

Il-Bord ta' Inkjesta

Imwaqqaf fl-10 ta' Ottubru 2016
mill-Onorevoli Prim Ministru Dr Joseph Muscat
biex jinvestiga allegazzjonijiet li saru f'artikolu
ppubblikat fil-gazzetta "MaltaToday" tad-9 ta' Ottubru, 2016

**"Money Laundering Investigation was not pursued when
Fenech Adami's name cropped up"**

Rapport tal-Bord ta' Inkjesta

Imhalled Emeritus Joseph David Camilleri

Chairman

Imhalled Emeritus Dr Lawrence Quintano

Membru

Imhalled Emeritus Dr Philip Sciberras

Membru

Fl-atti tal-Bord ta' Inkjesta mwaqqaf fl-10 ta' Ottubru 2016 mill-Onorevoli Prim Ministru Dr Joseph Muscat biex jinvestiga allegazzjonijiet li saru f'artikolu "Money Laundering Investigation was not pursued when Fenech Adami's name cropped up", liema artikolu kien ippubblikat fil-gazzetta "MaltaToday" tad-9 ta' Ottubru, 2016.

Rapport tal-imsemmi Bord ta' Inkjesta kompost mill-Imhallfin Emeriti Joseph David Camilleri, bhala Chairman, Lawrence Quintano u Philip Sciberras, bhala Membri.

L-EWWEL PARTI: INTRODUZZJONI

1. Fid-9 ta' Ottubru 2016 deher artikolu fil-gazzetta "MaltaToday", miktub minn Matthew Vella u Mark Hollingsworth, intitolat: "Money Laundering Investigation was not pursued when Fenech Adami's name cropped up". L-artikolista introducew l-istess artikolu, li kien mifruq fuq l-ewwel, it-tnax u t-tlettax-il pagna tal-Gazzetta, b'dawn il-kliem: "As Malta entered a general election, in January 2013 an investigation into alleged money laundering following a Dutch drug bust failed to gather steam: Beppe Fenech Adami, the parliamentary assistant for home affairs, was a director of the Maltese fiduciary company which police investigators said was handling the transactions for a company that could have been used by the suspected drug traffickers. MaltaToday has seen evidence that Dutch prosecutors say they were not given, and which they claim could have been withheld from them".¹
2. L-ghada, fl-10 ta' Ottubru 2016, l-Onorevoli Prim Ministru, Dr Joseph Muscat, bis-sahha tal-artikolu 4 tal-Att dwar l-Inkjesta (Kap 273), hatar Bord ta' Inkjesta², magħmul mill-Imhallfin Emeriti sottoskritti, Joseph David Camilleri, bhala Chairman, Dr Lawrence Quintano u Dr Philip Sciberras, bhala Membri, biex dan il-Bord jinvestiga l-allegazzjonijiet li saru fl-imsemmi artikolu, u partikolarment, izda mhux biss, l-allegazzjonijiet centrali għall-istess artikolu, li gew identifikati fis-sens illi:
 - i. "L-awtoritajiet pubbliċi Maltin żammew mill-awtoritajiet investigattivi Olandiżi informazzjoni li kienet fil-pussess tagħhom u li ġiet mitluba lilhom mill-awtoritajiet Olandiżi;

¹ L-artikolu shih jinsab fl-anness dokument markat "Dok R1" u jista' jitnizzel minn dan is-sit: <http://maltatoday.uberflip.com/i/736806-mt-9-october-2016/11>.

² Ara l-anness dokument markat "Dok R2".

- ii. *L-awtoritajiet pubbliċi Maltin naqsu milli jikkoperaw mal-awtoritajiet Olandiżi bi ksur tal-obbligi tagħhom u ta' Malta;*
- iii. *Kien irriżulta li numru ta' kumpaniji konnessi mas-sugġett tal-artikolu, uħud minnhom stabbiliti f'Malta, kienu jwettqu attivita' finanzjarja suspettuża, u li dik l-attivita' kienet tinkludi wkoll il-kommissjoni ta' transazzjonijiet kontra l-liġi;*
- iv. *Illi kien hemm istituzzjonijiet pubbliċi li naqsu minn dmirhom meta ma nvestigawx attivita' finanzjarja illeċita' jew transazzjonijiet kontra l-liġi kif imsemmi fl-artikolu;"*

Id-dokument tal-hatra ikompli jghid hekk: "Għat-tmexxija ta' din l-inkjesta intom qegħdin tinħatru biex taġixxu u biex teżerċitaw is-setgħat mogħtija bl-Att dwar l-Inkjesti waħedkom iżda l-Gvern huwa dispost li jagħtikom is-sostenn loġistiku kif ikun meħtieġ u mitlub minnkomb. Għandkom tespletaw dan l-inkarigu sa mhux iktar tard mis-16 ta' Jannar, 2017".

3. Qabel bdew jespletw l-inkarigu mogħti lilhom, il-membri kollha tal-Bord hadu l-gurament skond artikolu 5 tal-Att dwar l-Inkjesti (Kap 273) u dan gie depositat għand l-Avukat Generali. Sussegwentement, il-Bord zamm disa' seduti għall-gbir tal-provi u kien assistit f'dan ix-xogħol mis-Segretarja tal-Bord, Ms Carmen Scicluna. Insternghu sitta u ghoxrin (26) xhud³. Ingabru wkoll numru konsiderevoli ta' dokumenti⁴, fosthom numru ta' statements u dokumenti ohra bankarji. Fil-kors tal-gbir tal-provi, il-Bord hass il-bzonn li jkun assistit minn persuna teknika, debitament kwalifikata u indipendenti, sabiex l-imsemmija dokumenti bankarji jigu interpretati u evalwati kif jixraq. Għal dan il-ghan, il-Bord talab lill-Onorevoli Prim Ministru sabiex jogħgbu jinnomina tali persuna teknika biex tassisti l-Bord, liema talba giet milqugha fit-28 ta' Novembru 2016 bin-nomina tas-Sur Kenneth A. Farrugia⁵, li ukoll, qabel ma beda jassisiti lil dan il-Bord, ha l-gurament skont artikolu 5 tal-Att dwar l-Inkjesti (Kap 273). Fis-27 ta' Jannar 2017 is-Sur Farrugia pprezenta r-Rapport Tekniku tieghu għall-konsiderazzjoni tal-Bord billi għaddieh lic-Chairman, l-Imhalled Joseph David Camilleri. Dan ir-Rapport Tekniku qieghed jigi mmarkat bhala Dok RKF u qieghed jigi anness f'busta sigilata ma' dan ir-Rapport tal-Inkjesta.
4. Fil-21 ta' Dicembru 2016, il-Bord talab u ottjena (fit-28 ta' Dicembru 2016) minghand l-Onorevoli Prim Ministru estensjoni tat-terminu originali għall-espletar tal-inkarigu, li b'hekk, mis-16 ta' Jannar 2017 gie estiz sal-20 ta' Frar 2017.

³ Ara l-anness dokument, *Elenku tax-xhiedha*, markat "Dok R3".

⁴ Ara l-anness dokument, *Elenku tad-dokumenti esibiti*, markat "Dok R4".

⁵ Ara l-anness dokument markat "Dok R5".



5. Il-Bord ezamina akkuratament il-provi kollha migbura, ghamel l-accertamenti kollha mehtiega, u qies ic-cirkostanzi kollha tal-kaz, u issa jinsab fil-pozizzjoni li jirraporta bil-mod li gej. L-ewwel zewg termini ta' riferenza centrali elenkati fil-hatra tal-Bord sejrjn jigi ezaminati flimkien, billi dawn huma konnessi ma` xulxin, in kwantu jikkoncernaw l-operat tal-ufficcju tal-Avukat Generali u tal-Korp tal-Pulizzija vis-á-vis l-awtoritajiet Olandizi. Imbaghad jigi ezaminat ir-raba' terminu ta' riferenza, li jikkoncerna l-operat tal-istess Korp tal-Pulizzija u ta' istituzzjonijiet ohra pubblici Maltin. Sussegwentement jigi ezaminat it-tielet terminu ta' riferenza li jikkoncerna l-operat ta' kumpanniji li allegatament wettqu transazzjonijiet kontra l-ligi. Fl-ahhar nett, jigi investigat ukoll jekk hernmx xi allegazzjonijiet li ssemew fl-imsemmi artikolu tal-Gazzetta Malta Today u li ma jidhirx li nqabdu fl-erba' termini ta' riferenza partikolari fuq imsemnija. Ir-rapport jaghlaq billi jelenka l-konkluzjonijiet centrali ta' din l-inkjesta.

IT-TIENI PARTI: L-EWWEL ZEWG TERMINI TA' REFERENZA: L-UFFICCJU TAL-AVUKAT GENERALI

6. F'din il-parti ta' dan ir-Rapport, l-ewwel sejjer jigi ezaminat l-operat tal-ufficcju tal-Avukat Generali vis-a`-vis l-awtoritajiet Olandizi. Imbaghad isir ezami simili dwar l-operat tal-Korp tal-Pulizzija. Qabel xejn, ghandha tinghata stampa cara ta' dak li intalab mill-awtoritajiet Maltin mill-awtoritajiet investigattivi Olandizi. Fil-21 ta' Novembru 2012, in-National Public Prosecutor's Office ta' Amsterdam hareg freezing order⁶ (Luris number KLR-U2012.056.959)⁷ taht il-firma tal-Prosekutur Pubbliku Ms Martine J. Dontje. Din il-freezing order, li nharget bis-sahha tal-*Framework Decision of the Council of the European Union of 22 July 2003 (2003/577/JHA) on the execution in the European Union of orders freezing property or evidence*⁸, intbaghtet Malta lill-Avukat Generali, li hu l-awtorita' kompetenti⁹ li jirceviha. Hadet hsiebha, id-deputata tieghu, Dr Donatella Frendo Dimech, li lllum tokkupa l-kariga ta' Magistrat. Fis-17 ta'

⁶ Fi kliem semplici, *freezing order* (li bil-Malti tissejjah "mandat ta' ffrizar") is a temporary order from a judicial authority to prevent criminals hiding, selling on or using property, documents or data in criminal activity. This decision applies to freezing orders issued for the purpose of: securing elements which could be used as evidence in a criminal proceeding, or subsequent confiscation orders to permanently stop offenders from benefiting from their criminal conduct and prevent criminal property from being laundered or reinvested, potentially fuelling further criminality. Link: <http://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=URISERV:l16009&from=EN&isLegisum=true>.

⁷ Ara l-anness dokument markat "Dok R6".

⁸ Din id-Decizjoni, fil-qosor hafna, " tistabbilixxi regoli għar-rikonoxximent u l-eżekuzzjoni minn pajjiż tal-UE ta' mandat għall-iffriżar mahruġ mill-awtorità ġudizzjarja ta' pajjiż ieħor tal-UE fi proċeduri kriminali. Hija tkopri wkoll l-iffriżar tal-evidenza.

⁹ Ara Freezing Orders (Execution in the European Union) Regulations, Reg. 4. (a).

Dicembru 2012 hija nformat lill-awtoritajiet Olandizi, ezattament lil Jeroen Hennekam, li l-freezing order kienet irricevietha b'xi pagni neqsin. Ghandu jigi nnotat li meta Dr Frendo Dimech baghtet din l-email, hija kkuppjata lill-Ispettur Mario Cuschieri u lill-Assistant Kummissarju Michael Cassar¹⁰. Irrizulta li fis-17 ta' Dicembru 2012 stess, hija irceviet minghand l-imsemmi Hennekam, soft copy tal- freezing order intiera, liema email ukoll giet ikkuppjata lill-Ispettur Mario Cuschieri u lill-Assistant Kummissarju Michael Cassar¹¹. L-ghada, l-Avukat Generali hareg certifikat¹² biex il-freezing order tkun tista' tigi esegwita. Fl-24 ta' Dicembru 2012 Dr Frendo Dimech irceviet hard copy tal- freezing order u din giet debitament esegwita fuq il- Bank of Valletta plc fis-27 ta' Dicembru mill-Ispettur tal-Pulizija Raymond Aquilina¹³.

7. L-awtoritajiet Olandizi hargu din il-freezing order bl-iskop li jkun iffriżat kont bankarju specifiku wiehed, mizмум mill- Bank of Valletta plc, liema kont kien relatat mal-*visa credit card* numru 4459 5100 1101 4020, li nharget f'isem Robert Guillaume Soogea fuq il-kont ta' Capitolone Inv. Group Ltd¹⁴. Il-parti g) tal-istess dokument markat "Doc R6" jinkludi taghrif dwar din il-persuna naturali, jigifieri Robert Guillaume Soogea u dwar persuna legali, jigifieri il-kumpanija CapitolOne Investment Group Ltd., li t-tnejn gew indikati bhala li kienu suspettati li wettqu r-reati, punibbli fl-Olanda b'sentenza ta' mill-anqas tliet snin prigunerija. Ir-reati suspettati li t-tnejn li huma wettqu jinsbu elenkati fil-parti i) tal-istess document markat "Dok R6", jigifieri *"illicit trafficking in narcotic drugs and psychotropic substances"* u *"laundering of the proceeds of crime"*. Din il-parti tal-freezing order fiha taghrif dettaljat, mifrux fuq zewg pagni, dwar l-investigazzjonijiet li ghamlu l-awtoritajiet Olandizi, inkluzi x'sabu fil-perkwizzjonijiet li ghamlu f'erba' residenzi f'Amsterdam u taghlaq b'dan il-kumment: *"It can be deduced from the documents found at different locations that Soogea does indeed have quite substantial interests in the companies established in Cyprus and Malta. Besides this, Spanish bank cards were also found in the name of suspect Soogea. Suspect Soogea is involved with residences where drugs were found and is aware of consignment notes that were kept in a hidden space. These consignment notes relate to containers with the goods that were shipped from Brazil to Rotterdam. Drugs were also found in the residence where the consignment notes were found. There are serious suspicions that suspect Soogea tried to hide his criminal assets by means of various companies and is possibly involved in international drugs transportation"* (enfasi ta' dan il-Bord).

¹⁰ Ara Red 2 fil-file 3247/12 tal-Avukat Generali.

¹¹ Ara Red 13, pagna 2 fil-file 3247/12 tal-Avukat Generali.

¹² Skont ir-Regolament 7. (1) tal-Freezing Orders (Execution in the European Union) Regulations.

¹³ Skont ir-Regolament 10. (2) tal-Freezing Orders (Execution in the European Union) Regulations.

¹⁴ Ara l-parti f) tad-dokument markat "Dok R6".



8. Fit-2 ta' Jannar 2013 Jeroen Hennekam talab lil Dr Frendo Dimech biex tinformah dwar "the possible bank balance(s) that have been seized"¹⁵. Hija irrispondiet bl-email¹⁶ datata 3 ta' Jannar 2013 f' 12.06 li "the relative card has been marked as cancelled since 7/05/2011 with the balance at that date being of Euro 1513.85 in debit". Barra minn hekk, Dr Frendo Dimech ipprovdiet lill-istess awtoritajiet Olandizi informazzjoni li huma ma kienux talbuha, meta komplet tghid lil Hennekam li "...it appears that another three credit cards had been issued in the name of the said Company [CapitalOne Investment Group Ltd.] under the names of Henrique R. Cumberbatch, Robert Guillaume Soogea, laonnis Moustos. Another two cards were issued in the names of another person Nicolaos Kerefidis. One should note that CapitalOne Investment Group Ltd. holds another account (Euro Savings) opened in 23/07/2008. Kindly advise as to whether any further action is required from this end." Din l-email, bhal diversi emails ohra li hemm fil-file, kienet ikkuppjata wkoll lill-Ispettur Mario Cuschieri u lill-Assistent Kummissarju Michael Cassar. Ghandu jigi nnotat li din l-informazzjoni kienet waslet ghand Dr Frendo Dimech permezz ta' ittra datata 31 ta' Dicembru 2012¹⁷, mibghuta mill-Bank of Valletta lill-Kummissarju tal-Pulizija (izda ghall-attenzjoni tal-Ispettur Raymond Aquilina), u li l-Bank kien ikkopja lill-Avukat Generali. Ghandu jigi rilevat hawn li dan l-Ispettur Raymond Aquilina kien gie appuntat mill-Assistent Kummissarju Michael Cassar biex jesegwixxi l-imsemmija freezing order, fl-eventwalita' li l-Avukat Generali johrog ic-certifikat relattiv¹⁸. Dr Frendo Dimech akkwistat l-informazzjoni li ssemmiet bl-email datata 3 ta' Jannar wara li l-Ispettur Aquilina kien innotifika l-Bank of Valletta bil-freezing order u dan il-Bank spontanjament (ara x-xhiedha tal-Ispettur Raymond Aquilina li ta fil-21 t'Ottubru 2016 f'pagna 4) baghat iz-zewg ittri, t-tnejn datati 31 ta' Dicembru 2012, li jinsabu esibiti bhala Red 8 u 9 fil-file 3247/12 tal-Avukat Generali. Irid jigi rikonnoxxut li Dr Frendo Dimech ma baqghatx passiva, ghaliex hija mill-ewwel baghtet, bl-email imsemmija, din l-informazzjoni (li kif diga` gie rrimarkat, ma kienetx mitluba) lill-awtoritajiet Olandizi. B'hekk hija wettqet l-obbligu li Malta assumiet taht il-" Mutual assistance in criminal matters between Member States Convention, 2000" tal-Unioni Ewropea, kif ukoll taht il-Konvenzjoni tal-Kunsill tal-Europa "ETS30-Mutual Assistance in Criminal Matters, 20.IV.1959". Infatti, l- artikolu 11¹⁹ tas-"Second Additional Protocol" ta' din il-

¹⁵ Ara Red 10 fil-file 3247/12 tal-Avukat Generali.

¹⁶ Ara Red 10 fil-file 3247/12 tal-Avukat Generali.

¹⁷ Ara Red 9 fil-file 3247/12 tal-Avukat Generali.

¹⁸ Dan ic-certifikat jinsab fil-minuta Red 24 fil-file ENU/68/LR/12 tal-Pulizija.

¹⁹ Article 11 – Spontaneous information : Without prejudice to their own investigations or proceedings, the competent authorities of a Party may, without prior request, forward to the



Konvenzjoni jipprovdi għall-bdil spontaneju t' informazzjoni bejn l-Istati Membri u l-istess haga jagħmel l-artikolu 7²⁰ tal-Konvenzjoni imsemmija tal-Unjoni Ewropea.

9. L-awtoritajiet Olandizi, tramite l-imsemmi Jeroen Hennekam, irrisponda l-ahhar imsemmija email ta' Dr Frendo Dimech, b'email datata 23 ta' Jannar 2013²¹, li wkoll kienet ikkuppjata lill-istess Ufficjali tal-Pulizija. Hennekam talab "...is it worth the effort to send you an EU freezing order with regard to the other accounts". Dakinhar stess Dr Frendo Dimech wiegbitu: *"please feel free to do so"*²². Imbagħad fid-29 ta' Jannar 2013 hija għaddiet din l-ahhar imsemmija korrisondenza lill-Ispettur Raymond Aquilina²³, li fl-4 ta' Marzu 2013²⁴ kitbilha lura hekk: *"The bank concerned forwarded the balances in the respective accounts in the case of Soogea. Would you think it would be appropriate that the Dutch authorities be informed to let us know if the remaining balance will be freezed or otherwise. The bank was informed to hold any transaction until a definite reply is received from the Dutch authorities"*. L-għada, 5 ta' Marzu 2013, Dr Frendo Dimech bagħtet email²⁵ lil Hennekam, fejn fakkritu li kienet għada ma rcevietx freezing order fil-konfront tal-persuni indikati lilu bl-email li kienet bagħtitlu fit-3 ta' Jannar 2013 u kompliet tghidlu hekk: *"Kindly let us know what action is intended in this respect since we cannot guarantee that the balances remain frozen after more than two months have elapsed"*. Jirrizulta li Dr Frendo Dimech annettiet mal-imsemmija email tagħha lil Hennekam, kopja ta' ittra, datata 22 ta' Frar 2013, li kienet irceviet mingħand l-Ispettur Aquilina. Din l- ittra²⁶, Aquilina kien ircevieha mingħand John Scicluna, Money Laundering Reporting Officer Compliance Unit tal-Bank of Valletta, li fiha għamel referenza għall-ittra precedent tiegħu datata 31 ta'

competent authorities of another Party information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving Party in initiating or carrying out investigations or proceedings, or might lead to a request by that Party under the Convention or its Protocols.

²⁰ Article 7 - **Spontaneous exchange of information:** Within the limits of their national law, the competent authorities of the Member States may exchange information, without a request to that effect, relating to criminal offences and the infringements of rules of law referred to in Article 3(1), the punishment or handling of which falls within the competence of the receiving authority at the time the information is provided.

²¹ Ara Red 11 fil-file 3247/12 tal-Avukat Generali.


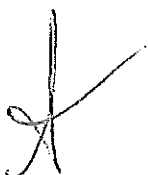
²² Ara Red 11 fil-file 3247/12 tal-Avukat Generali.

²³ Ara Red 12, pagna 2 fil-file 3247/12 tal-Avukat Generali.

²⁴ Ara Red 12, pagna 1 fil-file 3247/12 tal-Avukat Generali.

²⁵ Ara Red 12, pagna 1 fil-file 3247/12 tal-Avukat Generali.

²⁶ Ara l-ahhar zewg pagni ta' Red 12, fil-file 3247/12 tal-Avukat Generali.



Dicembru 2012²⁷. Billi jidher li Dr Frendo Dimech baqghet ma semghet xejn minghand Hennekamm, hija kitbitlu hekk fis-16 ta' April 2013²⁸: *"Kindly advise as how to proceed regarding our queries of the 5th March and the 3rd January. We have not received another freezing order regarding the other names and accounts and hence it is very likely that the funds have moved"*. Siegha wara²⁹, Hennekam kitbilha lura li *"the charges against R.G. Soogea...and H.R. Cumberbatch... have been dropped due to the lack of evidence"*. Informaha wkoll li: *"there is no more ground for the seizure on these and other assets"* u spicca l-email tieghu hekk: *"I am sorry for the delay in the answer. We appreciate your wonderful assistance and your swift action. Don't hesitate to contact us if we can do anything in return"*. Fis-16 ta' April 2013³⁰ Dr Frendo Dimech harget certifikat li l-freezing order kienet giet revokata, u l-ghada, l-istess certifikat gie notifikat³¹ lill-Bank of Valletta mill-Ispettur Aquilina.

10. Irrizulta wkoll li fis-17 ta' April 2013 Dr Frendo Dimech baghtet email, li maghha annettiet kopja tal-imsemmija Freezing order³², lil Dr Manfred Galdes, dak iz-zmien Direttur tal-Financial Intelligence Analysis Unit (FIAU), fejn informatu hekk: *"Am just bringing this to your attention in case the persons are otherwise known to your records"*. Din l-email ma tinstabx fil-file 3247/12 tal-Avukat Generali, izda kopja taghha giet esibita mill-Avukat Generali, Dr Peter Grech fl-4 ta' Novembru 2016. Irrizulta li kienet il-prassi ta' Dr Frendo Dimech li tibaghat lill-FIAU kopja tal-freezing orders kollha li kienet tircievi, nonostante li ma kellha ebda obbligu fil-ligi li taghmel dan. Evidentement, li kieku Dr Frendo Dimech riedet li fil-kaz li qiegheed jigi investigat l-affarijiet ma jimxux b' mod normali bhas-soltu, certament hija ma kienetx sejra tibghat din l-informazzjoni lill-FIAU, izjed u izjed, ladarba ma kellha ebda obbligu li taghmel hekk.

11. Dan il-Bord m'ghandu l-ebda dubbju li Dr Frendo Dimech, fir-rwol taghha ta' Deputat Avukat Generali, ghamlet dak kollu li talbuha taghmel l-awtoritjiet Olandizi biex issir id-debita esekuzzjoni tal-freezing order skont il-ligi. Mhux hekk biss, talli hija forniethom, fil-waqt u skont l-obbligi internazzjonali assunti minn Malta,

²⁷ Ara l-paragrafu precedenti.

²⁸ Ara Red 13, pagna 2 fil-file 3247/12 tal-Avukat Generali.

²⁹ Ara Red 13, pagna 1 fil-file 3247/12 tal-Avukat Generali.

³⁰ Ara Red 14, fil-file 3247/12 tal-Avukat Generali.

³¹ Ara Red 15, pagna fil-file 3247/12 tal-Avukat Generali.

³² Ara kopja ta' dan id-dokument li hu markat "Dok R7".

b'informazzjoni rilevanti li waslet ghadha, u li huma ma kienux talbuha tibghatillohom, u generalment, hija taghthom kull assistenza li kellhom bzonn. Din il-konkluzjoni hija konfermata mir-risposta li Chairman ta' dan il-Bord ircieva fit-12 ta' Jannar 2017 minghand il-Prosekutur Pubbiku Olandiz Martine Djonte³³ ghal din il-mistoqsija li ghamliha: *"On 16th April 2013 Mr Hennekam wrote to the Deputy Attorney General, Dr Donatella Frendo Dimech informing her that there was no longer any ground for keeping the freezing order in place once the charges had been dropped because of lack of evidence. He ended his email with these words: "I am sorry for the delay in the answer. We appreciate your wonderful assistance and your swift action. Don't hesitate to contact us if we can do anything in return". Are you satisfied that Dr Frendo Randon (sic) fully cooperated in the execution of the freezing order in question? Have you got any other comment to make regarding the collaboration or otherwise you received from the office of the Attorney General in connection with this freezing order?" Ms Djonte irrispondiet hekk (enfasi tal-Bord): "Yes, Dr Donatella Frendo Dimech informed the Dutch authorities that the account mentioned in the European freezing order was cancelled since 2011 and that there was a small balance in debit. Furthermore, she took determined steps by asking whether further action was required with regard to possible other accounts. She even later reminded the Dutch authorities about her question"*³⁴. Dan il-Bord ghamel mistoqsija ohra lill-Prosekutur Djonte: "It is alleged in the Malta Today article, that the Dutch prosecutors expressed anger with the newspaper's sources that the said financial transactions of CapitalOne bank account were never passed to them. Is this allegation correct?" Djonte wiegbet hekk fit-12 ta' Jannar 2017: "This is not correct. I was the only public prosecutor in charge of this criminal investigation. I have never made a statement to the press of Malta".

12. Konferma ohra li d-Deputat Avukat Generali Donatella Frendo Dimech qdlet dmirijietha b'serjeta' u korrettezza, tohrog mill-iskambju ta' emails li sar bejn Dr Vincienne Vella, li tahdem fl-ufficcju tal-Avukat Generali, u Han Moraal li hu *National Member for the Netherlands Chief Prosecutor*. Kopja ta' dawn l-emails giet esibita mill-Avukat Generali, Dr Peter Grech fis-seduta mizmuma fl-4 ta' Novembru 2016. Fit-28 t'Ottubru 2016 Moraal kiteb hekk: "The Dutch authorities have no idea where the journalist's conspiracy theory comes from. In December 2012 and January 2013 Dutch and Maltese authorities communicated about a freezing order in the case of Robert Soogea. Early January 2013 the deputy AG informed the Dutch authorities about the closing of the account and its negative balance. Mid-April 2013 the deputy AG

³³ Ara kopja tal-korrispondenza skambjata bejn ic-Chairman ta' dan il-Bord ma' Ms Djonte markata bhala Dok JDC.

³⁴ Ara footnote 33 supra.



reminded the Dutch authorities of the situation and asked for a response. The same day the Dutch authorities replied to the deputy AG and explained that the case against RS had been dismissed and that no further direction was needed. This means that regarding the freezing order it was a Dutch initiative to end the MLA and not of the Maltese authorities. The Dutch authorities do not have any indication of any frustration of this case of anyone in Malta. And as said, the Dutch authorities did not have any contact with any journalist in this case. Could the journalist be telling lies, could he have spoken in some not official, off the record way with someone from the Netherlands, we probably will never know, but most importantly: the Dutch authorities do not agree in any kind with the wording of the journalist³⁵.

IT-TIELET PARTI: L-EWWEL ZEWG TERMINI TA' REFERENZA: IL-KORP TAL-PULIZIJA

13. Imiss issa li jsir ezami tal-operat tal-Korp tal-Pulizija fir-relazzjoni taghhom mal-awtoritajiet Olandizi. Kif diga` intqal, din il-freezing order³⁶ li ssemmiet qabel, intbaghatet lill-Avukat Generali, li hu l-awtorita' kompetenti f'Malta li jirceviha. Madankollu, l-awtoritajiet Olandizi, baghtu wkoll l-istess freezing order lill-Assistent Kummissarju Michael Cassar. Huma basikament talbuh li jghinhom halli issir esekuzzjoni taghha kemm jista' jkun malajr biex b'hekk ma jinargux il-flus mill-kont bankarju indikat fil-freezing order, liema flus kienu allegatament provenjenti mir-reati ta' traffikar ta' drogi u hasil ta' flus. Fit-22 ta' Novembru Jeoren Hennekam baghat, email lil Michael Cassar, fejn talbu hekk: *"My colleague and Dutch CARIN³⁷ representative Evert van der Steeg advised me to contact you. I would like to send you the attached EU freezing order in a Dutch money laundering investigation with the request for your assistance. It is suspected that the suspects have transferred criminal money to the accounts in Malta as mentioned in the documents. The main suspect is*

³⁵ Ara kopja ta' dan id-dokument li hu markat "Dok R8". Fir-4 pagna ta'dan id-dokument hemm migjuba l-dak li allegatament intqal lill-gurnalist tal-Malta Today.

³⁶ Ara l-anness dokument immarkat "Dok R6".

³⁷ CARIN (Camden Assets Recovery Interagency Network) is an informal network of law enforcement and judicial practitioners, specialist in the field of asset tracing, freezing, seizure and confiscation. The purpose of CARIN is to increase the effectiveness of its members' efforts, on a multi-agency basis, to deprive criminals of their illicit profits. CARIN contacts support the complete asset recovery process, from the starting point of the investigation involving the tracing of assets, to freezing and seizure, management and finally the forfeiture/confiscation, including any necessary asset sharing between jurisdictions. The CARIN permanent Secretariat is based at Europol Headquarters in the Hague. (<http://carin-network.org/>)

in custody, however it is possible that next Monday the conditions of his custody will be changed, so that he will then be able to communicate with people outside the penitentiary. From that moment there is a risk of dissipation of the assets. The EU freezing order has also been sent to Office of the Attorney General, The Palace, Valletta. I thank you in advance very much for your assistance”³⁸(Enfasi tal-Bord).

14. Meta l-Bord saqsa lil Michael Cassar x'ghamel meta rcieva din l-email, huwu stqarr li ma ghamel xejn billi ma waslitx *through the proper channels*. Qal li talba bhal dik kellha tigi jew *“through Europol jew through Interpol jew jekk hemm rogatorji through Foreign Affairs u Avukat Generali”³⁹*. Qal ukoll li lanqas ta kasha billi min baghtha seta' ma kienx veritier jew awtorita' kompetenti biex jibghatha⁴⁰. Zied jghid li *“kelli s-soljev ukoll li dan baghatha lill-AG u naf, jien naf mija fil-mija illi hemmhakk l-AG kif jircievu xi haga ta' barra, Donatella taqbad, hi kienet fuqhom u tiftah [file]... imma jien min-naha tal-pulizija ma stajt”⁴¹*.

15. Dan il-Bord ghamel erba` mistoqsijiet lill-Prosekutur Olandiz, Martine Dontje dwar l-ezitu tal-imsemmija email mibghuta lil Michael Cassar minn Jeoren Hennekam fit-22 ta' Novembru 2012 li sejrin jigu mtennija hawn, flimkien mar-risposti ta' Martine Djonte:

A. Mistoqsija: Was Mr Hennekam entitled in terms of European law and practice to seek from Mr Cassar the assistance he was actually requesting?

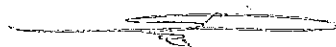
Risposta: Yes, Mr Hennekam was entitled to seek the assistance from Mr Cassar. As legal advisor international affairs in criminal confiscation proceedings, Mr Hennekam is official of the National Public Prosecution Service for Serious Fraud, Environmental Crime and Asset Confiscation and also connected to the Dutch asset recovery office (ARO) which is part of the National Public Prosecution Service for Serious Fraud, Environmental Crime and Asset Confiscation. The Dutch ARO is also part of the Dutch network of mutual legal assistance centre points (IRC's) through which official requests for legal assistance and European freezing orders are sent to other member states. The Dutch ARO handles cases for the National Public Prosecution Service and the regional Public Prosecution Services. On the 22nd of November 2012 the

³⁸ Din l-email ma instabitx fil-file ENU/68/LR/12 tal-Pulizija. Instabet bhala Red 1 fil-file tal-Avukat Generali AG 3247/12. Jidher li waslet hemm bhala fax mibghuta mill-awtoritajiet Olandizi.

³⁹ Ara x-xhieda li ta fit-2 ta' Dicembru 2016, pagna 3.

⁴⁰ Ibid, pagna 11.

⁴¹ Ibid, pagna 12.



European freezing order, dated 21 November 2012 - 13/710165-12 (Luris number KLR-U2012.056.959), was officially sent by the Dutch ARO to the competent authorities of Malta (Office of the Attorney General, The Palace, CMR 02 – Valletta).

On the same date an e-mail was sent by Mr Hennekam to Mr Cassar in which his mediation was requested to have the European freezing order executed as soon as possible. Malta didn't have an asset recovery office in 2012. The assistance of Mr Cassar was requested because Mr Cassar was in 2012 the national representative of Malta of the (informal) CARIN (Camden Asset Recovery Inter agency) network.

B. Mistoqsija: Did Mr Cassar give any reply or acknowledgment to Mr Hennekam's email?

Risposta: Mr Cassar did not give any reply or acknowledgment to Mr Hennekam's email.

C. Mistoqsija: If in the negative, did Mr Hennekam follow up on his request?

Risposta: No, the reason was that on the 17th of December 2012, Dr. Donatella Frendo Dimech, sent an e-mail with regard to the European freezing order in which Mr. Cassar was copied.

D. Mistoqsija: Have you any comments to make regarding Mr Cassar's cooperation or otherwise?

Risposta: No

16. Jista' jkun li Michael Cassar huwa teknikment korrett meta jghid li fil-mument li waslitlu l-email in kwistjoni hu kien intitolat jiddubita mill-awtenticita' tal-persuna li baghtitielu, ghax f'dak il-mument l-Avukat Generali kien ghadu ma harigx ic-certifikat⁴² li jawtentika il-provenjenza taghha. Mill-banda l-ohra, anke jekk hass li kellu jinjora l-email ta' Hennekam, kif ukoll il-kontenut tal-freezing order li kienet tixhet suspett serju ta' reati allegatament imwettqa minn kumpanija Maltija, u li normalment kellha tiskatta investigazzjoni lokali, seta' baghat xi forma ta' risposta lil Hennekam. Hu maghruf bizzejjed li l-assistenza reciproka f'materja kriminali bejn l-Istati Membri fl-Unjoni Ewropea, li hija tant essenzjali fil-glieda kontra l-kriminalita', hi regolata b'ligijiet ad hoc. Ghalhekk ukoll li l-Kodici Kriminali taghna fit-Titolu VIII, fl-artikolu 628A u 628B jahseb li jaghti setgha lill-Ministru responsabbli mill-Gustizzja li johrog regolamenti li jipprovdu ghall-assistenza reciproka f'materja kriminali. Madanakollu jrid jinghad li l-fatt li Michael Cassar injora l-imsemmija email, essenzjalment ma gab assolutament l-ebda pregudizzju lil hadd. Dan ghaliex meta l-Avukat Generali hareg ic-certifikat fuq imsemmi, dan ic-certifikat, flimkien mal-freezing order relattiva, giet

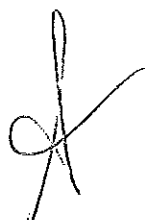
⁴² Dan ic-certifikat jinhareg fit-termini tar-Regolament 7. (1) tal-Freezing Orders (Execution in the European Union) Regulations, L.N. 397 ta' 2007

kommunikata lill-Kummissarju tal-Pulizija⁴³ fit-18 ta' Dicembru 201⁴⁴ biex huwa jiehu hsieb li ssir l-esekuzzjoni taghha. Hamest ijiem wara, l-Assistent Kummissarju Michael Cassar innomina l-Ispettur Raymond Aquilina biex jese gwixxi l-istess freezing order. Irrizuta li l-freezing order giet debitament esegwita minnu fuq il-Bank of Valletta plc fis-27 ta' Dicembru 2012, jigifieri gurnata wahda biss wara li l-Pulizija seghtet tesegwiha. Dan il-Bord ma ghandu l-ebda dubbju li l-Pulizija wettqet dmirha sewwa u kompletament in kwantu jikkoncerna l-esekuzzjoni tal-freezing order. Rigward l-ewwel terminu ta' riferenza ta' din l-inkjesta, fejn jehtieg li jigi ezaminat jekk l-awtoritajiet pubblici Maltin zammewx mill-awtoritajiet investigattivi Olandizi informazzjoni li kienet fil-pussess taghhom u li giet mitlub lillhom mill-awtoritajiet Olandizi, ghandu jinghad li kemm il-Pulizija u kemm ukoll l-Ufficju tal-Avukat Generali taw lill-Awtoritajiet Olandizi kull informazzjoni li huma kienu talbuhom. Certament irrizulta li kien hemm koperazzjoni tajba bejn l-ufficju tal-Avukat Generali u l-Pulizija in kwantu l-istess freezing order giet debitament esegwita fi zmien ragonevolment xieraq meta wiehed iqis ic-cirkostanzi kollha, inkluz li l-freezing order kienet originarjament giet ricevuta b'xi pagni nieqsa. Irrizulta wkoll li l-assi fil-kontijiet rilevanti ma tbiddu xejn matul il-perjodu bejn id-data tal-wasla effettiva f'Malta u d-data tal-esekuzzjoni tal-istess freezing order. Ghalhekk, f'dan ir-rigward u f'dana l-istadju, il-Pulizija, qdiet dmirijetha sewwa.

17. Kif sejjer jirrizulta aktar 'il quddiem, il-Pulizija Maltija rnexxielha takkwista minghand il-Bank, informazzjoni shieha dwar it-transazzjonijiet bankarji tal-kumpanija **CapitalOne Investment Group Limited**, li l-awtoritajiet Olandizi, a bazi tal-investigazzjoni taghhom, kienu jissuspettawha li kienet involuta f'hasil ta' flus. Kopja ta' dawn it-transazzjonijiet bankarji qieghdin jigu annessi ma' dan ir-rapport bhala dok BOV. Ghandu jigi sottolinejat li l-awtoritajiet Olandizi qatt ma talbu lill-awtoritajiet Maltin li jfornuhom b'din l-informazzjoni. Infatti dan huwa kkonfermat mir-risposta negattiva tal-Prosektur Pubbliku Olandiz, Martine Djonte li tat lil dan il-Bord ghal din il-mistoqsija li ghamlilha: *"In connection with the freezing order in question, did the Dutch Authorities seek information from the Maltese authorities regarding the financial transactions resulting from the bank statements of CapitalOne Investment Group Limited. If your answer is in the affirmative, what was the reaction of the*

⁴³ Ara Regolament 7. (3) tal-Freezing Orders (Execution in the European Union) Regulations, L.N. 397 ta' 2007.

⁴⁴ Ara Red 2 tal-file tal-Pulizija ENU/68/LR/12. Din l-esekuzzjoni saret skont ir-regolament 10. tal-Freezing Orders (Execution in the European Union) Regulations, L.N. 397 ta' 2007.



Maltese authorities?" Hija rrispondiet semplicement: "No". Allura, tqum hawnhekk il-kwistjoni jekk l-awtoritajiet Maltin kellhomx obbligu li jibaghtu lill-awtoritajiet Olandizi din l-informazzjoni ohra imsemmija dwar dawn it-transazzjonijiet bankarji li ma kienetx mitluba minnhom. Fil-lista ta' mistoqsijiet li dan il-Bord ghamel lill-Prosektur Pubbliku Olandiz, Martine Djonte, li kienet qieggheda tmexxi l-kaz l-Olanda, kien hemm din il-mistoqsija: "...it has resulted that by 31st December 2012 the local Police had already acquired access to the detailed financial transactions resulting from the bank statements of CapitalOne Investment Group Limited. In your view, were the Malta Police obliged, or expected in terms of European law and practice, to pass on this information to the Dutch authorities, or to Europol at The Hague, even in the case where the Dutch authorities did not expressly seek such information directly from them?" Ms Djonte irrispondiet li l-freezing order kienet tolqot biss kont wiehed (dwar Visa credit card specifika) u allura, fil-kuntest tal-istess freezing order, il-Pulizija ma kellha ebda obbligu li tghaddi din l-informazzjoni tant wiesa. Fi kliemha stess: "In my view, on the basis of the European freezing order, the Malta police was not obliged to pass the information. In the mentioned European freezing order only the freezing of a specific bank account was ordered. In this context, an European freezing order only arranges the freezing of a specific asset". Il-Pulizija ma kella ebda obbligu li tibaghat dawn it-transazzjonijiet bankarji lill-awtoritajiet Olandizi⁴⁵. Isegwi li **fil-kuntest tal-esekuzzjoni tal-freezing order innifisha**, l-awtoritajiet Maltin certament ma kkomettew l-ebda nuqqas meta ma baghtux l-imsemmija informazzjoni lill-awtoritajiet Olandizi. Ghalhekk, l-allegazzjonijiet fir-rigward, maghmula fl-artikolu in kwistjoni tal-gazzetta Malta Today jirrizultaw bla ebda bazi.


IR-RABA` PARTI: IR-RABA` TERMINU TA' REFERENZA: IL-KORP TAL-PULIZIJA

18. Fil-kuntest tar-raba` terminu ta' referenza li inghata lill-Bord, irid isir ezami dwar l-allegazzjoni: "Illi kien hemm istituzzjonijiet pubblici li naqsu minn dmirhom meta ma nvestigawx attivita' finanzjarja illecita' jew transazzjonijiet kontra l-ligi kif imsemmi fl-artikolu". Fost dawn l-istituzzjonijiet certament hemm il-Korp tal-Pulizija. L-artikolu 346. (1) tal-Kodici Kriminali jipprovdi hekk: "Huwa dmir tal-Pulizija li zzomm l-ordni u

⁴⁵ Infatti il-pubblikazzjoni 'Commentary from the Handbook for Judges, Prosecutors and Other Competent Authorities on How to issue and execute a request for enforcement of a freezing order' tispjega li:

Paragraph 1 is intended to make clear that the Framework Decision is limited to 'freezing orders', as instruments with two very specific purposes:

- (a) To secure existing evidence, but not investigation or the search for evidence.
- (b) To seize property, and thus ensure future confiscation, making it a provisional and protective but not independent measure.



l-kwiet pubbliku, li ma thallix isiru reati, li tikxef u tinvestigat r-reati li jsiru, li tigbor il-provi u li ggib il-hatjin, sew l-awturi kemm il-komplici, quddiem l-awtorita` gudizzjarja". Fil-kuntest ta' dan ir-raba` terminu ta' referenza, l-operat tal-Pulizija Maltija ghandu jigi ezaminat biex jigi stabbilit jekk il-Pulizija naqsitx minn dmirijietha meta ma nvestigatx attivita' finanzjarja allegatament illecita' jew transazzjonijiet kontra l-ligi kif imsemmi fl-artikolu tal-gazzetta Malta Today. Ghandu jinghad mill-bidu nett li, apparti l-kontenut tar-Rapport Tekniku tas-Sur Kenneth Farrugia, anness ma' dan ir-rapport bhala dok RKF, dan il-Bord ma huwiex sejjer jippronunzja ruhu dwar jekk sehhitx effettivament xi attivita' finanzjarja illecita' jew transazzjonijiet kontra l-ligi f'dan il-kaz u dan ghar-raguni gurisdizzjonali li tigi trattata aktar 'il quddiem. Hawnhekk sejr in naraw biss x'ghamlu l-Pulizija meta gew rinfaccati bil-kontenut tal-freezing order Olandiza in kwistjoni, li evidentement kienet tpoggi l-kumpanija Maltija CapitalOne Investment Group Limited taht suspett mhux zghir li bl-operat taghha f'Malta kkommettiet ir-reat tal-hasil ta' flus.

19. Diga` sar accenn ghall-fatt li l-Assistent Kummissarju Michael Cassar innomina l-Ispettur Raymond Aquilina biex jese gwixxi l-freezing order in kwistjoni. Ghandu jigi rikonoxxut u apprezzat li l-Ispettur Raymond Aquilina ma kkuntentax ruhu jaghmilha biss ta' pustier, billi semplicement iwassal il-freezing order lil Bank of Valletta kif effettivament ghmel fis-27 ta' Dicembru 2012. Konxju ta' dak li rrizultalu mill-investigazzjoni Olandiza u konxju wkoll mill-konkluzjoni registrata fil-freezing order li *"There are serious suspicions that suspect Soogea tried to hide his criminal assets by means of various companies and is possibly involved in international drugs transportation"*, l-Ispettur Aquilina, bla dubbju ta' xejn, issa fir-rwol tieghu ta' Spettur fil-"Anti-Money Laundering Unit", prattikament ta bidu ghal investigazzjoni lokali dwar is-suspett tal-allegat reat ta' money laundering li ntefa` fuq CapitalOne Investment Group Ltd.. Beda billi gabar kemm seta' taghrif u dokumenti mir-Registry of Companies dwar il-kumpanija Maltija CapitalOne Investment Group Limited⁴⁶ (C 44750). Billi rrizultalu li d-direttur, shareholder, legal representative u judicial representative ta' din il-kumpanija kienet kumpanija fiducjarja Maltija, ezattament Baltimore Fiduciary Services Limited (C 27997), l-Ispettur Aquilina gabar ukoll id-dokumentazzjoni kollha li sab dwar din l-ahhar imsemmija kumpanija mir-Registry of Companies.

20. Kif inqal aktar qabel f'dan ir-Rapport, l-awtoritajiet Olandizi talbu l-iffrizar ta' kont bankarju wiehed specifiku taghha, liema kont saru jafu bih b'rizultat tal-perkwizzjonijiet li kienu ghamlu f'Amsterdam. Jirrizulta illi fit-28 ta' Dicembru 2012 l-Ispettur Aquilina talab lil John Scicluna, Money Laundering Reporting Officer tal-Bank

⁴⁶ L-imsemmija dokumentazzjoni dwar iz-zewg kumpaniji li jissemew f' dan il-paragrafu huma minutati bhala Red 5 sa 23 tal-file tal-Pulizija ENU/68/LR/12.

of Valletta, biex mhux aktar tard mill-31 ta' Dicembru 2012 sad-9 ta' filghodu, jaghtih it-taghrif li jissemma fl-istess ittra. Jigi mtenni li l-awtoritajiet Olandizi qatt ma talbu lill-awtoritajiet Maltin jaghtuhom l-informazzjoni li tisemma f'din l-ittra. Spettur Aquilina kiteb *inter alia* hekk f'din l-ittra, dok R9 anness ma' dan ir-Rapport:

" In pursuit of an ongoing police money laundering investigation in terms of Chapter 373 of the Laws of Malta, of a crime punishable by imprisonment, I would be grateful if you could provide the Executive Police with all data/ information on the following subjects and/or companies:

1. *Soogea Robert Guillaume ...*
2. *Capitalone Investment Group Limited...*
3. *Gilesa Shipping Limited;*
4. *Chriphera Enterprises Limited of Cyprus;*
5. *Senblema Trading Limited;*
6. *Mr Moustos;*
7. *Mr Henrique Regilio Cumberbatch*

If in the affirmative to query 1 to 7, kindly provide the information such as but not limited to -

1. *Any financial businesses/es;*
2. *A survey of all transactions and operations on its accounts ever since from the opening of account up-to-date;*
3. *All data concerning the banking account/s such as but not limited to -*
 - *The Actual Balance in account*
 - *Who opened the account etc.*
 - *The Due Diligence documentation/s*
 - *All supporting documentation, but not limited to the –*
Accounts opening;
KYC;
Identification provided to the bank;
Statement of accounts as from the opening date up to date;
List of any additional signatories to the accounts in caption and copies of any identification documents and directives that the bank might have received or sent or both;
Instructions by letter/s, email/s, fax/es, sms/es. etc...received/sent by the credit financial institution and/or vice versa".

21. Jigi spjegat li bl-ittra datata 31 ta' Dicembru⁴⁷ 2012, John Scicluna irrisponda ghal hafna mit-talbiet li ghamillu l-Ispettur Aquilina. Barra minn dan, mal-istess ittra, Scicluna akkluda tmienja u sittin (68) pagna ta' dokumenti korrobarattivi mitluba mill-Ispettur Aquilina migbura taht is-segwent i kapi:

"Company statements for the period 23 July 2008 to date

Company detailed statement for the period 23 July 2008 to date

Opening of account form for Capitalone Investment Malta Ltd subsequently changed to Capital one Investment Group Ltd

Credit Cards Application Forms"

22. Imbaghad, fid-19 ta' Frar 2012 Scicluna baghat ittra⁴⁸ u kwazi mitt (100) pagna ta' dokumenti ohra lill-Ispettur Aquilina. Kitiblu inter alia hekk:

"Enclosed please find the following documentation for the 23/07/2008 to 22/12/12

Capitalone Investment Group Ltd

- a) *Details for Payment Order Inwards for account 40017397669*
- b) *Application forms for Payment Orders Outwards*
- c) *Transections Vouchers*
- d) *Statement copies as detailed in the below table....."*

23. John Scicluna rega' kiteb ittra⁴⁹ lil Aquilina fit-22 ta' Frar 2013 li biha tah dettalji tal-bilanci li kien hemm f'dik id-data fil-kontijiet ta' Capitalone Investment Group Limited. Minn din l-ittra kien jirrizulta li CapitalOne kellha seba' (7) kontijiet mal-Bank of Valletta, sitta (6) minnhom dwar Visa Gold Cards, li jidhru li gew cancellati, wiehed minnhom f'Dicembru 2010 u l-ohrajn, f'April 2011. Jidher li kont wiehed biss kien

⁴⁷ Ara dok R10 anness ma' dan ir-Rapport.

⁴⁸ Ara dok R11 anness ma' dan ir-Rapport.

⁴⁹ Ara dok R12 anness ma' dan ir-Rapport.



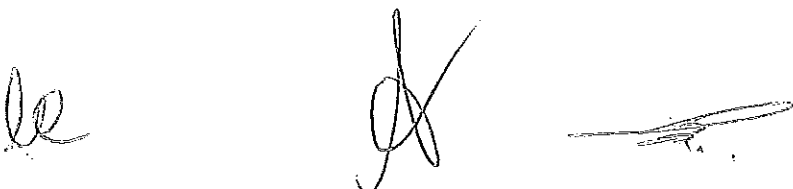
baqa' attiv, jigifieri s-Savings Account Numru 400173797669 li kien infetah fit-8 ta' Frar 2003 u li fil-31 ta' Dicembru 2013 kellu bilanc positiv fih ta' Euro 10,865.28. Jidher ukoll li l-Ispettur Aquilina ghadha⁵⁰ din l-ittra lil Dr Frendo Dimech u din baghtitha lill-awtoritajiet Olandizi, kif intqal aktar qabel f'dan ir-Rapport.

24. Intqal li l-Ispettur Aquilina Prattikament ta bidu ghal investigazzjoni lokali. Anke l-Ispettur Aquilina stess jaqbel illi, apparti l-freezing order, **indirettament** huwa fetah investigazzjoni ohra⁵¹. Dan il-Bord huwa tal-fehma, fid-dawl tal-kontenut tal-hames paragrafi precedenti u partikolarment tal-operat inizjali intensiv tal-Ispettur Aquilina, li l-Pulizija Maltija bdiet investigazzjoni *de facto* fil-konfront tal-kumpanija Maltija CapitalOne Investment Group Limited dwar l-allegat reat ta' hasil ta' flus. Dan il-Bord wasal ghal din il-konkluzjoni wara li kkonSIDra diversi fatti centrali, fosthom: **(a)** li l-Ispettur Aquilina gabar mill-MFSA dokumentazzjoni shiha, li ma gietx mitluba mill-awtoritajiet Olandizi, dwar din il-kumpanija Maltija, kif ukoll fuq il-kumpanija Baltimore Fiduciary Services Limited, meta huwa sab li din is-socjeta' fiducjarja kienet id-direttur, shareholder, legal representative u judicial representative ta' CapitalOne Investment Group Limited; **(b)** li meta l-Ispettur Aquilina indirizza lil John Scicluna bl-imsemmija ittra tieghu tat-28 ta' Dicembru 2012, l-Ispettur informah espressament li l-Pulizija kienet varat "an ongoing money laundering investigation"; **(c)** li l-istess Spettur talab u gabar mill-Bank of Valletta kopja tat- transazzjonijiet u dokumenti ohra bankarji tas-socjeta' CapitalOne Investment Group Ltd, li evidentement setghu jkunu biss utili f'investgazzjoni ta' hasil ta' flus li allegatament twettaq u ma kienu relevanti assolutament xejn ghall-esekuzzjoni proprja tal-freezing order, li effettivament kienet diga` giet esegwita debitament fuq il-Bank, mill-Ispettur Aquilina stess fis-27 ta' Dicembru. **(d)** Fl-ahhar nett, ghandu jigi sottolinejat li l-awtoritajiet Olandizi qatt ma talbu lill-awtoritajiet Maltin biex ifornuhom b'dawn it-transazzjonijiet bankarji u bl-informazzjoni bankarja dettaljata ta' din is-socjeta' li l-Ispettur Aquilina deherlu li kien xieraq li jigbor. Dan il-fatt johrog car mhux biss mill-kontenut tal-freezing order stess⁵² u mill-korrispondenza li ghaddiet bejn l-istess awtoritajiet, izda wkoll jinsab konfermat mir-risposta negattiva cara li dan il-Bord ircieva fit-12 ta' Jannar 2017 minghand il-Prosekutur Pubbliku Olandiz Martine Djonte ghall-mistoqsija li ghamlilha dan il-Bord u li diga` sar accenn ghalha fil-bidu tal-paragrafu 17 *supra*.

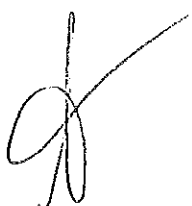
⁵⁰ Ara Red 12, pagna 1 fil-file 3247/12 tal-Avukat Generali.

⁵¹ Ara t-traskrizzjoni tax-xhiedha tieghu moghtija fil-21 t'Ottubru 2016, f'pagna 11.

⁵² Il-freezing order kienet tolgot kont bankarju specifiku, dak relatat mal- Visa Credit Card number 4459 5100 1101 4020 li taghha hemm ritratt fil-parti f) tal-anness dokument markat "Dok R6".



25. Fil-paragrafu precedenti intqal li l-Ispettur Aquilina prattikament ta' bidu ghal investigazzjoni lokali. Intuzat il-kerna "prattikament" ghaliex irrizulta, li ghall-ahhar tas-sena 2012 u l-bidu tas-sena 2013, il-Pulizija lokali ma jidhirx li formalment varat investigazzjoni *ut sic* fuq il-kumpanija CapitalOne Investment Group Limited dwar l-allegat reat ta' hasil ta' flus kif jissemma fil-freezing order in kwistjoni. Mix-xhiedha li serna' l-Bord, irrizulta li f'dak iz-zmien, il-Pulizija, fethet file wiehed biss in konnessjoni mal-fatti li taw lok ghal din il-freezing order u mal-informazzjoni li kien fiha dwar kumpanija Maltija. Ezattament kif kellha d-dmir li taghmel, il-Pulizija tal-Europol National Unit, fethet file fuq dan il-kaz jigifieri dak registrat bin-numru ENU/68/LR/12 li huwa intestat hekk: "Subject: Freezing Order by the Dutch Authorities Against Robert Guillaume Soogea (16/10/68) and CapitalOne Investment Group Limited". L-Ispettur Dr Mario Cuschieri (inkarigat mis-Special Branch, Europol u SIRENE) xehed li "dal- file huwa l- file li ftahna ahna biex tkun tista' tigi processata dik it-talba ta' l-Awtoritajiet Olandizi" u li dak li fih il- file huwa limitament dwar il-Freezing Order. Ikun xieraq li, f'dana l-istadju, tinghata harsa hafifa lejn il-kontenut ta' dan il-file.
26. Jirrizulta li l-file infetah wara li l-awtoritajiet Olandizi hargu l-European freezing order inkwisjoni. Kopja ta' din il-freezing order intbaghtet mid-Deputat Avukat Generali, Dr Donatella Frendo Dimech, attaccjata ma' email datata 17 ta' Dicembru 2012. Din kienet ikoppjata lill-Ispettur Dr Mario Cuschieri u lill-Assistent Kummissarju Michael Cassar (li kien responsabbli mill-Vice Squad u mill-Anti Money Laundering Unit li taqa' taht l-Economic Crimes Squad). Fit-18 ta' Dicembru Dr Frendo Dimech talbet li jkun nominat Spettur biex eventwalment jesegwixxi l-freezing order. Fit-23 ta' Dicembru Michael Cassar appunta spettur mill-Money Laundering Unit peress li l-kaz kien jikkoncerna atti finanzjarji, ezattament lill-Ispettur Raymond Aquilina, biex jesegwiha. Kif diga' gie accennat aktar 'il fuq, fid-dawl tal-kontenut tal-istess freezing order, l-Ispettur Aquilina beda jgbor mill-MFSA informazzjoni dwar il-kumpanija CapitalOne Investment Group Ltd. Din l-investigazzjoni waslitu biex jiskopri li d-direttur, shareholder, legal representative u judicial representative ta' din il-kumpanija kienet kumpanija fiducjarja Maltija **Baltimore Fiduciary Services Limited**. L-Ispettur Aquilina gabar ukoll dwar din il-kumpanija, id-dokumentazzjoni kollha li sab mill-MFSA. Fit-28 ta' Dicembru 2012 esegwixxa il-freezing order fuq il-Bank of Valletta u fil-file hemm zewg ittri tal-Bank of Valletta datati 31 ta' Dicembru 2012 mibghuta minn John Scicluna, Money Laundering Reporting Officer tal-Bank of Valletta (Red 25 u 26).
27. Il-minuta Red 27 tirreferi ghar-rapport datat 13 ta' Jannar 2013 li l-Ispettur Aquilina bhala Spettur fl-Anti Money Laundering Unit ghamel lill-Assistent Kummissarju, ECU/ML/Vice Squad, Michael Cassar. Dan ir-rapport jispicca b'dawn il-kliem:



"...the police made a request under the money laundering act to be provided with additional information on Capitalone Investment Group Limited / Robert Guillaume SOOGEA. The information illustrated that other credit cards were issued on other individuals, and that the company Capitalone Investment Group Limited maintains a Euro Saving account opened on 23rd July 2008 [red 26]. Since this information was not requested in the order, however the Dutch authorities will be informed through the Attorney General Office to state whether they would like to extend the freezing order or otherwise. Since to-date, no additional request / orders were received from the Amsterdam Public Prosecutor and/or any other Dutch authority requesting additional assistance.

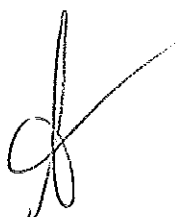
Conclusion

Having conducted what has been requested by the Dutch authorities and in addition, the inquiries made about the fiduciary company "Baltimore" and its directors, shareholders, etc." which one of them is a PEP, papers are being referred to note and for all the onward reference to Europol Office through a AC SB and as deemed necessary, please."

28. Mitlub jispjega x'fehem bil-konkluzjoni tal-imsemmi rapport tal-Ispettur Aquilina, Michael Cassar xehed hekk fis-27 ta' Ottubru 2016, f'pagna 4-5: "...fil- fatt f' dal- kaz kien qalli li sar ix- xoghol kollu, ghadha l- informazzjoni lill- Avukat Generali u over and above that, peress illi kien hemm xi informazzjoni ohra li ahna ovjament ma nistghux naqbd u naghtu, qalli, issugerixxa illi, nghaddu l-informazzjoni lill-Olandizi through EUROPOL. U fil- fatt ghalhekk jiena hawnhekk [Red 29] ghedtlu lill- AC - Assistent Kummissarju Security Branch, ghedtlu "referred for necessary action"... "for further necessary action". Izda f'it aktar 'l isfel donnu biddel fehemtu ghax zied jghid hekk: "Min naha l- ohra over and above that, l- informazzjoni li kien gabar mill- Bank , u d- dokumenti u kollox, dak jghaddi kollox lill- AG biex dawka jiehdu hsieb". Qal ukoll (ara pagna 24 tax-xhieda) li l-file in kwistjoni ma kienx file dwar money laundering li jaqa' tahtu, izda kien file li jaqa' taht l-Assistent Kummissarju Andrew Seychell u li hu (Cassar) fil-25 ta' April kien spicca mill-kariga li kellu (pagna 37).
29. Jigi notat li f'dan ir-rapport hemm referenza ghaz-zewg ittri tal-Bank Red 25 u 26, li diga` issemmev, izda m'hemm l-ebda referenza ghall-ittra l-ohra tal-Bank tat-31 ta' Dicembru 2012 u ghall-informazzjoni u d-dokumenti bankarji li ntbaghtu maghha. Lanqas hemm ebda referenza ghall-ittra tal-Ispettur Aquilina tat-28 ta' Dicembru u tat- tip ta' informazzjoni li talab lill-bank biex jaghtih.
30. Il-minuta Red 28 prattikament tirriproduci r-rapport imsemmi tal-Ispettur Aquilina datat 13 ta' Jannar 2013. Jidher li l-Assistent Kummissarju Michael Cassar irrefera il-file

lill-Assistent Kummissarju tal-*Ispécial Branch*, Andrew Seychell [Red 29] u dan għaddieh fis-17 ta' Jannar 2013 lis- Supt. IRU (International Relations Unit) *for necessary action* [Red 30]. B'hekk il-file għadda għand Dr Mario Cuschieri li fil-minuta sussegwenti [Red 31] kiteb "*B U in 3 months*" jgifieri "*bring up, in three months*". L-Ispettur Cuschieri spjega li dik il-minuta kitibha hu stess u minn rajh bhala l-Ispettur responsabbli mill- *Europol National Unit*, billi l-awtoritajiet Maltin kienu qiegħdin jistennew twegiba minghand l- awtoritajiet Olandizi. Spjega li dik il-minuta "*bring up, in three months*" kienet saret **għall-fini tal-Freezing Order** biss u ma kienetx tirriferi għal xi investigazzjoni ohra li setgħet kienet konnessa magħha. Zied jghid (ara pagna 13) li kieku kien hemm xi investigazzjoni ohra, il- *file* kien ikun CID , *file* tal- *Money Laundering Unit* jew inkella tal- *Economic Crimes*.

31. Fit-18 t'April 2013 il-freezing order giet revokata [Red 31]. Michael Cassar spicca mill-kariga li kellu fil-25 ta' April 2013 u fl-istess data , 25 t'April 2013, l-Ispettur Aquilina kiteb il-minuta [Red 32] indirizzata din id-darba lis- Supretendent responsabbli mill-Money Laundering Unit (SUPT MLU), li tghid hekk: "*In reference to the freezing order issued by the Attorney General dated 18 December 2012 [red 24], and the non-interest of the Dutch authorities to maintain such order of freezing and/or successive freezing order as pointed out in a minute 28 Paragraph "y", an order against such freezing for the release of any funds was issued by the Attorney General on the 18 April 2013 [red 32]. The order was delivered to the bank of Valletta and the relative sub-poena was referred to the Attorney General for any future reference. Hence since all action has been taken and the freezing order revoked, papers are being referred to note and for onward reference to Europol Office through AC SB and as deemed necessary, please.*"
32. Jigi notat li din il-minuta tispicca, tista' tghid, bl-istess kliem tar- rapport li l-Ispettur Aquilina kien għamel fit-13 ta' Jannar 2013 u dan nonostante li l-freezing order kienet issa ilha li giet revokata.
33. Jidher li l-file baqa' jistrieħ fuq l-ixkaffa sakemm is-Supretendent, *Vice and Economic Crime* bagħat il-file lill-Ispettur Cuschieri fil-25 ta' Dicembru 2013 [Red 33]. Dan għamel minuta fis-27 ta' Dicembru 2013, qasira qasira: "*PA*" li tfisser "*Put Away*". L-Ispettur Cuschieri spjega li l-*Unit* tiegħu mhix *unit* investigattiva, izda hija *unit* ta' support għall- iskwadri investigattivi: "*Jekk hemm xi investigazzjoni minn dipartiment speċjalizzat tal-puluzija ahna nidhlu biss fejn hemm rikjesti tagħhom specifici, isma ezempju nixtiequ nibghatu ezempju dir-rikjesta lill-Italja, jew Franza. Issa fejn ikun hemm l-Avukat Generali involut mill- ewwel hafna drabi jghaddu mingħajr lanqas biss ma jireferuh lilna (pagna 22)*".



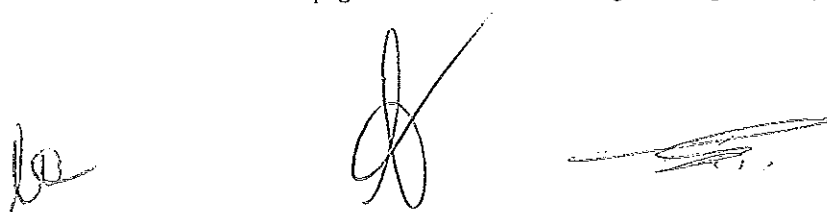
34. Diga` sar accenn li fid-dawl tal-kontenut tal-freezing order Olandiza, l-Ispettur Aquilina gabar mill-MFSA id-dokumentazzjoni kollha dwar il-kumpanija CapitalOne Investment Group Limited u l-kumpanija fiducjarja Baltimore Fiduciary Services Limited. L-Ispettur Aquilina fit-28 ta' Dicembru 2012, jigifieri l-ghada minn meta kien esegwixxa il-freezing order fuq il-Bank of Valletta, kiteb ittra lil John Scicluna, Money Laundering Reporting Officer tal-Bank of Valletta, fejn talbu *inter alia* jfornieh bl-informazzjoni bankarja dettaljata li diga` ssemmiet. Mill-provi migbura mill-Bord jirrizulta li, John Scicluna baghat hames (5) ittri lill-Kummissarju tal-Pulizija, kollha kemm huma ndirizzati ghall-attenzjoni tal-Ispettur Aquilina. Il-Pulizija stess gabrithom lill-ufficju ta' John Scicluna u l-ufficjal li gabarhom halla debita ricevuta fuq kopja li baqghet fil-pusses ta' Scicluna. Kopja ta' dawn ir-ricevuti jinsabu fl-inkartament ta' din l-Inkjesta. Tlieta mill-imsemmija ittri, ntbaghtu fil-31 ta' Dicembru 2012 u t-tnejn l-ohra intbaghtu rispettivament fid-19 u 22 t' April 2013. Tnejn biss minn daww mibghuta fil-31 ta' Dicembru u dik tat-22 t'April jinsabu fil-file tal-Pulizija⁵³. Dawn l-istess tliet ittri jinsabu wkoll fil-file tal-Avukat Generali⁵⁴ u jirrizulta li l-kontenut taghhom kien gie mghoddi lill-awtoritajiet Olandizi.
35. Hija haga stramba li kopja ta' l-ittra fuq imsemmija tat-28 ta' Dicembru 2012, li l-Ispettur Aquilina baghat lil John Aquilina, la tinstab fil-file ENU/68/LR/12 tal-Pulizija u lanqas f'xi file iehor tal-Pulizija. Dan il-Bord akkwista kopja taghha⁵⁵ waqt li kien qieghed jiehu x-xhiedha ta' John Scicluna, fis-seduta tas-27 ta' Ottubru 2016, li esibha bhala parti minn document "JS1". Hija daqstant iehor haga stramba li la fil-file ENU/68/LR/12 u l-anqas f'ebda file iehor tal-Pulizija ma hemm iz-zewg ittri li John Scicluna baghat lill-Pulizija rispettivament fil-31 ta' Dicembru 2012⁵⁶ u fid-19 t'April 2013. Wisq anqas ma hemm iz-zewg *bundles* ta' dokumenti bankarji li Scicluna baghat separatament fl-ahhar imsemmija dati, ghall-attenzjoni tal-Ispettur Aquilina, b'risposta ghall-imsemmija ittra tat-28 ta' Dicembru 2012. Kopja ta' dawn iz-zewg ittri u tal-mazz dokumenti bankarji li intbaghtu maghhom gew ezibiti f'din l-inkjesta bhala Dokumenti JS1 u JS2 minn John Scicluna.
36. Irrizulta ghalhekk li dawn id-dokumenti kollha, li ghadhom kif issem mew fil-paragrafu precedent, sparixxew mill-pussess tal-Pulizija. Ir-raguni li inghatat ghat-telfien ta' dawn id-dokumenti mill-pussess tal-Pulizija kienet li dawn inghataw lill-Ufficju tal-

⁵³ Ara Red 25, 26 u dokument mhux redded li jinsab tlett pagani qabel Red 32 fil-file tal-Pulizija ENU/68/LR/12.

⁵⁴ Ara Red 8,9, u l-ahhar zewg pagani ta' Red 12, fil-file 3247/12 tal-Avukat Generali.

⁵⁵ Ara dok R9 anness ma' dan ir-Rapport.

⁵⁶ Mhux qieghda ssir referenza hawn ghaz-zewg ittri, tnejn datati 31 ta' Dicembru 2012, Red 25 u 26.



Avukat Generali biex minn hemm jintbaghtu ghand l-awtoritajiet Olandizi. Kien hemm cahda kategorika da parti tal-Ufficcju tal-Avukat Generali li dawn id-dokumenti qatt ghaddew ghandu, verzjoni din li tidher aktar attendibbli minn ta' l-ewwel, primarjament ghaliex l-Ufficcju tal-Avukat Generali normalment ma setghax jibghat informazzjoni dettaljata bhal din, partikolarment meta din qatt ma kienet intalbet. Din l-informazzjoni li ingabret mill-Pulizija, se mai, setghet tintbaghat mill-Europol Unit ta' Malta lill-kollegi taghhom fl-Olanda u ghal bzon seta` jigi kkonsidrat it-twaqqif ta' *joint investigation team* fil-kuntest tal-*Framework Decision 2002/465/JHA on joint investigation teams (OJ L 162 20.06.2002)*⁵⁷, billi whud mill-provi materjali, skont il-kontenut tal-freezing order kienu f'Amsterdam, waqt li l-allegati provi dwar ir-reat tal-hasil ta' flus kienu jemergu mit-transazzjonijiet bankarji li saru f'Malta, l-aktar bejn is-snin 2009 u 2010. Dawn it-transazzjonijiet kienu jinvolvu sommom kbar ta' Euro. Mill-banda l-oħra, l-ittra⁵⁸ tal-Bank of Valletta datata 22 ta' Frar 2013, li intbaghtet lill-Ispettur Aquilina u li imbaghad waslet ghand l-awtoritajiet Olandizi kienet tindika stampa kompletament differenti. Infatti, l-uniku kont li kien baqa' attiv, jgifieri s-Savings Account Numru 400173797669 li bih kienu saru l-imsemmija transazzjonijiet suspettati, fil-31 ta' Dicembru 2013 kellu bilanc positiv fih biss ta' Euro 10,865.

37. Dan il-Bord saqsa lill-Prosektur Pubbliku Olandiz, Martine Djonte, li kienet qiegheda tmexxi l-kaz l-Olanda, kien hemm din il-mistoqsija: *"On 16th April 2013 Mr Hennekam wrote to the Deputy Attorney General, that the charges against Soogea and Cumberbatch had been dropped due to lack of evidence and that there was a small chance that an investigation would be started at a later moment against these persons. In actual fact, were any criminal proceedings taken against these persons?"* Hija

⁵⁷ L-Ewwel Artikolu, dwar Skwadri ta' Investigazzjoni Kongunti nter alia jipprovdi hekk:

1. Bi ftehim reċiproku, l-awtoritajiet kompetenti ta' tnejn jew aktar Stati Membru jistgħu jwaqqfu skwadra ta' investigazzjoni kongunta għal skop speċifiku u perjodu limitat, li jista' jiggèdded permezz ta' kunsens bejn xulxin, biex iwettqu investigazzjonijiet kriminali f'wieħed jew aktar mill-Istati Membri li waqqfu l-skwadra. Il-kompożizzjoni tat-skwadra għandha ikun stabbilit fil-ftehim.

Skwadra ta' investigazzjoni kongunta tista' b'mod partikolari, titwaqqaf meta:

(a) l-investigazzjonijiet ta' l-Istat Membru f'reati kriminali jitolbu investigazzjonijiet diffiċli u ta' ċertu impenn li għandhom rabtiet ma' Stati Membri oħra;

(b) numru ta' Stati Membri qieghdin jagħmlu investigazzjonijiet dwar reati kriminali fejn iċ-ċirkustanzi tal-kaz jitolbu azzjoni kkordinati u flimkien fl-istati Membri involuti.

Talba biex titwaqqaf skwadra ta' investigazzjoni kongunta magħmul minn xi Stati Membri kkonċernati. L-iskwadra għandha tkun imwaqqfa f'wieħed mill-Istati Membri fejn huma mistennija li jsiru l-investigazzjonijiet.

⁵⁸ Ara Paragrafu 23 *supra*.



rispondiet hekk: *"Indeed criminal proceedings were taken against R.G. Soogea, case number 13/710165-12, and H.R. Cumberbatch, case number 13/710164-12. As mentioned, both cases were dropped due to the lack of evidence"*. Saritilha domanda ohra mill-Bord: *"If your answer is in the negative, would you say that the financial transactions mentioned in the preceding paragraph, had they been in your hands, could have had a significant impact on your investigation and on your decision whether to take criminal action against the same persons or not?"* It-twegiba li rcieva l-Bord kienet: *"In retrospective and without detailed information it is difficult to conclude whether the information concerning the financial transactions could have a significant impact on my investigation"*. Jigi spjegat hawn li dan il-Bord ma baghatx lil Ms Djonte l-ebda dettalji dwar it-transazzjonijiet bankarji in kwistjoni u wisq inqas ma baghatilha kopja tal-istatements bankarji li jinsabu fl-atti ta' din l-inkjesta.

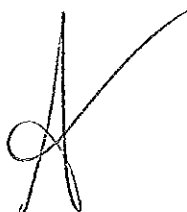
38. Dan il-Bord hu tal-fehma illi dawn id-dokumenti ma kellhom qatt josfru, izda (flimkien mad-dokumenti dwar iz-zewg kumpaniji Maltin, jgifieri Red 5 sa Red 23 fil-file ENU/68/LR/12) minflok kellhom isibu posthom gewwa file separat, fil-kontest ta' investigazzjoni separata tal-Anti Money Laundering Unit li l-Ispettur Raymond Aquilina prattikament, jew indirettament, kif qal huwa stees kien beda, ghall-ahhar ta' Dicembru 2012 u l-bidu tas-sena ta' wara. Irrizulta li din l-investigazzjoni hekk informalment mibdija, waqfet hesrem ftit wara li nbdiet. Ghalkemm l-isparixxar tal-imsemmija dokumenti jista' jkun li fixkel xi ftit it-tkomplija tal-investigazzjoni, certament, fil-fehma tal-Bord, dan il-fatt ma jidherx li kien xi raguni impellenti ghaliex l-investigazzjoni ma tkompletix. L-istess dokumenti setghu minghajr diffikulta` kbira jigu riprodotti. L-ittra tat-28 ta' Dicembru 2012 kienet fuq il-computer tal-Ispettur Aquilina u d-dokumenti bankarji l-ohra kienu kollha computer generated u allura dejjem accessibbli ghal min ikun intitolat ghalihom skont il-ligi , kif effettivament kienu ghal dan il-Bord. L-investigazzjoni ma thallitx tissokta, fil-fehma konsidrata tal-Bord, ghaliex ma jidherx li kien hemm ir-rieda qawwija u necessarja da parti tal-Pulizija li l-istess investigazzjoni tkompli tiehu il-kors normali taghha. Tant hu hekk li lanqas file formali dwarha ma kien infetah mill-Pulizija tempestivament.

39. Hija haga pjuttost diffiqli li tistabilixxi r-raguni vera ghaliex din l-investigazzjoni, li bdiet b'mod indirett gewwa file pjuttost innokwu tal-Pulizija, fejn ir-rwol taghha normalment ikun wiehed li jixbah ir-rwol ta' pustier, ma mxietx `il-quddiem. Il-Bord iltaqa' mas-soliti skuzi f'esercizzju ta' "passing the buck", jew minn ufficjal fuq ufficjal iehor, jew fuq il-Bank li ghandu ufficjal apposta bi dmir li jirraporta lill-FIAU meta jkollu suspett fuq xi transazzjoni. Kien hemm min strah fuq il-fatt li l-kazijiet kriminali kontra Soogea u Cumberbatch quddiem il-Qrati Kriminali Olandizi ma kellhom ebda success minhabba nuqqas ta' provi, u argumenta li ma setax ikun hemm investigazzjoni fuq

money laundering minghajr ma jkollok sejbien ta' htija minn qorti fuq ir-reat relatat mal-money laundering⁵⁹. Kien hemm min qal li l-Avukat Generali seta' jitlob l-awtoritajiet Olandizi: "isma` nista` nuza dik l-informazzjoni biex jiena nibda "another investigation in my country?" Hadd ma semma bhala raguni, l-isem influwenti u maghruf tal-PEP li, tfacca fil-file tal-Pulizija dwar il-freezing order. Dak iz-zmien, Dr Beppe Fenech Adami inzerata wkoll li kien jokkupa l-kariga ta' Assistent Parlamentari, fl-ewwel lok mal-Ministru għall-Intern, Dr Karm Mifsud Bonnici u fit-tieni lok mal-Prim Ministru, meta dan assumta l-poteri ta' Ministru għall-Intern wara li Dr Mifsud Bonnici kien irrizenja. Dan il-Bord sema' lil Dr Beppe Fenech Adami jistqarr fix-xhieda tiegħu li huwa qatt ma ndaħal fix-xogħol tal-Pulizija jew tal-Avukat Ġenerali f'din l-investigazzjoni tal-Pulizija u jista' jkun li hekk hu. Madanakollu, meta fit-13 ta' Jannar 2013, tfaċċa l-isem ta' Dr. Beppe Fenech Adami, l-investigazzjoni saret ' a very hot potato' li forsi setgħet iggħib konsegwenzi xejn pjaċevoli fuq min ikollu l-kuraġġ li jaqbadha u jipprova jgaxxarha. Il-qawl jgħid 'La ddardarx l-għajn li trid tixrob minnha'. Imma persuna integra ma timxix ma' dan il-proverbju. Ir-responsabilitajiet tal-kariga jridu jingarru dejjem u f'kull waqt, inkluż f'dawk l-okkażjonijiet skabrużi meta l-interess personali jista' jissuggerixxi triq oħra. Aktar ma għadda ż-żmien, seta' kien hemm raġunijiet oħra għala l-investigazzjoni waqfet.

40. Dan il-Bord huwa tal-fehma li l-Pulizija kellha dmir skond l-artikolu 346 (1) tal-Kodici Kriminali li tinvestiga l-kumpanija CapitalOne Investment Group Limited li fuqha inizjalment intefa` suspett serju ta' money laundering a bazi tal-kontenut tal-freezing order Olandiza. Jidher li l-Ispettur Raymond Aquilina, li kien stazzjonat fi skwadra speċjalizzata li huwa maghruf li hija komposta minn persuni esperti fuq xogħolhom, jgħid li l-Anti Money Laundering Unit tal-Pulizija, indirettament beda tali investigazzjoni, izda dan ix-xogħol għamlu fil-kuntest tal-file tal-Pulizija dwar l-imsemmija freezing order. Matul din l-investigazzjoni fuq CapitalOne Investment Group Limited, irrizulta li l-istess Spettur gabar ammont konsiderevoli ta' dokumenti, inklużi statements dwar transazzjonijiet bankarji tal-istess kumpanija. Huwa skopra wkoll li d-direttur, shareholder, legal representative u judicial representative ta' din il-kumpanija kienet kumpanija fiducjarja Maltija, ezattament Baltimore Fiduciary

⁵⁹ Ara l-artikolu 2.2 (a) tal-Att kontra l-Money Laundering, Kapitolu 373 jipprovdi hekk: "*Persuna tista' tinsab haġta tad-deliġt ta' money laundering taħt dan l-Att, anke fin-nuqqas ta' sentenza ta' qorti li tistabbilixxi htija fir-rigward tal-attività kriminali sottostanti, liema attività kriminali tista' tiġi stabbilita minn prova ċirkostanzjali jew prova oħra, mingħajr il-htieġa li l-prosekuzzjoni tipprova li kien hemm sentenza ta' kundanna għall-attività kriminali sottostanti u mingħajr il-htieġa li jiġi stabbilit b'mod preċiż liema hija l-attività sottostanti*". Ara wkoll is-sentenza tal-Qorti tal-Appell Kriminali mogħtija fis-26 ta' Novembru 1999 fil-kawza "Ir-Repubblika ta' Malta v. John Vella"



Services Limited, li bhala wiehed mid-direttur taghha kien hemm PEP, Dr Beppe Fenech Adami. Din l-investigazzjoni mibdija b'dan il-mod indirett, jidher li f'dan l-istadu sabet ruhha f'diffikulta', waqfet, u prattikament intesiet. Dan il-Bord jidhirlu li din l-investigazzjoni, mibdija hekk indirettament mill-Ispettur Aquilina, kienet timmerita li tigi formalizzata kif suppost, billi jinfetah file separat tal-Pulizija ghalha, tinghata d-direzzjoni opportuna mis-superjuri tal-Ispettur Aquilina, kif wara kollox dan tal-ahhar kien issugerixxa, biex hekk kienet tista' tkompli tiehu l-kors normali taghha, bhal kull investigazzjoni ohra tal-Pulizija. Il-Bord wasal ghal din il-konkluzjoni wara li ha in konsiderazzjoni l-fatti u ic-cirkostanzi kollha tal-kaz, inkluz ukoll ir-Rapport Tekniku Dok RKF⁶⁰ li sar mis-Sur Kenneth Farrugia, liema Rapport Tekniku kien ta assistenza kbira ghall-Bord biex jifhem ahjar it-transazzjonijiet finanzjarji u dokumenti bankarji ohra tal-kumpanija CapitalOne Investment Group Limited, li kienu ngabru mill-Pulizija. Il-Bord huwa tal-fehma li kien hemm nuqqas serju da parti tal-Pulizija meta din l-investigazzjoni ma tmexxietx kif suppost li kellha titmexxa. Il-Bord ma jistax jghid b'certezza li r-raguni li l-investigazzjoni ma ssoktatx kienet minhabba li tfacca in xena l-isem tal-imsemmi PEP, kif gie allegat fl-artikolu in kwistjoni tal-Malta Today. Mill-banda l-ohra, daqstant iehor dan il-Bord ma jistax jeskludi li dak kien li effettivament gara.

IL-HAMES PARTI: IR-RABA` TERMINU TA' REFERENZA: THE FINANCIAL INTELLIGENCE ANALYSIS UNIT (FIAU)

41. Il-Financial Intelligence Analysis Unit⁶¹ ("l-FIAU") hija l-agenzija nazzjonali mwaqqfa bis-sahha tal-artikolu 15 tal-Prevention of Money Laundering Act (Kapitolu 373) biex tikkumbatti l-money laundering. Iggorr ir-responsabbilita` ghall-gabra, il-kollazzjoni, l-ipproċessar, l-analisi u ttixrid ta' informazzjoni bil-għan li jigi miġġieled il-money laundering u l-finanzjar ta' terroriżmu. L-artikolu 16 tal-istess Att jelenka d-diversi funzjonijiet partikolari tal-FIAU, fosthom li tircievi minghand xi persuna sugġetta (subject person) rapporti ta' operazzjonijiet jew attivitajiet li jkunu suspettati (STR) li jinvolvu money laundering jew finanzjar ta' terroriżmu jew proprjeta` li setgħet inkisbet direttament jew indirettament minn attivita` kriminali. Meta l-FIAU tircievi rapport bhal dan, isir analisi tieghu u jtfassal rapport analitiku fuq ir-rizultat ta' dik l-analisi. Jekk jinstab li hemm suspett ragonevoli, dan ir-rapport analitiku jintbaghat lill-Kummissarju tal-Pulizija biex issir kull investigazzjoni ulterjuri. Funzjoni ohra li tista` tissemma hawn

⁶⁰ Ara paragrafu 3 supra.

⁶¹ Bil-Malti jissejjah: "Il-Korp għall-Analisi ta' Informazzjoni Finanzjarja".

hija dik li tissorvelja l-konformità mill-persuni sugġetti mal-Prevention of Money Laundering Act u r-regolamenti li jsiru taħtha. In oltre l-agenzija tikkopera u tikkordina ma' awtoritajiet sorveljanti sabiex tiżgura li jkun hemm tali konformità.

42. Fil-paragrafu 10 ta' dan ir-Rapport intqal li fis-17 ta' April 2013 Dr Frendo Dimech, dak iz-zmien Deputat Avukat Generali, bagħtet email, li magħha annettiet kopja tal-imsemmija Freezing order⁶², lil Dr Manfred Galdes, dak iz-zmien Direttur tal-Financial Intelligence Analysis Unit (FIAU), fejn informatu hekk: "*Am just bringing this to your attention in case the persons are otherwise known to your records*". Baqa' ma giex zvelat lil dan il-Bord jekk l-FIAU għamlitx xi analizi f'waqtha dwar it-transazzjonijiet bankarji u l-operat relattiv tal-kumpanija Maltija CapitalOne Investment Group Limited, fid-dawl tal-informazzjoni kontenuta fil-freezing order, li ntbagħtet lill-FIAU. Jigi sottolinejat hawn li dik il-freezing order kien fiha indikazzjoni cara tas-suspett serju ta' money laundering, li l-awtoritajiet Olandiżi kellhom fil-konfront ta' Robert Soogea u fil-konfront ukoll tal-istess kumpanija CapitolOne Investment Group Limited. Il-Bord ha x-xhieda tal-Acting Director tal-FIAU, Alfred Zammit li, minkejja li wera x-xewqa tieghu li jgħin il-Bord f'din l-investigazzjoni, spjega li l-artikolu 34 tal-Money Laundering Act kien assolutament jimpedieh milli jizvela xi informazzjoni, li tkun "case specific", miksuba fl-eżerċizzju tal-funzjonijiet tieghu bħala ufficjal tal-FIAU. F'dan il-kuntest jista' jissemma li John Scicluna, Money Laundering Reporting Officer tal-Bank of Valletta wkoll insista li l-ligi kienet timpedieh milli jinforma lill-Bord dwar jekk il-Bank, bħala *subject person*, in kwistjoni, kienx qatt issottometta xi STR, jigifieri jekk irrapportax jew le lill-FIAU dwar xi suspett li jinvolvi *money laundering* li seta' kellu dwar xi wahda mid-diversi transazzjonijiet bankarji li l-kumpanija Maltija CapitolOne Investment Group Limited kienet tagħmel permezz tal-kont Savings li kellha mal-Bank.

43. Illi f'dawn ic-cirkostanzi ta' segretezza imposta mil-ligi stess, il-Bord, minkejja l-poteri li għandu taħt l-Att dwar l-Inkjesti Pubblici, ma jistax jgħid jekk il-FIAU wettaqx, **fiz-zmien opportun u tempestivament**, id-dmirijiet imposti fuqu mil-ligi fil-konfront tal-attività finanzjarja illecita' allegatament imwettqa mill-istess kumpanija Maltija. Lanqas jista', dan il-Bord jgħid jekk din l-agenzija, **fiz-zmien opportun u tempestivament**, wettqitx id-dmir tagħha li tassigura li l-persuni sugġetti involuti fil-kaz harsux id-disposizzjonijiet tal-Prevention of Money Laundering Act u tar-regolamenti magħmulin taħtu fil-qies li dawn kellhom japplikaw għalihom. Kif sejjer jingħad fit-taqsimha li jmiss, il-FIAU assenjat lill-MFSA xogħol ta' skrutinju fuq Baltimore Fiduciary Services Limited, pero' dan ma jidherx li kellu x'jaqsam ma' xi ezami ta' "attività finanzjarja illecita' jew transazzjonijiet kontra ligi" kif jingħad fir-raba' terminu ta' referenza mogħti lil dan il-Bord. Madanakollu sejjer isir accenn qasir għal xi

⁶² Ara kopja ta' dan id-dokument li hu markat "Dok R7"



xoghol ta' skrutinju li twettaq mill-MFSA ghaliex l-MFSA hija supervisory body b'Unit apposta li jghin mhux ftit fil-glieda kontra l-money laundering.

IS-SITT PARTI: IR-RABA' TERMINU TA' REFERENZA: THE MALTA FINANCIAL SERVICES AUTHORITY (MFSA)

44. L-imsemmi Prevention of Money Laundering Act jipprovdi li, fit-twettiq tal-obbligi tal-FIAU, din l-agenzija tista' tinkariga awtoritajiet sorveljanti (supervisory authorities) biex jassistuha. Fost dawn l-awtoritajiet hemm il-Malta Financial Services Authority (MFSA). Il-Bord ha x-xhieda ta' Dr Anton Bartolo, Direttur tal-Enforcement Unit (Anti-Money Laundering / Counter-Terrorism Financing section) fi hdan il-Malta Financial Services Authority. Irrizulta li fit-2 ta' Frar 2016 l-FIAU kiteb lil din l-Enforcement Unit tal-MFSA fejn talab li ssir "on-site compliance examination" ta' numru ta' kumpaniji fosthom, Baltimore Fiduciary Services Limited. Fit-28 t'April 2016 l-Enforcement Unit tal-MFSA informaw lill-FIAU bid-dati f'Mejju meta kienu bi hsiebhom iwettqu dan ix-xoghol. Fl-4 ta' Mejju, 2016, l-FIAU kitbu lill-Enforcement Unit tal-MFSA hekk: "*Kindly note that an administrative penalty had been imposed on Baltimore Fiduciary Services Limited for failure to reply to a request made by the Financial Analysis section in terms of Regulation 15(11) of the PMLFTR in 2015. Baltimore Fiduciary Services Limited was subject to a warning for failure to submit the 2014 Annual Compliance Report and an administrative penalty for failure to submit the 2015 Annual Compliance Report. Please find attached the 2013 Annual Compliance Report which is the latest Annual Compliance Report submitted*". Fid-9 ta' Mejju 2016 Dr Bartolo kiteb lid-Diretturi ta' Baltimore Fiduciary Services Limited fejn *inter alia* informahom bl-inkarigu li l-Unit tieghu kien ircieva minghand l-FIAU u fejn indikalhom id-dati tal-"on-site compliance examination", l-isem tal-ufficjali li kienu sejr in iwettqu dan l-ezami, kif ukoll in-natura tad-dokumenti li d-Diretturi kellhom ikollhom lesti fit-23 ta' Mejju 2016, f'liema data kellu jibda jsir l-ezami li kellu jestendi wkoll fuq xi granet wara dik id-data. Dan l-ezami sar bejn it-23 u-25 ta' Mejju 2016 u fil-11 ta' Ottubru 2016 l-Enforcement Unit tal-MFSA baghtet ir-rapport⁶³ taghha dwar dan l-ezami kemm lill-FIAU u kemm ukoll lid-Diretturi ta' Baltimore Fiduciary Services Limited. Din ta' l-ahhar baghtet il-veduti taghha dwar in-nuqqasijiet li gew indikati fl-imsemmi rapport permezz ta' ittra datata 25 ta' Novembru 2016.

45. Dan l-iskrutinju sar f'Mejju 2016 mill-MFSA fuq inkarigu tal-FIAU fuq il-kumpanija Baltimore Fiduciary Services Limited, biex minnu jkun maghruf "*the extent to which the company is abiding by the provisions of the Prevention of Money Laundering Act*


⁶³ Ara d-Dokument esibit minn Dr A. Bartolo, markat "Post-Visit Letter Reply".

1994 (CAP 373 of the Laws of Malta..., the Prevention of Money Laundering and Funding of Terrorism Regulations 2008 (S.L.373.01) and the Financial Intelligence Analysis Unit (FIAU) Implementing Procedures” kif jinghad fl-imsemmija ittra ta’ Dr Bartolo tad-9 ta’ Mejju 2016. Madanakollu, meta Dr Bartolo xehed fl-4 ta’ Jannar 2017, huwa spjega li l-iskop tal-on-site visit ma kienx li jigbru, ghan-nom tal-FIAU, informazzjoni dwar it-transazzjonijiet bankarji tal-klijenti ta’ Baltimore Fiduciary Services Limited, fosthom CapitolOne Investment Group Limited, biex imbaghad issir analizi taghhom. Qal li dan ix-xoghol ma jidholx fir-remit tal-Enforcement Unit tal-MFSA⁶⁴. Huwa kompli jispjega li f’dan il-kaz riedu jaraw jekk Baltimore Fiduciary Services Limited kellix id-debita informazzjoni u dokumentazzjoni dwar l-identita` u il-background tal-klijenti taghha. F’dan il-kuntest zied jghid: “l-FIAU identifika l-element ta’ traskuragni minn naha taghhom [Baltimore Fiduciary Services Limited] pero` ahna il-verita` ahna ma kienx il-concern taghna ghaliex dan ma baghtux din ir-return [l-annual compliance report] lill-FIAU. Ahna l-concern li hassejna u li hu iktar importanti – isma` jekk dawn huma xi ftit traskurati/jiena lanqas jinteressani jekk baghtux dawn id-dokumenti jew le. L-FIAU kien jaf biha, tahom warning, wahhalhom multa – igifieri that was being handled. Jien ridt nara t-traskuragni taghhom jekk kinitx tmur oltre li ghad-dirittura li dawn jaghtu servizzi lil nies li ma jafux minn huma jew li m’ghandhomx records tal-identita` taghhom. Jien dik dehrli ahna min naha taghna li kienet izjed serja”⁶⁵.

46. Mill-provi li ngabru, jirrizulta li fuq talba tal-FIAU, l-MFSA kienet ghamlet skrutinju precedenti fuq il-Baltimore Fiduciary Services Limited, kif jirrizulta mill-ittra mibghuta fit-13 ta’ Marzu 2013 minn Dr Michelle Mizzi Buontempo, Deputy Director, Securities & Markets Supervision Unit, lid-Diretturi ta’ din il-kumpanija fiducjarja. Din is-Securities & Markets Supervision Unit giet mitluba mill-FIAU biex taghmel *Compliance Visit*: “to review the extent to which the company: (a) is complying with the requirements of the Trusts and Trustees Act and (b) has in place relevant controls and procedures for the proper conduct of business in terms of the Code of Conduct for trustees. This invariably includes a review of the procedures in terms of the Prevention of Money Laundering and Funding of Terrorism Regulations, 2008”. Sussegwentement sar business meeting fit-13 t’Awissu 2013. Dr Michelle Mizzi Buontempo ipprezentat rapport dettaljat, konsistenti minn tlettax-il pagna, dwar din il-laqgħa. Fil-15 ta’ Dicembru 2014 dan ir-rapport f’forma mqassra (*summary of findings and issues that need to be addressed by the LH [Licence Holder] in relation to the Trusts and Trustees Act*) intbagħat lill-kumpanija. Wara skambju pjuttost twil ta’ korrisondenza, id-Direttur Generali tal-MFSA, Marianne Scicluna, b’ittra tat-28 t’Ottubru 2016, wara li

⁶⁴ Ara t-traskrizzjoni tax-xhieda ta’ Dr Bartolo mogħtija fl-4 ta’ Jannar 2017 f’pagna 22.

⁶⁵ Ara t-traskrizzjoni tax-xhieda ta’ Dr Bartolo mogħtija fl-4 ta’ Jannar 2017 f’pagna 23.



issenzjalat lill-kumpanija diversi nuqqasijiet serji tal-kondizzjonijiet tal-licenzja taghha, wissietha li l-MFSA *"is minded and proposes to suspend the authorisation granted to the Company under the same Act in terms of Article 43A(1) of the Trusts and Trustees Act"*. L-Avukati tal-kumpanija wiegbu b'ittra datata 17 ta' Novembru 2016, fejn issottomettew il-veduti taghhom u talbu li l-MFSA *"to consider allowing BFSL to continue with the orderly divestment of its business, following which BFSL shall relinquish its authorisation and proceed to liquidate BFSL"*. Minn dan it-taghrif succinct hafna⁶⁶ li ghadu kemm inghata hawn, jidher car li anke dan l-iskrutinju, maghmul mis-Securities & Markets Supervision Unit u wara mill-Conduct Supervisory Unit tal-MFSA, ma kienx jikkoncerna bl-ebda mod it-transazzjonijiet bankarji tal-klijenti ta' Baltimore Fiduciary Services Limited, fosthom CapitolOne Investment Group Limited.

47. Irrizulta mix-xhieda ta' Dr Claudette Fenech, konsulent legali tar-Registratur tal-Kumpaniji, li l-kumpanija CapitolOne Investment Group Limited, qatt ma baghtet lir-Registratur il-kontijiet annwali taghha u naqset ukoll li tibghatlu l-*annual returns* ghas-snin 2013, 2014, 2015 u 2016. L-ufficju taghha baghat *reminders* u impona l-multi u l-penalitajiet provduti mil-ligi u sa meta xehdet, fil-21 ta' Dicembru 2016, din l-inadempjenza baqghet tipprevali. Il-pass li jmiss hu li jinbdew proceduri gudizzjarji kontra l-kumpanija. Ziedet tghid li fir-Registru hemm madwar sebghajn elf kumpanija u tidher haga desiderabbli li dan l-ufficju jinghata aktar rizorsi sabiex ikun jista' jsir aktar *follow up* fuq il-kumpaniji li jibqghu lura. Certament, ir-Registratur tal-Kumpaniji huwa awtorita` sorveljanti ghall-fini tal-ligi, izda xogholu ma jidhirx li jista' jigi kunsidrat li jaqa' fl-iskrutinju ta' xi *"attivit` finanzjarja illecita` jew transazzjonijiet kontra ligi"* kif jinghad fir- raba' terminu ta' referenza moghti lil dan il-Bord.

IS-SEBA` PARTI: IT-TIELET TERMINU TA' REFERENZA: ALLEGAZZJONIJIET DWAR NUMRU TA' KUMPANII KONNESSI MAS-SUGGETT TAL-ARTIKOLU TAL-MALTA TODAY

48. Artikolu tal-Malta Today in kwistjoni, li ghamel diversi allegazzjonijiet li jissemmew fit-termini ta' riferenza ta' din l-inkjesta, isemmi numru ta' kumpaniji. Tisemma l-kumpanija Maltija, CapitalOne Investment Group Limited. L-awtoritajiet Olandizi kienu talbu l-iffrizar ta' kont bankarju taghha bil-freezing order li hargu f'Novembru tas-sena 2012. L-investigaturi Olandizi saru jafu b'dan il-kont fil-Bank of Valletta, b'rizultat tal-perkwizzjonijiet li kienu ghamlu f'erba residenzi f'Amsterdam. L-artikolu jghid li

⁶⁶ It-taghrif inghata b'mod succinct hafna ghalix dan l-iskrutinju mhux daqstant rilevanti fil-kuntest tar-raba' terminu ta' referenza moghti lil dan il-Bord.

hemmhekk sabu drogi, flus u dokumenti, fosthom shipping consignment notes mohbija, u "a Bank of Valletta Visa gold card issued in the name of CapitalOne Inv. Group / Robert Guillaume SOOGEA" li ngabru għall-investigazzjoni tagħhom dwar suspettati li kienu twettqu r-reati ta' traffikar ta' droga u money laundering. Fl-istess artikolu jinghad ukoll: *"the sum total of these papers was important for police. Apart from the shipping consignment notes and the bank card, Soogea was the ultimate beneficiary owner of several Cypriot businesses. One of them was Senoblema Trading, which had acquired a total of 250,000 shares in the Malta company CapitalOne Investment Group. Senoblema had loaned another Cypriot company, Gillesa Trading, €3.8 million to be repaid between 2012 and 2015. Soogea was also the beneficial owner of Gillesa Shipping, a company which deposited large amounts of cash into CapitalOne's BOV account"*. Tissemma wkoll fl-artikolu tal-Malta Today il-kumpanija fiducjarja Maltija, Baltimore Fiduciary Services Limited, li l-artikolu jindikaha bħala *"the nominee company that 'owned' CapitalOne's shares"*, billi din kienet tidher bħala id-direttur, ix-shareholder, il-legal representative u l-judicial representative ta' CapitalOne Investment Group Limited.

49. Bit-tielet terminu ta' referenza, dan il-Bord gie mitlub jinvestiga l-allegazzjoni li: *"Kien irrizulta li numru ta' kumpaniji konnessi mas-suġġett tal-artikolu, uħud minnhom stabbiliti f'Malta, kienu jwettqu attivita' finanzjarja suspettuża, u li dik l-attivita' kienet tinkludi wkoll il-kommissjoni ta' transazzjonijiet kontra l-ligi"*. Isegwi allura li l-Bord qed jintalab li jinvestiga l-kumpaniji imsemmija fil-paragrafu precedenti, biex jstabilixxi jekk dawn il-kumpaniji, jew xi hadd minnhom, wettaqx verament *"attivita' finanzjarja suspettuża, u li dik l-attivita' kienet tinkludi wkoll il-kommissjoni ta' transazzjonijiet kontra l-ligi"*.

50. F'dana l-istadju, il-Bord irid jieqaf biex jagħmel konsiderazzjoni importanti li tikkoncerna l-gurisdizzjoni jew il-kompetenza li effettivament għandu dan il-Bord skont il-ligi. Dan il-Bord inhatar mill-Prim Ministru bis-sahha tal-artikolu 4 ta' l-Att dwar l-Inkjesti (Kapitlu 273). Isegwi għalhekk, li dan il-Bord huwa fid-dmir li jaqdi l-inkarigu mogħti lillu fil-parametri precizi indikati fl-istess Att. Inkjesta, bħal ma hija dik odjerna, mahtura bis-sahha tal-imsemmi Kap. 273, m'għandhiex tinvestiga u jkollha fil-mira, kwalunkwe persuna, fisika jew morali tkun xi tkun, izda minflok, għandha tkun diretta biex tinvestiga eskklusivament ufficjali, korpi u dipartimenti kif imsemmi fl-artikolu 3 tal-istess Att. Dan l-artikolu jipprovdi hekk:

"Dan l-Att għandu japplika għal kull Bord maħtur jew awtorizzat b'xi ligi, jew taħtha, magħdud dan l-Att, biex imexxi inkjesta jew inkjesta dwar xi haġa minn dan li ġej:

- (a) l-imġiba ta' ufficjali pubbliċi, jew ta' ufficjali jew impjegati ta' korp imwaqqaf b'ligi, jew ta' kull wieħed jew iżjed minn dawk l-ufficjali pubbliċi jew ufficjali jew impjegati;*
- (b) l-imġiba u t-tmexxija ta' kull dipartiment tal-Gvern jew ta' kull korp imwaqqaf b'ligi;*

(c) kull haġa li taqa' taht il-funzjonijiet jew ir-responsabbiltà ta' xi dipartiment jew korp bħal dawk, jew xort'oħra li għandha x'taqsam ma' jew tolqot servizz tal-Gvern, u b'mod partikolari, iżda bla ħsara għall-ġeneralità ta' dak li ntqal qabel, dan l-Att għandu japplika għal kull Bord jew awtorità oħra, li teżercita s-setgħat ta' dixxiplina dwar uffiċjali pubblici skont l-artikolu 110 u l-artikolu 121 tal-Kostituzzjoni ta' Malta u kull regolamenti magħmula bis-saħħa tagħhom".

L-artikolu 2 tal-istess Att jispjega u jfisser il-frazzjiet "korp imwaqqaf b'ligi" u "uffiċjal pubbliku" hekk:

"korp imwaqqaf b'ligi" tfisser kull korporazzjoni jew enti morali ieħor imwaqqaf b'ligi u kull soċjetà jew korp ieħor li fih il-Gvern ta' Malta jew xi korp kif intqal qabel ikollhom sehem biżżejjed biex jikkontrollaw, jew li fuqu jkollhom kontroll effettiv;

"uffiċjal pubbliku" għandha l-istess tifsir kif mogħti lilha bl-artikolu 124 tal-Kostituzzjoni ta' Malta⁶⁷.

51. Evidentement, dawn il-provvedimenti tal-ligi, jistabilixxu tassattivament il-parametri tal-kompetenza u l-gurisdizzjoni ta' dan il-Bord, li għalhekk huwa prekluz skont il-ligi milli jinvestiga jew jeżercita kwalunkwe gurisdizzjoni fuq persuna, korp jew entità' li ma tkunx taqa' strettament fl-istess parametri indikati fil-paragrafu precedent.

52. Huwa importanti li jigi sottolinejat li din l-ahhar imsemmija konsiderazzjoni ssib l-applikazzjoni tagħha fil-kaz odjern, nonostante l-fatt li dan il-Bord ta' Inkjesta, meta inhatar, inghata termini ta' referenza li jidhru pjuttost aktar wiesa mill-parametri stretti delinejati aktar 'l fuq. Daqstant ieħor hija applikabbli din l-istess konsiderazzjoni, għall-kaz odjern fejn, fil-kors ta' investigazzjoni tal-agir ta' xi uffiċjal pubbliku, jew ta' xi dipartiment jew ta' xi korp imwaqqaf b'ligi, **incidentalment** ikunu irrizultaw lill-Bord nuqqasijiet jew non osservanza ta' dmirijiet imposti mill-ligi⁶⁸ fuq persuna fisika jew fuq entità' morali, li ma tkunx taqa' taht il-kompetenza u l-gurisdizzjoni ta' dan il-Bord, kif

⁶⁷ "uffiċjal pubbliku" tfisser id-detentur ta' xi kariga pubblika jew persuna maħtura biex taġixxi f'xi kariga bħal dik.

⁶⁸ Fost ligijiet oħra, ara "PREVENTION OF MONEY LAUNDERING AND FUNDING OF TERRORISM REGULATIONS" (LEGAL NOTICE 180 of 2008, as amended by Legal Notices 328 of 2009, 202 of 2012, 464 of 2014 and 78 of 2015).

limitata bit-termini ta' l-imsemmi artikolu 3 tal-Kapitolu 273. Infatti, fil-gbir tal-provi, biex ikun jista' jasal ghall-konkluzzjonijiet tieghu dwar l-operat ta' xi ufficjal pubbliku, jew ta' xi dipartiment jew ta' xi korp imwaqqaf b'ligi, dan il-Bord kien kostrett li jisma' diversi xhieda li ma kienux ufficjali pubblici jew impjegati simili, u kellu wkoll jigbor minghandhom diversi dokumenti, fosthom statements u dokumenti ohra bankarji. Dawn tal-ahhar gew ezaminati mis-Sur Kenneth Farrugia, li nhatar biex jassisti l-Bord fl-*evalwazzjoni tal-istess dokumenti*⁶⁹. Fir-raba' parti tar- Rapport Tekniku tieghu Dok RKF, huwa stabbilixxa xi fatti dwar l-operat tal-kumpanija CapitalOne Investment Group Limited u fl-ahhar parti qal: *"The facts established under Section 4 of this report warrant a more thorough review/investigation by the Competent National Authorities"*, konkluzzjoni din li hija wkoll kondivisa minn dan il-Bord. Fid-dawl ta' dak li ntqal fil-paragrafi precedent ta' din is-Seba' Parti, dan il-Bord huwa kompetenti li jinvestiga u jippronunzja ruhu, kif effettivament diga' ghamel, dwar l-Ufficju tal-Avukat Generali, il-Korp tal-Pulizija, l-FIAU u l-MFSA. Ghall-kuntrarju, dan il-Bord m'ghandux il-gurisdizzjoni li jinvestiga u jippronunzja ruhhu dwar il-kumpaniji imsemmija fil-paragrafu 47 supra u partikolarment dwar il-kumpanija CapitalOne Investment Group Limited u l-kumpanija Baltimore Fiduciary Services Limited. L-istess konkluzzjoni tapplika ghall-kaz tal-ufficcjali tal-kumpanija l-ahhar imsemmija, fosthom Robert Abdilla Castillo, Dr Ian Micallef u Joe Zammit Pavia, li kollha instemghu mill-Bord.

53. Dejjem fil-kuntest tal-aspett gurisdizzjonali tal-Bord, iqumu zewg kweziti li ghandhom jigu ndirizzati. Dawn il-kweziti jikkoncernaw fl-ewwel lok il-kaz ta' Dr Beppe Fenech Adami u fit-tieni lok il-kaz tal-Bank of Valletta. Irrizulta li Dr Beppe Fenech Adami kien jokkupa l-kariga ta' *non-executive director* tal-kumpanija Baltimore Fiduciary Services Limited fiz-zmien meta graw il-fatti li taw lok ghal din l-inkjesta u meta din il-kumpanija kienet tmexxi t-transazzjonijiet imsemmija fil-kont bankarju ta' CapitalOne Investment Group Limited. Billi fl-istess zmien, huwa kien jokkupa l-kariga ta' Assistent Parlamentari, l-ewwel mal-Ministru ghall-Intern, Dr Karm Mifsud Bonnici u wara li dan kien irrizenja, mal-Prim Ministru, meta dan ta' l-ahhar assumma l-poteri ta' Ministru ghall-Intern, tqum il-mistoqsija jekk l-operat ta' Dr Fenech Adami jaqghax taht il-gurisdizzjoni jew kompetenza ta' dan il-Bord. Ghalkemm hadd ma jista' jmeri li fiz-zmien relevanti, Dr Fenech Adami kien Assistent Parlamentari mal-Prim Ministru Dr Lawrence Gonzi, madanakollu ma jista' jkun hemm l-ebda ombra ta' dubju li l-operat kollu ta' Dr Fenech Adami in konnessjoni ma' dan il-kaz, huwa zvolgieh eskklusivament fil-mansjoni privata tieghu bhala wiehed mit-tliet Diretturi tal-kumpanija fiducjarja Baltimore Fiduciary Services Limited. Ghalhekk, dan il-Bord huwa tal-fehma li l-imsemmi operat ta' Dr Beppe Fenech Adami ma jistax jaqa' taht il-gurisdizzjoni jew il-kompetenza ta' dan il-Bord.

⁶⁹ Ara paragrafu 3 supra.



54. Skond il-provvedimenti tal-ligi msemmija fil-paragrafu 49 supra, il-Bank of Valletta jista' jkun meqjus li jaqa' taht il-gurisdizzjoni ta' Bord bhal ma hu dan, jekk ikun jirrizulta li l-Gvern ghandu ishma biżżejjed biex jikkontrolla l-Bank, jew jekk jirrizult li fuqu l-Gvern ghandu kontroll effettiv. Sa fejn seta' jikkonstata l-Bord, il-Gvern ghandu 25.23 % tal-ishma fil-Bank of Valletta, is-socjeta` UniCredit S.p.A. ghandha 14.45% tal-ishma, waqt li l-pubbliku huwa s-sid tal-kumplement tal-ishma. Hawn min jargumenta li f'sitwazzjoni bhal din, il-Gvern jista' jkun konsidrat bhala shareholder maggoritarju, nonostante li ghandu ferm anqas minn 50% tal-ishma. Min-naha l-oħra, jidher aktar xieraq li kwistjoni bhal din tkun determinata "on a case by case basis" wara li wiehed jezamina u jqis sewwa c-cirkostanzi kollha ta' kull kaz partikolari. Dan il-Bord jidhirlu, għall-fini tal-ezami gurisdizzjonali li qieghed isir hawn, li l-Gvern ma jistax jitqies li ghandu verament kontroll effettiv fuq il-Bank of Valletta u dan wara li qies diversi fatturi, fosthom li: (a) 60.32% tal-ishma jappartjenu lill-pubbliku; (b) li l-Bord tad-diretturi, li jstabilixxi l-policy tal-bank, ghandu d-diretturi tieghu appuntati wara li jintghazlu mis-shareholders; (c) ma jidhirx li hemm xi ligi speċjali li tirregola l-Bank; (d) Jidher li skont id-Diretturi tal-Bank of Valletta "the Bank has no controlling shareholders". Infatti, f'pagna 35 tal-BOV Directors' Report datat 30 ta' Settembru 2015 hemm miktub hekk: "Principle 9 (Code Provision 9.3): Code Provision 9.3 requires the Bank to have in place a mechanism to resolve conflicts between minority shareholders and controlling shareholders. This Code Provision is not applicable to the Bank since the Bank has no controlling shareholders". La l-Bord wasal għal din il-konkluzzjoni isegwi li l-operat tal-Bank of Valletta, li huwa "subject person" għall-finijiet tal-Money Laundering Act, ma jistax jitqies li jaqa' taht il-gurisdizzjoni jew kompetenza ta' dan il-Bord.

**IT-TMIEN PARTI: JEKK HEMMX XI ALLEGAZZIONIJET LI SSEMMIEW FL-IMSEMMI
ARTIKOLU TAL-GAZZETTA MALTA TODAY U LI MA JIDHERX LI NQABDU FL-ERBA'
TERMINI TA' RIFERENZA**


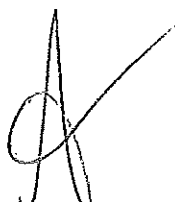
55. Jidher li hemm allegazzjoni wahda biss fl-artikolu in kwistjoni tal-Malta Today li ma gietx trattata sa issa. Fl-ewwel pagna tal-artikolu jinghad hekk: "MaltaToday understands that the asset freeze carried out by the Maltese police for the Dutch, would have required a court order. But the court order does not appear on the public registry of the Financial Intelligence Analysis Unit". Imbagħad, aktar l-isfel fl-artikolu saret referenza għal meta l-freezing order giet revokata: "Two days later the freezing order was revoked. But this freezing order does not appear anywhere in the public register uploaded on the website of the Financial Intelligence Analysis Unit, which displays all freezing orders sworn before the Maltese courts. This, a top legal source

assured MaltaToday, was mandatory according to law: the asset freeze had to be sworn before a judge as laid down in the Prevention of Money Laundering Act”.

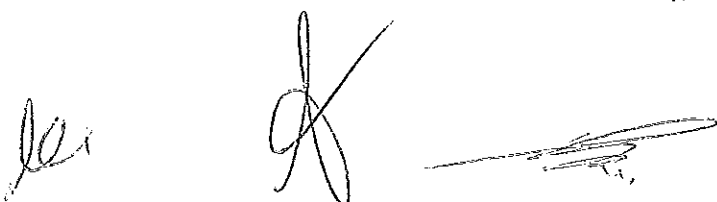
56. Jidher li l-Mata Today akwistat parir legali skorrett fuq din il-kwistjoni u konegwentement l-allegazzjoni li saret fir-rigward hija bla bazi. Dana peress li l-freezing order in kwistjoni ma giet esegwita skond il-“*Prevention of Money Laundering Act*”. Invece din il-freezing order Olandiza giet esegwita skont il- **Freezing Orders (Execution in the European Union) Regulations, 2007** (Legal Notice 397 tas-sena 2007, kif sussegwentement emendata) mahruġa bis-sahha tal- artikolu 628A tal-Kodici Kriminali. Dawn ir-regolamenti huma ispirati mill-Council Framework Decision 2003/577/JHA tat-22 ta’ Lulju 2003. L-esekuzzjoni ta’ freezing order Ewropea li ssir skont dawn ir-regolamenti ma tghaddix mill-procedura tal-Qorti Kriminali fejn ikun hemm il-pubblikazzjoni fil-Gazzetta tal-Gvern, kif isir normalment taht il-Prevention of Money Laundering Act. Kif intqal qabel f’dan ir-Rapport, il-Freezing order Ewropea jirceviha l-Avukat Generali. Imbagħad wara li dan jara li l-awtorita` barranija li hargħitha, verament għandha l-funzjoni li tohrog tali freezing orders, huwa johrog certifikat f’dan is-sens u l-freezing order tkun esegwita direttament minn Spettur tal-Pulizija, mingħajr l-intervent ta’ ebda Qorti Kriminali. Freezing orders ta’ dan it-tip ma jidhrux fuq il-website tal-FIAU minhabba li ma jingħatawx il-pubblicita` bħall-ohrajn li jigu ppubblikati fuq il-Gazzetta tal-Gvern.

ID-DISA` PARTI: KONKLUZIONIJET

1. L-Ufficju tal-Avukat Generali qeda d-dmirijiet kollha tiegħu dwar il-freezing order Ewropea li baġtulu l-awtoritajiet Olandiżi. Dan l-Ufficju ikkopera magħhom ukoll billi baġthilhom informazzjoni li ma talbux, fil-kuntest ta’ bdiel spontaneju t’ informazzjoni bejn l-iStati Membri u saħansitra baġhat tempestivament kopja tal-freezing order lill-FIAU meta ma kellux obbligu bil-ligi li jaġhmel dan.
2. Il-Korp tal-Pulizija ikkopera mal-Ufficju tal-Avukat Generali biex il-freezing order Olandiżi giet esegwita debitament u fil-waqt.
3. L-allegazzjoni li l-awtoritajiet Maltin żammew mill-awtoritajiet investigattivi Olandiżi informazzjoni li kienet fil-pussess tagħhom u li giet mitluba lilhom mill-awtoritajiet Olandiżi ma tirrizultax pruvata
4. L-allegazzjoni li l-Korp tal-Pulizija Malti ma għaddiex lill-awtoritajiet investigattivi Olandiżi informazzjoni li kienet fil-pussess tagħhom izda li ma gietx mitluba lilhom mill-awtoritajiet Olandiżi tirrizulta pruvata.




5. Irrizulta li l-Pulizija Maltija bdiet investigazzjoni fuq il-kumpanija Maltija CapitolOne Investment Group Limited fuq suspett ta' money laundering, liema suspett gie skattat mill-freezing order Olandiza. Irrizulta li l-Pulizija, tista' tghid sa mill-bidu nett tal-imsemmija investigazzjoni taghom, skoprew li d-direttur, shareholder, legal representative u judicial representative ta' CapitolOne Investment Group Limited kienet kumpanija Maltija, Baltimore Fiduciary Services Limited. Il-Pulizija skoprew ukoll li wiehed mit-tlett diretturi ta' din il-kumpanija kien Dr Beppe Fenech Adami, li kien PEP "a Politically Exposed Person".
6. L-allegazzjoni li din l-investigazzjoni waqfet hezrem u ma tkompletatx issir mill-Pulizija irrizultat sodisfacentement.
7. Saret l-allegazzjoni fl-artikolu tal-Malta Today li din l-investigazzjoni waqfet hezrem meta tfacca l-isem ta' Dr Beppe Fenech Adami. Dan il-board sema' lil Dr Beppe Fenech Adami jistqarr fix-xhieda tieghu li huwa qatt ma ndaħal fix-xogħol tal-Pulizija jew tal-Avukat Ġenerali f'din l-investigazzjoni tal-Pulizija u jista' jkun li hekk hu. Il-Bord, wara li qies ic-cirkostanzi kollha, kkonkluda li ma jistax jinghad b'certezza li l-investigazzjoni ma ssoktatx minhabba r-raguni proposta fl-artikolu tal-Malta Today. Madanakollu, daqstant iehor dan il-Bord ma jistax jeskludi li dak kien li effettivament gara.
8. Irrizulta li fis-17 ta April 2013 l-Ufficju tal-Avukat Ġenerali baghat kopja tal-freezing order Olandiza lil-Financial Intelligence Analysis Unit (FIAU). Dan il-Bord ma jistax jghid jekk il-FIAU ezaminatx il-kontenut taghha u jekk wettaqx, fiz-zmien opportun u tempestivament, id-dmirijiet imposti fuqu mil-ligi. Il-Bord ha x-xhieda tal-Acting Director tal-FIAU, li, minkejja li wera x-xewqa tieghu li jghin il-Bord f'din l-investigazzjoni, spjega li l-artikolu 34 tal-Money Laundering Act kien assolutament jimpedieh milli jizvela xi informazzjoni, li tkun "case specific".
9. Irrizulta li l-Malta Financial Services Authority (MFSA) intalbet darbtejn mill-FIAU biex taghmel ezami ta' xi nuqqasijiet fl-operat ta' Baltimore Fiduciary Services Limited. L-ewwel ezami, li inbeda' f'Marzu 2013 u jidher li ghadu ghaddej, sar mis-Securities & Markets Supervision Unit u wara mill-Conduct Supervisory Unit tal-MFSA. It-tieni ezami inbeda f'Mejju 2016 mill-Enforcement Unit (Anti-Money Laundering / Counter-Terrorism Financing Section) tal-MFSA, l-aktar biex jaraw jekk Baltimore Fiduciary Services Limited kellix id-debita informazzjoni u dokumentazzjoni dwar l-identita' u il-background tal-klijenti taghha. Irrizulta li dawn iz-zewg skrutinji, li saru mill-MFSA fuq talba tal-FIAU, ma kienux jikkoncernaw bl-ebda mod it-transazzjonijiet bankarji tal-klijenti ta' Baltimore Fiduciary Services Limited, fosthom CapitolOne Investment Group Limited.
10. Bit-tielet terminu ta' referenza, dan il-Bord gie mitlub jinvestiga diversi kumpaniji imsemmija fl-artikolu tal-Malta Today, biex jistabilixxi jekk dawn il-kumpaniji, jew xi



hadd minnhom, weċċaqx verament "attività' finanzarja suspettuża, u li dik l-attività' kienet tinkludi wkoll il-kommissjoni ta' transazzjonijiet kontra l-ligi". Dan il-Bord ezamina, fid-dawl tal-artikolu 3 ta' l-Att dwar l-Inkjesti (Kapitlu 273), jekk ghandux il-gurisdizzjoni li jinvestiga u jippronunzja ruhhu dwar dawn l-istess kumpaniji u kkonkluda li m'ghandux il-gurisdizzjoni li jinvestigahom. Fost dawn hemm il-kumpaniji CapitalOne Investment Group Limited u Baltimore Fiduciary Services Limited. L-istess konkluzjoni tapplika ghall-kaz tal-ufficjali tal-kumpanija l-ahhar imsemmija, fosthom Robert Abdilla Castillo, Dr Ian Micallef u Joe Zammit Pavia. Dwar Dr Beppe Fenech Adami, il-Bord wasal ghall-istess konkluzjoni, ghaliex minkejja li huwa kien jokkupa funzjoni pubblika, pero` l-operat li intalab li jigi investigat, huwa zvolgieh prettament fil-mansjoni privata tieghu bhala wiehed mid-Diretturi ta' Baltimore Fiduciary Services Limited. Il-Bord wasal ukoll ghall-istess konkluzjoni li ma ghandux gurisdizzjoni jinvestiga dak li ghamel il-Bank of Valletta dwar dan il-kaz, peress ma jidher li l-Gvern ma ghandux kontroll effettiv fuq l-operat tieghu.

11. Dan il-Bord, biex jesegwixxi l-inkarigu moghti lilu gabar diversi dokumenti, fosthom statements u dokumenti ohra bankarji. Dawn tal-ahhar gew ezaminati mis-Sur Kenneth Farrugia, li nhatar biex jassisti l-Bord fl-evalwazzjoni tal-istess dokumenti. Huwa hejja Rapport Tekniku mmarkat bhala Dok RKF, li gie anness f' busta sigilata ma' dan ir-Rapport tal-Inkjesti, fejn fir-raba' parti tieghu, huwa stabbilixxa xi fatti dwar l-operat tal-kumpanija CapitalOne Investment Group Limited u fl-ahhar parti qal: *"The facts established under Section 4 of this report warrant a more thorough review/investigation by the Competent National Authorities.* Din il-konkluzjoni hija kondivisa minn dan il-Bord.
12. L-allegazzjoni tal-Malta Today li *"the asset freeze carried out by the Maltese police for the Dutch, would have required a court order"* hija skoretta ghaliex il-freezing order in kwistjoni giet esegwita taht ligi differenti minn dik imsemmija fl-artikolu tal-Malta Today.



Joseph David Camilleri

Chairman

ta' Frar 2017



Lawrence Quintano

Membru

2^e ta' Frar 2017



Philip Sciberras

Membru

ta' Frar 2017

