court is once again referring to the Carlos Frias Mateo decision above cited, dated 19th January, 2012, wherein the Court said:

“F’din il-kawza, l-appellat qed jigi akkużat bil-ksur ta’ provvedimenti tal-Kap 373 tal-Ligijiet ta’ Malta iżda dan il-Kap jagħmel referenza wkoll għall-Artiklu 21(1C)(b) tal-Kap 101 tal-Ligijiet ta’ Malta li wkoll jitfa’ l-piż li juri l-origini leċita tal-flus, proprjeta jew rikavat fuq il-persuna akkużata.

Għalhekk, dan il-livell ta’ prova “prima facie” japplika kemm għall-persuna li tkun akkużata b’money laundering taht il-Kap 101 kif ukoll taht il-Kap 373. Issa, peress illi l-Artiklu 2(2)(a) ta’ l-istess Att jeżimi mir-responsabilita’ l-prosekuzzjoni illi tipprova xi htija preċedenti in konnessjoni ma xi attivita` kriminali, kull ma għandha tipprova l-prosekuzzjoni huwa illi l-flus illi nstabu fil-pussess tal-persuna li ma kienux konformi ma l-istil ta’ hajja tal-persuna, liema prova tkun tista’ tigi stabbilita anke minn provi indizzjarji. Dana jfisser illi l-prosekuzzjoni m’għandix tipprova lill-Qorti l-origini tal-flus, lanqas jekk il-flus kienu llegali. Kull ma trid tipprova huwa fuq grad ta’ “prima facie” illi ma hemm l-ebda spjegazzjoni logika u plawsibbli dwar l-origini ta’ dawk il-flus. Darba ssir din il-prova fil-grad imsemmi, jkun imiss lill-akkużat sabiex juri illi l-origini tal-flus ma kienx illegali. [emfazi tal-Qorti]

Forsi f’dan l-istadju ikun opportun illi jigi kwalifikat il-prova “prima facie” u fiex din tikkonsisti.

Ikkunsidrat :

Hu ben saput illi l-Qrati generalment jirrikonoxxu erba’ tipi ta’ prova, dak li huwa possibbli, l-probabbli, mingħar dubju dettat mir-raġuni u ċ-certezza. Iżda l-prova “prima facie” hija wżata mill-Maġistrat Inkwirenti meta jirredici l-Process Verbal u l-Maġistrat Istruttur fl-għeluq tal-Kumpilazzjoni. Fl-opinjoni tal-Qorti din hija livell ta’ prova illi tidhol bejn il-possibbli u l-probabbli.

L-awtur Blackstone (At D 6.21) jgħid fost affarijiet oħra,

“Thus, the standard of proof the prosecution are now required to satisfy at committal proceedings is very low, lower than that resting on a plaintiff in civil proceedings. It is commonly expressed as establishing a prima facie case or a case to answer.”

Il-probabbli huwa l-livell użat fi proċeduri ċivili. Għalhekk skond dan l-awtur “prima facie” huwa anqas minn hekk u jista’ jiġi definit bħala “a case to answer”, haġa li għandha tigi investigata aktar fil-fond.

Fil-kuntest tal-provi illi l-proskuzzjoni gabet f’dan il-każ, intlaħaq dan il-livell ta’ “prima facie”? Kien hemm “a case to answer”?

Further considers:

First and foremost the Court is of the opinion that the first issue to be tackled is one raised by the Defence in its note of submissions regarding the charges proffered claiming uncertainty on the part of the Prosecution, having directed at the accused all the content of Section 2(2) of the Money Laundering Act. True enough, Prosecution chose to debit the accused with the burden of all the criminal instances found in the said Section. Obviously he cannot be guilty of all, but one does not necessarily exclude the other. Obviously these are alternate charges, this being more evident and obvious in as far as the alleged complicity or attempted charges are proffered. One must also remember that at a later stage in the proceedings, Attorney General, exercising his discretion under Chapter 373, sent this case for a summary judgement, therefore inviting this Court to examine the facts against the requisites of Section 2(2) of the said Chapter.

Illi fl-istess każ il-Qorti tal-Appell Kriminali kellha l-opportunita’ tagħmel analiżi approfondita u dettaljata dwar l-oneru tal-prova li tinkombi lill-partijiet f’kazijiet ta’ hasil ta’ flus. Fil-fatt dik l-Qorti qalet hekk: 12

Ma hemmx dubju illi r-reat ta’ money laundering huwa wieħed mir-reati l-aktar diffiċli u delikati biex jiġu nvestigati. It-teknika u s-sofistikazzjoni tal-mod kif il-flus jiġu ġirati u jinħbew mill-provenjenza lleċita tagħhom jagħmluha kważi impossibli illi l-investigaturi jsibu traċċa tal-provenjenza tal-flus. Kien għalhekk illi f’dawn iċ-ċirkostanzi l-liġi tal-Money Laundering Kap 373 tpoġġi l-oneru fuq dak li jkun illi huwa jipprova għas-sodisfazzjon tal-Qorti l-provenjenza leċita tal-flus illi jkunu nstabu fuqu. Dan il-bdil ta’ l-oneru tal-provi m’hijiex wahda kapriċċuża u kif qalet il-Qorti fil-kawża “Il-Pulizija vs John Vella”

“din hi liġi strordinarja li tintroduċi kunċetti radikali fis-sistema nos-trana u li tirrikjedi applikazzjoni fl-aktar skruplu u attenzjoni biex ma tiġix reża xi sturment ta’ ingustizzja, aktar reminixxenti taż-żminijiet ta’ l-inkwizizzjoni minn dak ta’ l-era’ moderna tad-drittijiet tal-bniedem. . . .”.

Il-Qorti qiegħda tagħmel dan il-pronunċjament fl-isfond tad-dispost ta’ l-Artiklu 2(2)(a) u l-Artiklu 3(3) tal- Kap 373 tal-Liġijiet ta’ Malta illi għandhom jinqraw fid-dawl ta’ l-Artiklu 21(1C)(b) tal-Kap 101 tal-Liġijiet ta’ Malta li jstipulaw li l-Avukat Ġenerali jista’ jakkuża persuna bir-reat ta’ “money laundering” mingħajr ma jkollu xi sentenza b’referenza għal xi offiża preċedenti. Ma dan kollu jibqa’ l-fatt illi l-Avukat Ġenerali għandu jipprova n-ness bejn il-flus jew il-proprjeta u l-attività kriminali li tkun generat dawk il- flus.

Dwar il-livell ta’ prova li jinkombi fuq l-Avukat Ġenerali, l-Qorti tagħmel referenza għall-kawża “Il-Pulizija vs Paul Borg” deċiża mill-Qorti ta’ l-Appell Kriminali fis-sitta (6) ta’ Ottubru tal-2003. F’din il-kawża l-Qorti kienet qalet illi meta l-Avukat Ġenerali jakkuża lil xi hadd bl-offiża ta’ money laundering taħt il-Kap 101 tal-Liġijiet ta’ Malta, l-Avukat Ġenerali għandu jipprova “prima facie” n-ness bejn il-flus jew il-proprjeta u l-attività kriminali li tkun generat dak il-flus jew proprjeta. Minn eżami u qari akkurat ta’ din id-dispożizzjoni din il-Qorti thoss li una volta li l-prosekuzzjoni tiddeċiedi li tipproċedi skond l-Ordinanza Kap 101 u mhux taħt id-dispożizzjonijiet tal-Kap 373 ossia l-Att tan-1994 kontra “Money Laundering”, fejn l-attività kriminali sottostanti tista’ tkun varja u tirreferi għall-ksur ta’ diversi liġijiet kif indikat fit-tieni skeda ta’ l-istess Att, irid almenu jiġi “prima facie” pruvat li l-akkużat ikun qed jaġixxi bi hsieb li jaħbi jew jikkonverti flus jew ir-rikavat ta’ flus u jkun jaf jew ikollu suspett li dawk il-flus ikunu miksuba bhala riżultat ta’ ksur ta’ xi dispożizzjoni ta’ l-Ordinanza Kap 101 u dana qabel ma tiskatta l-inverzjoni ta’ l-oneru tal-prova fuq l-akkużat.”

Illi kif kkonkludiet b’mod konċiż iżda preċiż għall-aħħar, il-Qorti tal-Maġistrati (Malta) fil-kawża Il-Pulizija vs Alfred Delia et:

Illi għalhekk il-mistoqsija li trid tiġi riżolta fil-kaz in ezami hija dik interposta mill-Qorti ta’ l-Appell Kriminali fil-kawża hawn fuq kwotata u cioe fil-kuntest tal-provi illi l-proskuzzjoni gabet f’dan il-kaz, (provi biex jiġi pruvat in-ness bejn il-flus utitlizzati biex jinxtraw il-vetturi imsemmija u xi attività kriminali) intlaħaq dan il-livell ta’ “prima facie”? Kien hemm “a case to answer” biex mbagħad l-oneru

tal-prova jdur fuq l-imputati biex jippruvaw l-origini legittima tal-flus utilizzati.¹³

Il-Qorti tal-Appell Kriminali (Sede Superjuri) rritiniet kif ġej dwar ir-rekwizit li għandu jkun hemm indikazzjoni ċara tar-reat sottostanti os-sia l-attività kriminali li ssir riferenza għaliha fl-artikolu 2(2) tal-Kapitolu 373:

7. In its judgement regarding these pleas, the Criminal Court said:

“That as regards the first count, the accused is claiming that this is null and void because it does not in any way indicate the antecedent offence or source which could give rise to money laundering.

“The accused is arguing that the Attorney General must at least prove prima facie that the money is coming from an illicit activity. If there is a shifting of the burden of proof, this must be accompanied by an illicit activity which illicit activity should show in the bill of indictment. In this case no previous offence was established, therefore there is no antecedent criminal act. The situation is very similar to the crime of receiving stolen property where there must be proof that the goods have a criminal origin. Therefore, in matters of money laundering, the Prosecution must prove the illicit origin of the money. The suspicion of a crime is not enough. It has yet to be established what is the predicate offence.

“This means, therefore, that if according to the accused, the bill of indictment does not in any way indicate the antecedent offence, or source, this does not mean that evidence of this offence can not be brought during the trial.(14)

Illi dwar l-ispjegazzjoni inverosimili li jagħtu l-imputati, partikolarment Buttigieg li jipprova jattribwixxi n-numru konsiderevoli ta' drabi fejn ordnijiet gew kancellati bhala żbalji li saru minn trainees li kienu sorveljati minnu, u għal dak li tiddikjara meta xehdet quddiem il-Qorti Cutajar li l-flus hasbet li kienu ġejjin mill-bejgħ ta' mutur u mill-part-time li kien jagħmel Buttigieg, ser issir riferenza ukoll għal dak li gie dikjarat minn l-istess Qorti:

18. It is also true that article 22(1C)(b) of Chapter 101 of the Laws of Malta is applicable to proceedings under Chapter 373 (see article 3(3) of said Chapter 373) and that this article provides:

¹³ Qorti tal-Magistrati (Malta) Bhala Qorti ta' Gudikatura Kriminali, per Onor. Magistrat Dr. Doreen Clarke. Deciza 23.05.2013, Kump. Nru 672/2010.

¹⁴ The Republic of Malta vs Morgan Ehi Egbomon, Appell fuq Decizjoni tal-Qorti Kriminali fuq Ecezzjonijiet Preliminari, Att t' Akkuza Nru. 16/2009. Dec 31.07.2014.

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

19. Nonetheless the following principles, as clearly outlined by the Constitutional Court in its judgement of the 1st April 2005 in the case The Republic of Malta vs Gregory Robert Eyre and Susan Jayne Molyneaux, must be applied:

“(i) it is for the prosecution to prove the guilt of the accused beyond reasonable doubt; (ii) if the accused is called upon, either by law or by the need to rebut the evidence adduced against him by the prosecution, to prove or disprove certain facts, he need only prove or disprove that fact or those facts on a balance of probabilities; (iii) if the accused proves on a balance of probabilities a fact that he has been called upon to prove, and if that fact is decisive as to the question of guilt, then he is entitled to be acquitted; (iv) to determine whether the prosecution has proved a fact beyond reasonable doubt or whether the accused has proved a fact on a balance of probabilities, account must be taken of all the evidence and of all the circumstances of the case; (v) before the accused can be found guilty, whoever has to judge must be satisfied beyond reasonable doubt, after weighing all the evidence, of the existence of both the material and the formal element of the offence.”

Fid-deċiżjoni tagħha fil-proċeduri fl-ismijiet “Il-Pulizija vs Dayang Sakienah Binti Mat Lazin, il-Qorti tal-Maġistrati (Malta) ikkunsidrat:

That it is to be emphasised that the charge of money laundering brought against defendant is based on Chapter 373 of the laws of Malta and not Chapter 101. In the latter case the prosecution must necessarily show a link between the assets being laundered and some criminal activity prohibited under Chapter 101. In the former case (i.e. an offence under Chapter 373) what the prosecution must show is a link between the laundered assets and an offence listed in either the first or second schedule of the said Chapter 373 which however also include traffic in narcotic drugs and psychotropic substances.

That it must also be emphasised that what must be shown for the prosecution to satisfy its onus is a link between some criminal activity and

the assets in question. This has been affirmed by the Court of Criminal Appeal in the case Republic of Malta vs John Vella when it said:(15)

“...l-Avukat Ġenerali jista' jakkuża persuna bir-reat ta' money laundering mingħajr ma jkollu sentenza ta' kundanna ta' dak li jkun qed jiġi allegat li huwa l-attività kriminali sottostanti.... Ċertament pero ikun x'jkun il-każ, jekk l-Avukat Ġenerali jiddeċiedi li jakkuża lil xi hadd b'money laundering ... irid jindika n-ness bejn l-attività kriminali sottostanti partikolari li jkun qed jallega.”

That once the prosecution satisfied this onus, in terms of article 22(1C)(b) of Chapter 101 of the Laws of Malta which applies to proceedings for an offence of money laundering by application of article 3(2A)(3) of Chapter 373, the burden of proof then shifts on defendant who has the onus of showing the lawful origin of the money in question. Defendant produced no such evidence.(16)

Illi issa għal dak li għandu x'jaqsam mal-insenjament tal-Qrati tagħna dwar id-delitt ta' korruzzjoni, anke jekk MHUX rikjest mill-ligi, l-esponenti ser jinsenzjalaw f'it għurisprudenza fuq dan id-delitt sempliċement bħala gwida u għall-aħjar informazzjoni tal-Maġistrat Inkwirenti.

Illi fis-sentenza fl-ismijiet Il-Pulizija vs Saveria sive Saverin Sinagra (Deciża 30.06.2010 per Onor. Maġistrat Dr. Edwina Grima),¹⁷ il-Qorti tal-Maġistrati għamlet eżami *funditus* dwar ir-reat ravvizat bl-artikolu 115 tal-Kodiċi Kriminali:

“Illi minn eżami tal-artikolu 115 tal-Kodiċi Kriminali li jikkontempla r-reat ta' korruzzjoni jirriżulta illi l-elementi bażiċi li jridu jiġu ippruvati huma essenzjalment erba' u cioe`:

1. in-natura uffiċjali jew pubblika tal-impieg tal-persuna ikkonċernata.¹⁸
2. li dik il-persuna irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u dawn ma ikunux dovuti skond il-ligi.¹⁹

¹⁵ Deciża 29.11.1999 u citata f' Il-Pulizija vs Paul Borg (Qorti tal-Appell Kriminali sede Inferjuri) Deciża 06.10.2003.

¹⁶ Case Number: 197/2008; 23.11.2009, per Onor. Magistrate Dr Doreen Clarke.

¹⁷ Qorti tal-Maġistrati (Malta) Bħala Qorti ta' Ġudikatura Kriminali, Deciża 30.06.2010 per Onor. Maġistrat Dr. Edwina Grima.

¹⁸ Vide ukoll Il-Pulizija vs Joseph Buhagiar (Appell, Deciża 19 ta' Lulju, 1982).

¹⁹ Vide ukoll Il-Pulizija vs Lawrence sive Lorry Cuschieri et (Appell, Deciża 25 ta' Lulju, 1986).

3. li dana jkun in konnessjoni mal-istess kariga jew impieg.
4. li l-iskop ikun illi l-persuna tagħmel jew ma tagħmilx id-dmir tiegħu/tagħha.²⁰

Illi b'rabta ma' din id-disposizzjoni tal-liġi, l-Avukat Ġenerali iċċita wkoll l-artikolu 120, fejn titqies bħala kompliċi il-persuna li tikkorrompi l-uffiċjal pubbliku.

Illi għalhekk l-ewwel element essenzjali għall-kummissjoni ta' dan irreat huwa n-natura uffiċjali jew pubblika tal-impieg tal-persuna li qed tiġi korrotta. Illi l-Professur Mamo fin-noti tiegħu dwar id-dritt penali iġid: "The character of public officer or person employed under the Government is the first essential of this crime. The wording is very wide and embraces all officers or employees under the Government. ... It includes all public officers or employees whether their duties are judicial, ministerial or executive or mixed."

Illi l-artikolu 92 imbagħad jiddisponi testwalment illi:

"Taht il-frazi ġenerali 'uffiċjal pubbliku' jidhlu mhux biss l-awtoritajiet kostitwiti, ċivili u militari, iżda wkoll dawk il-persuni kollha li huma maħtura skond il-liġi sabiex jamministraw xi parti tas-setgħa eżekuttiva tal-Gvern, jew biex jeżegwixxu xi dmir ieħor pubbliku impost mil-liġi, sew gudizzjarju kemm amministrattiv kif ukoll tax-xorta l-waħda u l-oħra."

Illi apparti għall-konferma mogħtija mix-xhud Mireille Mifsud, l-artikolu 28(5) ta' l-Att dwar l-Enemalta, Kapitolu 272 tal-Liġijiet ta' Malta,⁶⁰ li kien fis-sehh fiż-zmien tar-reati addebitati lill-imputat, kien

Dwar it-tieni element, il-persuna li tikkwalifika bħala uffiċjal jew impjegat pubbliku, trid tkun irċeviet jew aċċettat flus, jew xi rigal, jew wegħda jew offerta u li dawn ma jkunux dovuti skond il-liġi. Illi mill-provi akkwiziti ġie ampjament pruvat, li Pantallaresco kien jaċċetta ħlasijiet li kienu jiġu mġhoddija lilu mill-imputat, liema flejjes ċertament ma kienux dovuti lilu skond il-liġi, għaliex dak li kien jagħmel ma kienx fl-ambitu tal-impjeg tiegħu jew bħala parti mid-doveri tiegħu.

Dan jorbot mat-tielet element essenzjali għall-kummissjoni ta' dan irreat u cioe` illi l-wegħda tal-flus trid tkun marbuta mal-kariga jew impieg ta' l-uffiċjal in kwistjoni. Ġie soddisfaċentement pruvat li Pantallaresco ġie magħzul mill-imputat minhabba l-impjeg tiegħu, dik ta' installer ta' meters fl-Enemalta, b'access liberu għal meters li kienu

²⁰ Vide ukoll Il-Pulizija v. Alfred Demicoli (Appell, Deċiża 2 ta' Mejju 1985).

jkunu diġa reġistrati fuqu.⁶¹ Kienet is-sengħa ta' Pantallaresco li l-imputat identifika bħala għodda utili sabiex jinnegozja minn fuqha u jisfruttaha! L-imputat, il-korruptur, kien konsepevoli tal-kariga u impjeg ta' Pantallaresco, il-korrott, tant li anke mal-konsumatur John Tanti kien iffissa appuntament sabiex issir it-tbagħbis f'jum meta Pantallaresco kien ikun fuq ir-rotta li tinkludi dik l-lokalita'.⁶²

L-aħħar rekwizit imbagħad, li ġie wkoll ampjament ppruvat, kien li l-uffiċjal in kwistjoni, Pantallaresco, ġie imħallas biex jonqos milli jagħmel dak li kien fid-dmir illi jagħmel. Minflok haress l-interessi tal-kumpanija, l-id li kienet qed tipprovdi l-għijxien kwotidjan tiegħu u ta' familtu, ra kif għamel biex il-kumpanija tiġi derubata u mcaħħda minn dak dovut legalment lilha!

Fis-sentenza citata dik il-Qorti kompliet hekk:

.....Illi l-artikolu 120 iqis lill-persuna li tikkorrompi uffiċjal pubbliku bħala kompliċi fir-reat previst f'dan il-każ fl-artikolu 115. Illi l-liġi tagħti definizzjoni ta' min jitqies li huwa kompliċi fl-artikolu 42 fejn hemmhekk jiġu ikkontemplati hames sitwazzjonijiet fejn persuna tirrendi ruħha kompliċi.

Illi mill-qari ta' dina d-disposizzjoni tal-liġi jidher ċar illi f'kull ċirkostanza ikkontemplata irid ikun hemm 'l hekk imsejjaħ common design bejn l-awtur u il-kompliċi. Ma hux neċessarju, kif tikkontendi id-difiza illi l-kompliċi ikun għamel xi forma ta' qliegh huwa innifsu u cioe' ikun kiseb xi vantaġġ finanzjarju ...

Illi kif ġie deċiż f'kawza fl-ismijiet Il-Pulizija vs Mario Camilleri et. deċiża fit-30 ta' Lulju 2009, mill-Qorti ta' l-Appelli Kriminali:

“Il-korruzzjoni li dwarha qegħdin nitkellmu hi, skond id-duttrina prevalenti, karatterizzata minn ftehim volontarju bejn l-uffiċjal (jew impjegat) pubbliku u l-persuna li tikkorrompi (li, kif ingħad, hija kkunsidrata fil-liġi tagħna bħala kompliċi) permezz ta' liema ftehim jitwieled veru u proprju pactum sceleris.”

Il-Professor Mamo ighid: *“The briber or corruptor is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises.”* (sottolinjar tal-Qorti).

Il-Professor Mamo ikompli: *Sections 11421 and 11822 deal with the crimes of bribery and corruption of public officers. ...*

21 Illum l-artiklu 115 tal-Kodiċi Kriminali.

22 Illum l-artiklu 120 tal-Kodiċi Kriminali.

As it is only a public officer or employee who can sell away an act of public office, so it is only he that can be considered as the principal offender in the crime of corruption. The briber or corrupter is only an accomplice in as much as he instigates or strengthens the resolution of the public officer or employee by giving or offering rewards or promises. And as the crime is completed by the mere acceptance, on the part of the public servant, of the reward or offer, so also it must be considered in respect of the corrupter.

Our Code at Sec.118 expressly applies to the corrupter the rules of complicity. If the crime of corruption is, therefore, completed by the unholy compact of the public servant and the private person, the latter is liable to punishment whether the corruption has as its object the performance by the public officer of his duty or his failure in such duty. And the punishment of the corrupter varies with that of the public servant. The consequences arising out of the personal circumstances of the public servant in the principal offender are, in their entirety, imputable to the accomplice: for this circumstance is an essential ingredient of the principal crime and an indispensable condition for its commission.

Illi mill-provi migjuba ma hemmx dubbju illi fil-kaz in dizamina kien hemm pactum jew ftehim bejn Martin Cilia La Corte u Paul Pantalleresco, is-suġġett passiv ta' dan il-korruzzjoni.

F'sentenza oħra, Il-Pulizija vs Alfred Attard, wara li l-Qorti għamlet l-konsiderazzjonijiet tagħha dwar il-grad ta' prova li trid tilhaq il-prosekuzzjoni, konsiderazzjonijiet li jsibu applikazzjoni anke fil-kaz prezenti, iddecidiet:23

Qabel ma din il-Qorti ser tiddiskuti l-fatti specie tal-kawża odjerna, thoss li għandha tfakkar lill-Prosekuzzjoni, li l-grad ta' prova li għandha tilhaq hu dak li ma jhalli ebda ombra dettat mir-raġuni u mhux xi grad ta' prova li ma jhalli ebda ombra ta' dubbju. Id-dubbji ombra, ma jistgħux jitqiesu bħala dubbji dettati mir-raġuni. Fi kliem iehor dak li ġudikant irid jasal għalih huwa li, wara li jqis ċ-ċirkostanzi u l-provi kollha u b'applikazzjoni tal-buon sens tiegħu ikun moralment konvint minn dak l-fatt li trid tipprova l-Prosekuzzjoni.

... Dwar t-tieni akkuża, u cioe dik ta' korruzzjoni ta' uffiċjal kif kontemplat fl-artikolu 115 tal-Kap 9 tal-Lihijiet ta' Malta, il-Qorti tagħmel referenza għal sentenza mogħtija mill-Qorti tal-Appell Kriminali nhar t-tlettax ta' Marzu 1997 fl-ismijiet Il-Pulizija v Omissis Carmelo sive Charles Attard fejn intqal li bħala premessi fundamentali għas-sussis-

23 Qorti tal-Magistrati (Malta) Bħala Qorti ta' Ġuikatura Kriminali, Deciża 28.02.2005 per Onor. Magistrat Dr. Consuelo Scerri Herrera.

tenza ta' dan r-reat, l- artikolu 115 tal-Kap 9 tal-Liġijiet ta' Malta, tip-
preċiza li:

"Jkun hemm r-reat ta' korruzzjoni meta kwalunkwe uffiċjal jew impje-
gat pubbliku jirċievi jew jaċċetta għalih jew għal haddiehor, xi rigal
jew wegħda, jew xi offerta ta' xi rigal fi flus jew f'utili ieħor, jew ta' xi
vantagġ ieħor li għalihom huwa ma jkollux jedd u jippreċiza in oltre,
li tali abbuż irid ikun sar in konnessjoni mal-kariga jew impjieg tiegħu
..."

Dik l-istess Qorti tal-Appell Kriminali fis-sentenza mogħtija nhar l-
hdax ta' Diċembru 1956 fl-ismijiet Il-Pulizija v Geraldo Sacco, sostni-
et li:

"Biex tkun tista tigi sostnuta l-korruzzjoni, hemm bżonn qabel xejn li
jiġi stabbilit ness bejn l-aċċettazzjoni ta' flus jew utili ieħor u l-eżer-
cizzju tal-kariga jew impjieg pubbliku."

Ligi tal-Unjoni Ewropea

Illi r-rikorrenti qed jitolbu lil din l-Onorabbli Qorti tordna l-ftuh ta' Inkjesta Magisterjali mhux biss a tenur tal-Kodiċi Kriminali iżda wkoll a tenur tal-ligi relevanti tal-Unjoni Ewropea;

Illi huwa ċar il-fatt li sa minn Frar 2016 meta dawn il-fatti bdew johorġu fid-dominju pubbliku, l-ewwel darba permezz tal-ġurnalista investigattiva Daphne Caruana Galizia fit-22 ta' Frar 2016, l-ebda awtorita' kompetenti f'pajjiżna, inkluż il-Kumissarju tal-Pulizija, l-Avukat Ġenerali u l-FIAU ma riedu jiehdu passi kif mistenni minnhom sabiex, bħala minimu, jibdedw investigazzjoni, u dan minkejja insistenza kontinwa mingħand esponenti diversi. Bl-istess mod, anki l-Prim Ministru konsistentement irrifjuta li jiehu passi kwalunkwe, la li jkeċċi lil Konrad Mizzi u Kieth Schembri mill-karigi pubbliċi tagħhom u wisq anqas li jordna inkjesta indipendenti skont il-ligi, kif wiehed kien jistenna, bħala minimu, f'każ bħal dan li ilu jiġi rappurtat mill-media lokali iżda anki mill-media barranija għal tliet snin shaħ;

Illi n-nuqqas flagranti u konsistenti tal-awtoritajiet kompetenti nazzjonali li jiehu passi għal tliet snin shaħ jikkostitwixxi ksur tad-Direttiva tal-Unjoni Ewropea 2005/60/EC (AML3) kif emendata bid-Direttiva 2015/849 (AML4), illum parti mill-ligijiet Maltin Kap 373 Att kontra *Money Laundering*, inkluż, iżda mhux biss, l-Artikli 58(2) u (4);

Illi n-nuqqas tal-awtoritajiet Maltin li jibdedw investigazzjoni u li jiehu kwalsiasi passi fuq dan il-każ jikkostitwixxi wkoll ksur tal-Artiklu 2, l-artiklu 4(3) u l-artiklu 19(1) tat-Trattat tal-Unjoni Ewropea moqrija flimkien mal-Artiklu 47 tac-Charter tal-Unjoni Ewropea tad-Drittijiet Fundamentali tal-Bniedem;

Illi l-implimentazzjoni effettiva tat-Trattat tal-Unjoni Ewropea (TEU) u tal-Ligijiet tal-Unjoni Ewropea kontra l-ħasil tal-flus huwa wkoll sanċit mill-ġurisprudenza tal-Qorti tal-Ġustizzja tal-Unjoni Ewropea, inkluż bil-principju ta' effettivita' (*the principle of effectiveness*) u cioe' illi l-ligi tal-Unjoni Ewropea jehtieġ li tiġi implimentata b'mod effettiv u li għandu jingħata rimedju effettiv fil-livell nazzjonali meta dan ma jsirx;

Illi għaldaqstant, kwalunkwe talba biex tinfetaħ inkjesta magisterjali trid tiġi deciza mhux biss skont il-kelma u l-ispirtu tal-ligi Maltija iżda wkoll skont il-kelma u l-ispirtu tal-ligi tal-Unjoni Ewropea, **b'mod li tagħti skop għal implementazzjoni effettiva tal-ligi, stante li, fin-nuqqas, ma jkunx hemm aktar mezz ta' kif il-ligi Ewropea tiġi implementata f'pajjiżna u ma jkunx hemm rimedju meta dan ma jsirx u dan, minnu nnifsu jikkostitwixxi ksur tal-ligi Ewropea;**

Konkluzjoni

Illi l-fatti hawn fuq elenkati juru b' mod inkonfutabbli li s-sugġett materjali tar-reati in kwistjoni għadu jeżisti, fosthom, u mhux biss, fil-forma tal-paper trail, korrisponden-za elettronika li intbagħtet minn computers u *servers* li jinsabu f'diversi uffiċini f' Malta, inkluż fil-Ministeru tal-Ġustizzja fejn Brian Tonna għandu jkun kelli uffiċju bħala konsulent tal-ministru u għandu fl-uffiċini ta' Nexia BT f'Malta, inter alia, kif jingħad mill-agenzija internazzjonali tal-aħbarijiet, (*Reuters*: <https://www.reuters.com/article/us-malta-daphne-accountant-exclusive/exclusive-in-malta-a-private-accountants-government-job-sparks-controversy-idUSKBN1O514I>)

“Brian Tonna, who created companies in Panama for a Maltese government minister and the Prime Minister’s Chief of Staff, held the consultancy full-time from August 2014 to August 2016, and part-time from then until August 31, 2017, contracts obtained from a Freedom of Information request show. His pay - about 55,000 euros annually plus expenses - was almost as high as that of the Prime Minister.

Tonna was hired as an adviser to Owen Bonnici, Minister for Justice. The work was in addition to previously disclosed business contracts, worth more than €800,000, awarded by other government ministries to NexiaBT, an accountancy firm that Tonna owns.

In a statement, a spokesman for Bonnici said that Tonna and NexiaBT “offered advice and technical guidance on purely financial matters relating to infrastructural projects in the field of culture.” Asked if Tonna’s employment involved any conflicts of interest and how this was managed, the spokesman did not respond.

Tonna set up companies in Panama that in 2015 he transferred to Keith Schembri, the Prime Minister’s Chief of Staff, and Konrad Mizzi, then Energy Minister and now Tourism Minister. Tonna has known Schembri as a personal friend and client for 20 years,

Illi l-esponenti jinformaw lil din l-Onorabbli Qorti li huma jinsabu għad-disposizzjoni tal-Magistrat Inkwirenti jekk hekk jidhirlu biex jixdhu taħt għurament u jgħaddu lill-Magistrat kwalunkwe informazzjoni meħtieġa, inkluż, izda mhux biss, biex jikkonfermaw l-eżistenza tas-sugġett materjali tar-reati hawn fuq elenkati u hawn annessi li l-persuni suspettati kkommettew jew ittantaw jikkomettu, liema sugġett materjali jinkludi:

- (i) kopji ta' korrispondenza elettronika li huma parti minn hafna emails u dokumenti li gew irrilevanti mill-*Panama Papers*;

- (ii) kopji ta' dokumenti relattivi għal *Know Your Client* (KYC) fil-konfront tar-registrazzjoni ta' ditti fil-Panama u *trusts* fi *New Zealand* mill-Ministru Konrad Mizzi u Keith Schembri;
- (iii) kopji ta' dokumentazzjoni, fosthom ta' *bearer certificates* tal-kumpaniji klandestini *Hearnville INC* u *Egrant INC*;
- (iv) kopja ta' rapport tal-*Financial Intelligence Analysis Unit* (FIAU) dwar il-Ministru Konrad Mizzi li kkonkluda fattwalment li dwaru kien hemm suspett raġjonevoli li kkometta jew ittanta jikkommetti hasil ta' flus u/jew l-eżistenza ta' flus illeċiti;

Illi għal kull *bon fini* l-esponenti, b'sens ta' lealta lejn il-Maġistrat tal-Għassa li ser jirċievi ir-rikors odjern, jinfurmawh ukoll li b' digriet tal-Qorti Kriminali, per Imhalled Giovanni Griscti fit-8 ta' Jannar 2019 (DOK17), id-deċiżjoni tal-Maġistrat Ian Farrugia tas-26 ta' Lulju 2017 giet revokata;

Illi għal kull *bon fini* l-esponenti ifakkru illi l-Imhalled Giovanni Grixti ma kellux għad-dispożizzjoni tiegħu dokumenti relevanti msemmija f'dan ir-rikors, fosthom l-*email* ta' Karl Cini tas-17 ta' Diċembru 2015 (DOK11) u r-rapport tal-FIAU dwar Konrad Mizzi (DOK9) u dan għas-sempliċi raġuni li meta kien gie prezentat ir-rikors tal-Onor Simon Busuttil fl-14 ta' Lulju tal-2017, dawn id-dokumenti ma kienux għadhom ġew pubblikati, anki jekk semmai, kienu pubblikati u disponibbli għall-Qorti tal-Appell fil-mument li tat id-digriet tagħha nhar it-8 ta' Jannar 2019;

Illi għal kull *bon fini* l-esponenti qed jannettu kopja tad-digriet tal-Maġistrat Dr Francesco Depasquale tal-21 ta' Mejju 2018 (DOK19) fejn kien wasal għall-konkluzjoni illi fil-konfront ta' Konrad Mizzi, Keith Schembri, Brian Tonna u Karl Cini ***“għalkemm il-prerekwiżiti meħtieġa fil-Liġi sabiex investigazzjoni dwar l-ingenere rigward il-fatti allegati fir-rikors promotur jidher illi jeżistu, tali investigazzjoni dwar l-ingenere fuq il-fatti hawn allegati gia giet ordnata fis-26 ta' Lulju 2017 permezz ta' digriet tal-Maġistrat Inkwirenti Ian Farrugia fuq talba tar-rikorrent Simon Busuttil u jkun aktar opportun illi l-ingenere titkompla fl-atti tal-Inkjesta ingenere miftuħa fis-26 ta' Lulju 2017 u mhux f'inkjesta ingenere għdida...”***

Illi għal kull *bon fini* l-esponenti qed jannettu wkoll ma' dan ir-rikors kopja tad-digriet (DOK16) tal-Maġistrat Dr Francesco Depasquale datat 29 ta' Jannar 2019 fejn fih osserva li d-deċiżjoni tiegħu mogħtija fil-21 ta' Mejju 2018 fejn kien ċaħad it-talba għal ftuħ ta' Inkjesta *in genere* kienet waħda finali;

Illi peress illi l-prinċipju ta' *ne bis in idem* mhux applikabbli f' digrieti minn Maġistrati Inkwirenti (stante li tali digriet la jistabilixxi ħtija u lanqas innocenza) l-esponenti qed jadixxu lill-Maġistrat Inkwirenti b' rikors għdid, b' fatti ferm iktar dettaljati, b' fatti aġġornati u magħrufa sa dan il-mument, b' fatti godda, ferm lil hinn minn dawk fir-rikors originali li kien gie prezentat sija quddiem il-Maġistrat Ian Farrugia

milqugh f'Lulju 2017 u li gie revokat fit-8 ta' Jannar 2019(24), u sija quddiem il-Maġistrat Francesco Depasquale f'Mejju 2018;

Illi għal kull *bon fini* wkoll l-esponenti jirrilevaw li kulfejn huma indikaw l-artikli tal-Liġi (Kodiċi Kriminali u oħrajn) li fil-fehma tagħhom ġew komejri ksur tagħhom mill-persuni suspettati indikati hawn fuq, dan għamluh biex jgħinu lill-Maġistrat Inkwirenti u bl-ebda mod, ovvjament, m'huma lista tassattiva ta' dak li l-Maġistrat Inkwirenti jista' jsib fil-kors tal-*in genere* u allura m'humieq u ma jistgħux jorbtu idejn jew jillimitaw 'l Maġistrat Inkwirenti waqt l-*in genere*;

Għaldaqstant l-esponenti umilment jitlobu lill-Maġistrat tal-Għassa jiftaħ Inkjesta Maġisterjali a tenur tal-artiklu 546(4A) tal-Kodiċi Kriminali, filwaqt li minn issa qed ipoggu lilhom nnefushom għad-dispożizzjoni sħiħa tal-Maġistrat tal-Għassa.

Avv. Jason Azzopardi

7, Cospicua Road, Paola

Esponenti:

24 Per eżempju, fir-rikors quddiem il-Maġistrat Ian Farrugia (li kien gie milqugh) ma kien hemm EBDA referenza għar-rapport tal-FIAU tal-2017 li huwa anness ma' dan ir-rikors u li minnu hawn referenzi ampji f'dan ir-rikors, **u ma setax kien hemm referenza** għalih għas-sempliċi raġuni li sa dakinhar li sar dak ir-rikors quddiem il-Maġistrat Ian Farrugia f'Lulju 2017 ir-rapport tal-FIAU imsemmi ma kienx għadu magħruf mill-esponenti u lanqas ma kienet magħrufa l-email ta' Karl Cini tas-17 ta' Diċembru 2015 li kienet giet żvelata biss fit-18 ta' April 2018.