

Report of the Board of Inquiry appointed to evaluate the events that led to the suspension of funds managed by the European Union Programmes Agency (EUPA) within the Ministry of Education, Employment and the Family

1.0 Purpose

The purpose of this document is to record the conclusions of the Board of Inquiry appointed by the Prime Minister on 20 May 2010 in terms of Article 4 of the Inquiries Act (Cap. 273)¹ to evaluate the events that led to the suspension of funds managed by the European Union Programmes Agency (EUPA) within the Ministry of Education, Employment and the Family (MEEF). The Board was assigned the following Terms of Reference:

- 1.1 to review all the processes, decisions and actions, or lack of same, that led to the temporary suspension of the funds by the European Commission and make any recommendations it deems fit to ensure that, as far as possible, similar incidents will not happen in future;
- 1.2 to report on whether the entities involved, namely the Ministry of Education, Employment and the Family as the National Authority of the Lifelong Learning and the Youth in Action Programmes, and EUPA as the entity responsible for the implementation of the decentralised actions of the two programmes, acted with due diligence; and
- 1.3 to report on the conduct of any employee that was involved in the process and to make recommendations as to any disciplinary proceedings that may be necessary if it be found that someone acted irresponsibly and/or ignored established instructions.

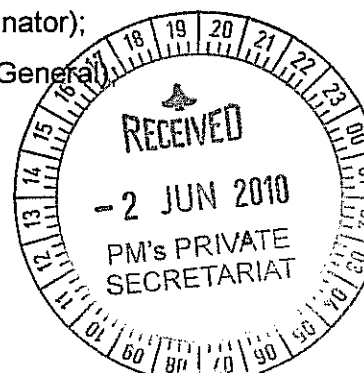
2.0 Methodology

The Board limited its inquiry strictly to the Terms of Reference, i.e. events that led to the suspension of funds on the Programmes. The Board initiated its evaluation process by requesting all the structures that were involved in the incident to forward all documentation, including electronic correspondence that was relevant to the suspension of funds by the European Commission. Given the sequence of events that led to this suspension, the time-frame indicated for documentation was that of 1 May 2009 to 21 May 2010.

The structures that were asked to submit such documentation were the:

- European Union Programmes Agency (through the National Coordinator);
- Internal Audit and Investigations Department (through the Director General)

¹ Hereafter referred to as the Board.



- Ministry of Education, Employment and the Family (through the Permanent Secretary and the Director Policy Development & Programme Implementation);
- Permanent Representation of Malta to the EU (through the Permanent Representative of Malta to the European Union);
- EU Secretariat (through the A/Head, EU Secretariat).

Each of the structures referred to above cooperated fully in providing this documentation. The Board then proceeded to go through all documents submitted and, on this basis, to identify and review those which it considered as being critical to an informed evaluation of the issue.

Once this process was completed, the Board then held a series of interviews with the officers that played a key role in the events that led to the suspension of funds. The aim of these interviews was to complement the assessment made by the Board of the documentation related to the issue, to clarify any ambiguities that may have arisen from the review of this documentation as well as to provide the Board with as detailed and first-hand an account as possible of the issue from the varying perspectives of the different individuals and entities involved.

The following interviews were held:

Dr Godwin Grima	Cabinet Secretary
Dr Christopher Bezzina &	Permanent Secretary, Ministry of Education, Employment and the Family (MEEF)
Mr Robert Tabone	Director, Policy Development and Programme Implementation, Ministry of Education, Employment and the Family (MEEF)
Mr Mauro Pace Parascandolo	National Coordinator, European Union Programmes Agency (EUPA)
Mr Silvano Cristauro &	Programme Manager, Youth in Action, European Union Programmes Agency (EUPA)
Mr Alessandro Cristina	Programme Manager, Lifelong Learning, European Union Programmes Agency (EUPA)
Hon Dolores Cristina &	Minister of Education, Employment and the Family (MEEF)
Mr Bryan Magro	Head of Secretariat, Ministry of Education, Employment and the Family (MEEF)
Mr Richard Cachia Caruana &	Permanent Representative of Malta to the EU (PREU)
Ms Graziella Pullicino	A/Head, EU Secretariat
Mr Mario Galea,	Managing Partner, Ernst & Young Auditors
Mr Robert Azzopardi &	Manager Assurance, Ernst & Young Auditors
Mr Noel Camilleri	Senior Advisory Services, Ernst & Young Auditors
Ms Rita Schembri &	Director General, Internal Audit and Investigations Department (IAID)
Mr Francis Darmanin	Senior Auditor, Internal Audit and Investigations Department (IAID)

3.0 Background

In Malta, the EU's Lifelong Learning (LLL) and Youth in Action (YIA) programmes are both implemented by the European Union Programmes Agency (EUPA), which is designated as the 'National Agency' responsible for such implementation, with the Head of EUPA designated as the National Aid Coordinator. The Ministry of Education, Employment and the Family (MEEF) is designated as the 'National Authority' with the responsibility of regulating the National Agency (in terms of the relevant EC Decisions and Guidelines).

The EUPA was formally set up as an Agency in 2007 in terms of Legal Notice 327.316 dated 4 May 2007, having formerly functioned as a Unit within the MEEF. In terms of paragraph 11, the EUPA is obliged to '*carry out its tasks in accordance with the operational Handbooks of the European Commission regarding the minimum requirements for internal control standards applicable to National Agencies and to the management of the projects financed under the various actions.*' The relationship between the National Authority and the National Agency is regulated by a document entitled 'Formal Relationship between the National Authority and the National Agency, as per Commission Decision of 26/IV/2007 relating to the respective responsibilities of the Member States, the Commission and the National Agencies in implementation of the Lifelong Learning Programme (2007-2013)' dated 24 September 2007².

Within the context of implementation of the Programmes, the MEEF acting as National Authority, is obliged to submit to the European Commission, on an annual basis for each year of the programming period (2007-2013), a Declaration of Assurance for each of the Programmes³ of the work carried out by EUPA, as the National Agency. The Declaration of Assurance has, as Annex, an audit report based on a systems and financial audit report confirming that the management and control systems of the National Agency, the EUPA in this case, are in place and functioning correctly, thus ensuring sound financial management of the funding. The European Commission requires that the systems and financial audit of the National Agency, upon which the Declaration of Assurance is based, is carried out by an external audit body that is independent from the National Agency.

4.0 Chronology of events leading to the suspension of funds for the Lifelong Learning and Youth in Action Programmes on 7 May 2010

June 2009 –

The National Authority submits the Declaration of Assurance for the year 2008 for the Youth in Action and Lifelong Learning Programmes to the

² This document is signed by the Permanent Secretary responsible at the time, the current Director Policy Development and Programme Implementation, MEEF and the incumbent National Coordinator, (Head, EUPA).

³ Lifelong Learning (LLL) and Youth in Action (YIA).

European Commission. In conformity with Cabinet approved procedures⁴ for the coordination of EU-related processes within the Government, this Declaration is submitted through the Permanent Representation of Malta to the EU following clearance by the EU Secretariat. This Declaration of Assurance 2008 is based on a systems and financial audit of the National Agency that was carried out by Grant Thornton International Ltd, the audit firm that, at the time, was contracted by the National Agency to act as the internal audit function of EUPA.

August 2009 –

The European Commission sends a letter (dated 5 August 2009) to the National Authority addressed to the Permanent Secretary, Ministry of Education, Employment and the Family (MEEF), giving its assessment of the 2008 Declaration of Assurance and yearly National Agency report with regard to the Lifelong Learning Programme. This letter is copied via email to the National Coordinator and the Programme Manager Lifelong Learning Programme, EUPA. This letter comprises thirty pages of analysis, observations and recommendations.

The European Commission states that the Declaration of Assurance 2008 submitted by the National Agency “*does not offer a sufficient basis for assurance*”. Annex 3 of the letter lists a number of observations and recommendations which relate to “issues of non-compliance concerning the National Authority and the National Agency”. These observations were rated in order of importance as follows: *critical, very important, important or recommended*.

The first ‘*critical*’ observation in this case refers to the fact that the systems and financial audit upon which the National Authority based the 2008 Declaration of Assurance was carried out by Grant Thornton International Ltd, the appointed internal auditors by the National Agency. According to the European Commission, this was not compliant with the ‘Guidelines to the National Authorities on the Yearly Declaration 2008’ which required that the National Authority bases its Declaration of Assurance on an audit carried out by a party that is *external* to the internal audit function of the National Agency. Signalling the deadline for the resolution of this issue as being ‘*immediate*’, the European Commission recommends to the MEEF that it submits a revised Declaration for 2008 immediately.

The second ‘*critical*’ observation refers to the need to close final reports related to pending agreements. The letter goes on to list five other observations which are rated as being ‘*very important*’ and which concern the following:

- Checks on grant beneficiaries;
- Documentation on procedures;
- Treasury management;
- Segregation of duties;
- Non realisation of minimum required activities;

⁴ ‘Malta as a Member of the EU: Structures and Decision-Making Processes’ – Memorandum approved by Cabinet dated 6 June 2003 (updated 15 March 2004). This Memorandum was followed up by a Memo from the PREU to Ministers, Parliamentary Secretaries and Permanent Secretaries dated 9/5/2008 entitled ‘Communication Flow’ (PR 334/08).

- National Agency Website;
- Use of LLP Link;
- Adequate number of staff.

The European Commission also asked the National Authority to react within fifteen calendar days, should the National Authority require further information on the findings and/or recommendations. The Board noted that a number of the findings had also been reported in previous reports⁵, including in audit findings by European Commission in September 2006 and also by Ernst & Young in their previous audit report related to the Declaration of Assurance of 2007⁶, as well as the European Commission's systems monitoring visit report of July 2008.

The Board noted that this letter was not forwarded by the National Authority to either the EU Secretariat or the Permanent Representation of Malta to the EU, in breach of procedures established by Cabinet with regard to EU-related business⁷.

September 2009 –

The National Authority initiates a request to the Internal Audit and Investigations Department (IAID) to carry out a Systems and Financial Audit of the National Agency.

Meanwhile, in response to the European Commission's letter of 5 August 2009, the National Agency initiates a process to close pending agreements. The Agency also takes some action, as indicated in status reports forwarded by the National Coordinator to the National Authority in October and November 2009, to tackle some other areas of non-compliance in terms of internal allocation and segregation of duties, checks on beneficiaries and documentation of procedures.

October 2009 –

Engagement letter for IAID Audit signed. This calls for the IAID to *'perform a financial audit on the Lifelong Learning Programme and the Youth in Action Programme focusing on payments to and from beneficiaries, and a systems audit on the internal controls in place for the necessary management and implementation of the LLP and YIA'*.

The European Commission sends a letter (dated 22 October 2009) to the National Authority, addressed to the Permanent Secretary, Ministry of

⁵ Prior to the letter of 5 August 2009.

⁶ In the interview with the Board Ernst & Young representatives declared that a number of findings were common in the three reports (2007, 2008 and 2009) that they had undertaken, confirming that a number of issues had not been acted upon.

⁷ 'Malta as a Member of the EU: Structures and Decision-Making Processes' – Memorandum approved by Cabinet dated 6 June 2003 (updated 15 March 2004).

Education, Employment and the Family (MEEF), giving its assessment of the 2008 Declaration of Assurance and yearly National Agency report with regard to the Youth in Action Programme. This letter is copied, via email, to Director, Policy Development and Programme Implementation, MEEF; the National Coordinator EUPA and Programme Manager, Youth in Action Programme, EUPA.

This letter acknowledges progress with regard to implementation (increase in participation when compared to 2007), however concerning the implementation system, the content is similar to that of the letter received by the National Authority on 5th August 2009 on the Lifelong Learning Programme. The European Commission states that the Declaration of Assurance 2008 submitted by the National Agency '*does not offer a sufficient basis for assurance*'. Annex 3 lists a number of observations and recommendations which relate to '*issues of non-compliance concerning the National Authority and the National Agency*'. These observations are, once again, rated in order of importance as follows: *critical, very important, important or recommended*. Paragraph 3 of this Annex goes on to state the following:

'As regards the observations rated 'critical', the Commission expects immediate/urgent remedial actions to be taken and reported on by the National Authority. Pending the remedial action, the Commission may apply precautionary measures (such as suspension of commitments or payments)'.

The *critical* observation in this case refers to the fact that the systems and financial audit upon which the National Authority based the 2008 Declaration of Assurance, was carried out by the National Agency's internal auditors which the European Commission did not deem to be compliant with the 'Guidelines to the National Authorities on the Yearly Declaration 2008'. Signalling the deadline for the resolution of this issue as being '*immediate*', the European Commission recommends to the National Authority that it submits a revised Declaration for 2008 immediately.

The letter goes on to list five other observations which are rated as being '*very important*' and which concern the following:

- Checks on beneficiaries
- Documentation of procedures
- Adequate number of staff
- Segregation of duties
- Treasury management.

Once again, the Board noted that the National Authority failed to alert both the EU Secretariat and the Permanent Representation of Malta to the EU, in breach of standard procedure approved by Cabinet.

November 2009 –

Cabinet Secretary convenes meeting (17 November 2009) at which were present the Minister of Education, Employment and the Family; the Head of the Minister's Secretariat; the Permanent Secretary MEEF; the Director Policy Development and Programme Implementation MEEF, and one of the IAID auditors who carried out the audit of EUPA.

At the meeting IAID presented preliminary findings to MEEF, as the National Authority. IAID identified a number of concerns within the National Agency, many of which are of a technical nature relating to key areas of non-compliance with European Commission requirements⁸ on the management and control systems, while others relate to breach of national procedures such as incorrect calculation of *per diem* rates and deficiencies in undertaking public procurement. It was proposed that further discussions are held on these findings to allow resolution with a view to a positive assurance being reached on the management and control systems.

In the context of the pending 2008 Declaration of Assurance awaited by the European Commission, a *pragmatic* way forward was proposed⁹ by Cabinet Secretary i.e. for MEEF to take immediate and tangible action to implement IAID's recommendations with the possibility of a *follow up audit* taking note of progress and implementation updates. This would allow the National Authority to arrive at a positive Declaration of Assurance within a reasonable timeframe.

December 2009 -

Permanent Secretary MEEF reacts to IAID findings¹⁰. Essentially the National Authority reacts by agreeing to follow up most of the recommendations made on technical matters related to compliance issues identified also by the European Commission, however maintained that the other matters were of *local* concern and bear no relevance to the purpose of the Declaration of Assurance to be submitted to the European Commission. In this reaction, Permanent Secretary MEEF also proposed two *possible ways forward*, namely either (i) to re-focus any update on what he terms 'the actual needs of the Declaration of Assurance' (ii) or to engage the services of another audit body to undertake a new audit of the management and control system used by the National Agency managing the two Programmes under review¹¹.

The Director General of the Directorate-General for Education and Culture within the European Commission writes (letter dated 16 December 2009) to the Permanent Secretary at the National Authority. This letter is copied to the National Coordinator.

This letter, while indicating that the European Commission was in receipt of the pending financial agreements referred to above (one of the '*critical*' observations issued to the National Agency with regard to the LLP in the Commission's letter of 5 August 2009), the European Commission reminds

⁸ As had already been identified by a number of EC reports and previous audits.

⁹ An email sent to National Authority by Cabinet Secretary on 20 November, 2009.

¹⁰ In the first instance reactions are circulated internally, through e-mails to Minister MEEF on 10 and 14 December 2009 and then subsequently also via e-mail to Cabinet Secretary on 24 December 2009 and to DG IAID on 12 January 2010.

¹¹ The Board noted that this second recommendation would have meant that the 2008 Declaration of Assurance would have generated three separate audit reports. This is what happened in actual fact by March 2010.

the National Authority that the revised 2008 Declarations of Assurance had not yet been received '*and deems this a matter of serious concern given the critical observations issued to the National Authority*'. In this regard the Director General of the European Commission also refers to reminders by phone and e-mails and further states that:

'This further delay puts at risk the reasonable assurance that we can have with regard to the management of the LLP and YIA Programmes in Malta and will oblige us to consider taking more formal measures.'

Once again the Board noted that even at this very critical juncture, both the National Authority and the National Agency failed to alert the EU Secretariat and the Permanent Representation of Malta to the EU, in breach of established procedures approved by Cabinet.

The Permanent Secretary, MEEF, replies to the Director General of the Directorate General for Education and Culture of the European Commission that the audit report in hand¹², is not satisfactory in terms of overall quality and the National Authority would therefore require till end of January 2010 to re-submit the 2008 Declaration of Assurance.¹³

January 2010 -

Director General, IAID, responds to the formal reactions by the Permanent Secretary MEEF to the IAID findings. She takes note that there is agreement to take a number of recommendations forward whilst at the same time clearly maintaining that ALL the IAID findings are of direct concern to the European Commission since they impinge on the financial interest of the EU. In the same communication, Director General IAID strongly cautions Permanent Secretary MEEF against the second proposal (with regard to way forward), namely to engage another auditor, as this could cause further confusion at the European Commission's end as well as be perceived to have repercussions on the Union's financial interests.

Engagement letter sent by Ernst & Young to Director Policy Development and Programme Implementation¹⁴ MEEF. Ernst & Young undertake another audit with regard to the 2008 Declaration of Assurance. The Board noted that the findings are similar to the ones found by IAID, in particular as regard the issues emanating from the European Commission's Guide¹⁵.

¹² For both programmes. Although this refers to the IAID findings, no explicit reference was made to IAID in this communication.

¹³ A similar statement is also in the record of the meeting which the European Commission held with National Authority representatives as part of the Systems Monitoring Visit of 19-21 January, 2010 as well as in the record of the meeting held in Brussels on 2 March 2010.

¹⁴ Sent by Ernst & Young on 19 January 2010 and confirmed by Permanent Secretary MEEF on 9 February 2010.

¹⁵ Ernst & Young Auditors commented during the interview that very few of the recommendations made in previous audit reports had been followed up by the National Authority and the National Agency.

During the period 19-21 January 2010, the European Commission carries out a National Authority and National Agency systems monitoring visit.¹⁶

February 2010 -

The Director General of the Directorate-General for Education and Culture within the European Commission writes to the Permanent Secretary at the National Authority. This letter (dated 9 February 2010) is copied to the National Coordinator.

This letter reiterates that the continued delay in receiving the 2008 Declarations of Assurance is a matter of *'serious concern'* to the Commission and, as such, proposes that a meeting be held in Brussels to *'re-establish rapidly a basis for assurance'*. For the purposes of this meeting the Director General requests the National Authority to submit a detailed Action Plan indicating the action being taken to resolve the non-compliance issues identified by the European Commission.

In this same letter the Director General informs of a series of measures being put in place by the European Commission *'in view of the necessity of appropriate control and assurance mechanisms'*. Once again the National Authority and the National Agency did not deem it necessary to inform either EU Secretariat or the Permanent Representation of Malta to the EU of this letter.

DG IAID, acting upon instructions by Cabinet Secretary, informs the Permanent Representative of Malta to the EU (PREU)¹⁷ of issues with MEEF in terms of concluding the IAID's audit report. The Permanent Representation establishes contact with DG IAID and the Director Policy Development and Programme Implementation, National Authority, to obtain further details and clarifications.

On 24 February, 2010, the Director of the Lifelong Learning Programme within the Directorate-General for Education and Culture writes to the Permanent Secretary and the National Coordinator recording the conclusions of the Monitoring Visit carried out between 19 and 21 January 2010.

This letter takes note of some progress¹⁸, however expresses concern *'as significant recurrent weaknesses were still noted in key compliance areas after three years of Programme implementation'*, and urges the National Agency immediately to put in place the necessary remedial action.

The letter then goes on to detail a number of areas where non-compliance remains an issue including segregation of duties and adequate number of staff¹⁹, treasury management, documentation of procedures, internal audit and conformity with the Agency's reporting obligations towards the European Commission, amongst others.

¹⁶ Report sent by EC on 24/2/2010 to Permanent Secretary MEEF copied to National Coordinator and Director Policy Development & Programme Implementation, MEEF.

¹⁷ E-mail dated 12 February, 2010.

¹⁸ With regard to Programme visibility at national level, closure of pending agreements and the developments of certain internal procedures.

¹⁹ With regard to this finding, the EC is also making pragmatic recommendations such as to use Youth in Action personnel for on the spot checks for the Lifelong Learning Programme and vice versa.

The Permanent Secretary at the National Authority forwards the Action Plan requested by the European Commission²⁰.

In breach of Cabinet approved procedures, the letter from the European Commission of 24 February 2010 as well as the Action Plan sent by Permanent Secretary MEEF were not sent to the EU Secretariat or the Permanent Representation of Malta to the EU.

March 2010 -

A meeting was held in Brussels on 2 March 2010 with the Director of the Lifelong Learning Programme within the Directorate-General for Education and Culture attended by the National Authority (Director, Policy Development and Programme Implementation) and the National Agency (National Coordinator).

In breach of the Cabinet approved procedures for the coordination of EU-related processes within the Government, neither the EU Secretariat nor the Permanent Representation of Malta to the EU are informed of this meeting.

Meanwhile, further to the additional clarifications sought by the Permanent Representation on the issues between the IAID and the National Authority, the Permanent Representative of Malta to the EU proposes a way forward in terms of unblocking the situation²¹. The PREU states that he does not agree with the approach adopted by the National Authority with regard to the Audit Report produced by IAID. He recommends that the National Authority holds further discussions with IAID and that a meeting be set up immediately between the National Authority and IAID and chaired by the Cabinet Secretary to discuss respective positions.

The Director of the Lifelong Learning Programme within the Directorate-General for Education and Culture writes (letter dated 9 March 2010) to the Permanent Secretary within the National Authority recording the conclusions of meeting held in Brussels on 2 March 2010. This letter reiterates that, despite progress being noted in some areas, *'the most worrying management weaknesses'* had not been *'adequately addressed by the National Agency'* *'although the majority were longstanding and raised with the National Agency repeatedly at previous monitoring visits and exchanges'*.

The European Commission underlined that *'if reliable proof of substantial improvement of the situation would not be provided at short notice, there was a serious risk that both Programmes **may be suspended in Malta**'*.

Once again this letter was not brought to the attention of the Permanent Representation or EU Secretariat, in breach of the procedures established by Cabinet, even though by then the document detailing these procedures had been sent to the Permanent Secretary MEEF by the Permanent Representative of Malta to the EU in order to emphasise the importance of conforming to these procedures.

A meeting is convened on 15 March 2010 by the Cabinet Secretary and the Permanent Representation and attended by the Permanent Secretary of the National Authority and the Director General, IAID. At this meeting the National Authority fails to inform the Permanent Representative or IAID of the

²⁰ Recorded in letter dated 9 March 2010 from EC to National Authority (PS MEEF).

²¹ E-mail dated 4 March, 2010 to Cabinet Secretary and copied to DG IAID.

latest developments on the issue in terms of the January Monitoring Visit, the follow-up report of 26 February 2010 as well as the meeting held in Brussels on 2 March 2010 and the follow-up report of 9 March, 2010.

Based on email correspondence seen by the Board involving the Permanent Representative of Malta to the EU, Director General IAID and the Cabinet Secretary, it appears that, at this stage, the main issue was the IAID's audit opinion and whether this opinion would be the basis of the 2008 Declaration of Assurance. At this point, the audit opinion of the IAID is *limited assurance*, which is the second from last in the level of assurance. The Permanent Representative recommends that in view of the opinion being of *limited assurance*, an additional statement could be included to indicate that the National Authority and the National Agency will be fully taking on board the recommendations made by IAID in its report and implementing an Action Plan in this regard.

The Permanent Secretary at the National Authority instructs (30 March 2010) the EU and International Affairs Directorate within the MEEF to forward the Declaration of Assurance 2008 as forwarded to him by Director, Policy Development and Programme Implementation, MEEF, through the EU Secretariat and the Permanent Representation of Malta to the EU as per Cabinet approved procedure. Both the EU Secretariat and the Permanent Representation request confirmation by the Permanent Secretary that the Declaration of Assurance was drawn up on the basis of the audit report by IAID.

April 2010 -

The Permanent Secretary at the National Authority, in an email to the EU Secretariat, does not confirm whether the declaration is based on the IAID report or not but states that he was satisfied with the documentation provided and that, given that *'the Commission expects this documentation to be signed by the National Authority, it is the Ministry that has to be satisfied with the documentation forwarded'*.

The Permanent Representative informs the Permanent Secretary, copying in the Cabinet Secretary and the A/Head, EU Secretariat, that in line with Cabinet approved procedures it is his (i.e. the Permanent Representative's) responsibility to clear the transmission of the documentation to the European Commission. He maintains that in order for the Declaration of Assurance to be accepted by the European Commission it must be based on a systems and financial audit undertaken by an audit body independent of the National Agency. He states that the decision had already been taken that the audit carried out by the IAID will serve as the basis for the 2008 Declaration of Assurance and that, therefore, IAID should be asked to confirm that the Declaration of Assurance is, in fact, based on their final audit report²².

The Permanent Secretary at the National Authority replies to the PREU (20 April, 2010) reiterating that all documentation forwarded to the EU Secretariat and the Permanent Representation on 30 March was based on

²² PREU clearly states that he could seek this confirmation himself but in the interest of the Public Service recommends that this should be sought by the Permanent Secretary MEEF. In fact, following the continued failure of MEEF to take action, this confirmation is ultimately sought by PREU (from DG IAID) on 27 April 2010.

the discussions and consultations held with IAID (as well as the IAID report which was attached to the Declaration) without confirming that the set of documents was actually *cleared* by the IAID.

The Director General of the Directorate-General for Education and Culture within the European Commission writes to the Permanent Secretary at the National Authority. This letter (dated 26 April 2010) is copied to the National Coordinator.

This letter informs the National Authority that the European Commission was recommending **the suspension of** the Lifelong and the Youth in Action Programmes in Malta due to the fact that the revised 2008 Declarations of Assurance had to be forwarded to their offices by the end of March 2010 and were still outstanding. The European Commission gives the Maltese authorities until the end of April 2010 to provide the requested information prior to taking such a decision. The European Commission also informed the Maltese authorities that precautionary measures will be taken if the deadline is not respected and/or if the documents provided are not satisfactory.

In conformity with Cabinet approved procedures, Director, Policy Development and Programme Implementation, MEEF, forwards a copy of this letter to the EU Secretariat and the Permanent representation of Malta to the EU. The following day (27 April 2010) the Permanent Representative writes to the Director General IAID asking for confirmation as to whether the Declaration of Assurance signed by the Permanent Secretary, MEEF, was, in fact, based on the final audit report compiled by IAID.

Director General IAID replies²³ to the PREU copying in the Principal Permanent Secretary and sends written comments on the Declaration of Assurance and supporting documentation which had been signed off by the Permanent Secretary at the National Authority. Given the conditions imposed by the European Commission on the quality of such documents, IAID made a number of recommendations in order to enhance the quality of the documents submitted. In particular, DG IAID noted that Annex 3 of the Declaration of Assurance did not include an Action Plan with time-lines to address the weaknesses²⁴.

On the same day the Permanent Representative writes to the Permanent Secretary at the National Authority informing him that given the tight deadline of 30 April 2010 to submit the Declaration of Assurance to the European Commission, failing which the European Commission would suspend participation in the Lifelong Learning and Youth in Action Programmes, Permanent Secretary MEEF was being advised to revise the Declaration in line with IAID's feedback and to re-submit it by noon of Thursday 29 April 2010, to the EU Secretariat for clearance and onward transmission to the Permanent Representation to meet the deadline set by the European Commission of 30 April 2010.

²³ 28 April, 2010.

²⁴ It should be noted that at this stage the information contained in the communication of 9 March, 2010 (from European Commission to National Authority) had not been brought to the attention of PREU, Cabinet Secretary and DG IAID.

Following the necessary changes, the Declaration of Assurance together with all the relevant documentation is sent to the European Commission – within the deadline of 30 April 2010.

May 2010 -

In an informal exchange²⁵ the European Commission informs the National Agency representatives that although the Declarations had been received within the established deadline, the possibility of suspension of Malta's participation in the LLP and YIA Programmes was still being considered as the European Commission was still not convinced that the National Authority was carrying out its monitoring function effectively. This fact is brought to the attention of the Permanent Representative of Malta to the EU by the Minister for Education, Employment and the Elderly.

Following enquiries made at the European Commission, the Permanent Representative of Malta to the EU informs the Minister (6 May, 2010), copying in the Permanent Secretary at the National Authority, that the European Commission's stance at this point appeared to be a concern that the recommendations made by the European Commission in August and October 2009, in reaction to the original submission of the 2008 Declarations, were still pending.

The Permanent Representative of Malta to the EU, therefore, advises that immediate action is to be taken on the European Commission pending observations even though he states that this would probably not be enough to change the European Commission's decision regarding suspension. A co-ordinated Plan of Action is, therefore, proposed to tackle the most pressing areas of non-compliance on the part of the National Agency and the National Authority as highlighted by the European Commission in previous communications as well as in the IAID Audit Report. The Permanent Secretary at the National Authority initiates the implementation of this Plan.

On 7 May, 2010, the Director General, Directorate General Education and Culture, writes to the Minister for Education Employment and the Family stating that the Lifelong Learning and Youth in Action Programmes **are being suspended**.

The reason stated in this letter is that *'on the basis of the results of the audits carried out by the IAID and by Ernst and Young I regret to note that the financial systems and procedures in place in the National Agency EUPA do not provide sufficient assurance on the legality and regularity of transactions'*. Given this development the Permanent Representative of Malta to the EU writes to the Minister on the same day recommending that the actions in the Action Plan should be brought forward and, in consultation with IAID, completed by the end of the following week. He stresses that evidence must be provided by the National Agency that the required improvements are in place.

²⁵ 3 May, 2010.

On 12 May, 2010 the Permanent Secretary MEEF informs the Permanent Representative of Malta to the EU that following informal talks held with the Director of the Youth in Action Programme on the fringes of the Education and Youth Council, the situation is described as 'serious' but not 'insurmountable'.

On the same day (afternoon) the Permanent Representative of Malta to the EU meets with the Director General, Education and Culture regarding the suspension of Malta's participation in Lifelong Learning and Youth in Action Programmes. He is informed during this meeting that communication (through letters and meetings) between the European Commission and the National Authority of the Programmes had been ongoing for quite some time on the need to take urgent action on a number of critical points, failing which a decision to suspend Malta from participation would have to be taken. These refer to the letters from the European Commission indicated above which were not copied to either the Permanent Representation of Malta to the EU nor the EU Secretariat, as well as to the meeting in Brussels of 2 March 2010.

It is indicated in the record of this meeting²⁶ that the European Commission stated that there are two main issues, the first being '*the shortcomings in the management of the National Agency*', and the second that '*at present the National Authority does not have sufficient control of the National Agency (EUPA) and is therefore not in a position to provide assurance to the Commission*'.

That same afternoon the EU Secretariat requests Director Policy Development and Programme Implementation MEEF to send ALL the relevant documents to the EU Secretariat and the Permanent Representation of Malta to the EU. Meanwhile both the National Authority and the National Agency continue to work on finalising of the Action Plan initiated earlier the same month.

On 18 May, 2010, Permanent Secretary MEEF sends an email to the Permanent Representative informing him that following a coordinated effort by the National Coordinator and the Director Policy Development & Programme Implementation MEEF the actions taken on the observations of the European Commission, the IAID and Ernst & Young had been implemented and that evidence was available to substantiate each action taken. The Action Plan is attached to the email.

The Action Plan is sent to the European Commission on 21 May, 2010.

5.0 Conclusions

- 5.1 The Board has reviewed the sequence of events that led to the suspension of funds by the European Commission for the Lifelong Learning Programme and Youth in Action Programme. From an analysis of these events, the Board can safely say that although there was clearly no intent on the part of any of the stakeholders and

²⁶ The meeting between Director General Education and Culture of the European Commission and the Permanent Representative of Malta to the EU.

individuals involved to act irresponsibly and/or against the interest of the positions they hold and the public service in general, the Board has concluded that the situation leading to the suspension could have been avoided.

- 5.2 The Board first considered the fact that the National Authority consistently failed to take the necessary action to bring its internal management procedures in line with the European Commission's minimum requirements. This was a state of affairs that directly contributed to the suspension of funds. The Agency's shortcomings in key compliance areas, including, but not limited to, checks on grants on beneficiaries, treasury management, segregation of duties, closure of agreements and documentation of procedures, were highlighted by the European Commission in various communications and monitoring visits. Many appear as early as 2006 and remained unresolved at the time of the monitoring missions of May 2009 and January 2010. Furthermore, from the interview with the National Co-ordinator, it transpires that the National Agency was not fully aware of national procedures on financial matters. In this regard, the Board also noted the lack of supervision (including the lack of secondary checks) by the National Authority on the work of the National Agency.
- 5.3 The Board noted that this failure to comply with European Commission requirements may have been due to a lack of awareness on the part of the National Agency and the National Authority of the importance of fulfilling their obligations *vis à vis* the Programmes' implementation systems as well as the potential repercussions of non-compliance. The National Agency should have understood its obligations given that these are clearly defined in the Legal Notice as well as in the Commission's, '*Guide for National Agencies*'. In this context the Board acknowledged that the necessary checks and balances (to be provided by the National Authority) which should have ensured that the Agency operates in line with the relevant Guidelines, did not function as the Authority relied too heavily on management information supplied by the Agency itself without the required extent of verification. In this regard the Board noted that a number of audit reports (over successive years) as well as the communications from European Commission were all highlighting a number of common issues and even these were not acted upon in a timely manner.
- 5.4 In the opinion of the Board, the message coming through from the European Commission regarding the risk of suspension of funds was clear and was repeated, in writing, on more than one occasion (as indicated in the above chronology of events). Decisive action should, therefore, have been taken by the National Authority and the National Agency as soon as this risk was detected. The Board also concluded that the European Commission gave the National Agency and the National Authority many chances in order to seek to avoid such suspension (probably because of the results achieved by the National Agency in terms of promotion and publicity of the Programmes as well as increasing Beneficiary participation – results which the Board also acknowledges). In this regard the Board recognised that although by the end of the year some progress was made with regard to a few compliance recommendations, this seems to have been a fragmented and non-systematic approach. The fact

that in May 2010, the Action Plan tackling all the outstanding observations of the IAID report, the Ernst and Young Report as well as the European Commission's observations, was prepared and even partially implemented in a comparatively short time period, indicates that had this co-ordinated action taken place earlier, the suspension would have been avoided. The Board agreed that this co-ordinated effort should have been triggered by the letters from the European Commission of 5 August 2009 and 22 October 2009 which could have led to a revised Declaration of Assurance 2008 being submitted by end of 2009, at the latest, thus avoiding the suspension of funds.

5.5 The Board noted that once the issues related to the 2008 Declaration of Assurance emerged in August 2009, there was almost total disregard by the National Authority and the National Agency of the Cabinet approved procedures for the co-ordination of EU related communication flows. Moreover, the Board also noted that at no point in time did anyone within the National Authority or National Agency try to seek advice from an established national structure. This resulted in a situation where the National Authority tried to handle the situation in isolation from the other Government Structures who are normally responsible for intervening in delicate situations of this type in order to secure a positive outcome. It is unfortunate that the attention of the Permanent Representation of Malta to the EU and the EU Secretariat had to be drawn to the issue by parties other than the National Authority, that is the Cabinet Secretary and Director General IAID. Even at that point, in March 2010, the National Authority did not provide the Cabinet Secretary, the Permanent Representative, the EU Secretariat or Director General IAID with all the relevant documentation and background on which they could make an informed assessment of the issue in order to prioritise it accordingly. This was revealed when the Permanent Representative of Malta to the EU met the Director General of the Directorate-General of Education and Culture on 12 May 2010 and was informed in the course of the meeting of the various communications that had been sent to the National Authority by the European Commission as well as the formal meeting in Brussels of 2 March 2010 attended by the Director, Policy Development and Programme Implementation, on the part of the National Authority, and the National Coordinator, of which up to that point the Permanent Representative was unaware. The Board is of the opinion that had the EU Secretariat and the Permanent Representation of Malta to EU been alerted in good time (at least after the letter from European Commission of 5 August 2009), the likelihood is that, based on the action taken between March and May 2010 when, unfortunately it was too late in the day, the suspension could have probably been avoided.

5.6 The European Commission (in a number of reports), the National Agency (in its memos to the Ministry) as well as the National Authority have raised the issue of human resources within EUPA²⁷. It is clear that the management of EU Funds is very taxing on human resources. EUPA has also suffered from a high turnover of staff (like other public organisations), however the Board noted that whilst this

²⁷ Based on organigrams provided, in May 2009, the EUPA had around 20 members of staff, rising to 24 in May 2010.

could have contributed to the difficulties in meeting compliance targets (particularly in the finance unit of the EUPA), the Board contended that the main underlying factors were ineffective management systems²⁸. In fact on 5 August 2010, the European Commission recommended '*a revision of the internal organisation to be able to cope with the programme management requirements*'. Ernst and Young (E+Y) Auditors also confirmed to the Board that, in their (E+Y) opinion, human resources matters were not the main issue as far as implementation of audit recommendations is concerned.

- 5.7 The National Authority also raised the issue of human resources which it considers to be the primary factor that prevented it from carrying out its own obligations in line with the European Commission requirements. Whilst the Board agrees that the expected secondary checks do require support in terms of human resources, the National Authority had information in hand (through commissioned audit reports as well as European Commission communications) regarding the operation of the Agency. The information contained in these reports should have triggered concern and concrete action by the National Authority. Given the seriousness of the situation, the Board also agrees that temporary solutions (possibly resorting to other resources within the Ministry of Education, Employment and the Family) could have been found with regard to the events from August 2009 to May 2010.
- 5.8 The Board noted that a number of audit reports contracted (externally) by the National Authority entail findings and recommendations but do not seem to contain an '*audit opinion*'.
- 5.9 Finally, the Board agreed that, in its opinion, the procedures – both national as well as those pertaining to EU Guidelines combined – are robust enough when correctly applied to ensure sufficient checks and balances in the system to effectively manage similar issues that arise in the course of our dealings with the European Union. Therefore, the Board can only conclude that there was a strong element of human error in allowing the situation to deteriorate to the point that the funds were actually suspended. In this regard the Board points to the following:
- 5.9(a) National Authority – the Board is of the opinion that there was an error of judgement on the part of both the Permanent Secretary as well as the Director Policy Development and Programme Implementation within the National Authority in the way the matter was handled. The Board concedes the fact that the Permanent Secretary only assumed his position in the first quarter of 2009 and that, therefore, the management weaknesses of the National Agency pre-date this appointment. However, at the point when the first version of the Declaration of Assurance was rejected by the European Commission, this should have sent alarm bells through the system and should have mobilised all necessary resources (within the National Authority and possibly outside) to take concerted action (and

²⁸ In fact the co-ordinated approach and leadership provided in the last weeks, particularly in May 2010, have clearly demonstrated that the job was '*doable*'.

micro manage if necessary²⁹) in the national interest. In the Board's opinion, precious time was lost unnecessarily between September 2009 and March 2010. The Board also took note that both the Permanent Secretary as well as the Director Policy Development and Programme Implementation failed to escalate the issue further, also within the Ministry, including to the political level.

- 5.9(b) National Agency – the Board feels that the long-standing compliance issues mentioned time and time again in European Commission communications as well as in audit reports should have been dealt with in 2007 and 2008. Although some issues date from the first programming period, most of these issues relate to the implementation system of the 'new wave' (2007-2013) of Programmes and, therefore, should have been a priority for the Agency, once the first work programme of the 'new programming period' were approved by the European Commission. It is not acceptable that issues such as segregation of duties, primary (first level of control) checks on beneficiaries, treasury management, documentation of internal procedures ...which are outlined in the first few pages of the European Commission Guide for National Agencies³⁰, were not fully implemented by end of 2009, three years into the Programmes' lifetime. In this regard, the Board feels that there was lack of leadership on the part of the National Co-ordinator of the Agency as well as inadequate awareness of the obligations and responsibility.

In this regard the Board concludes that on the basis of the information provided in the course of the inquiry, the Permanent Secretary and the Director Policy Development and Programme Implementation within the National Authority, as well as the National Coordinator (Head of National Agency), by virtue of their position, were duty bound to ensure that the failings outlined in these conclusions do not occur.

6.0 Recommendations

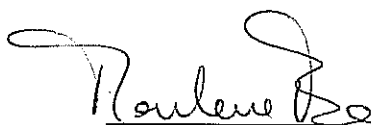
- 6.1 The Board strongly recommends that any pending issues related to the consolidation of the implementation system (arising either from the Action Plan and/or follow-ups still to come) are implemented by the Agency immediately. The National Authority, on its part, should ensure that all issues are implemented (and where this is not possible, clearly giving a timetable of the milestones that will be achieved until the recommendation is fully implemented) . The Board deems this as very important, also in the light that the 2009 Declaration of Assurance has to be sent in the very near future.
- 6.1 The Board also strongly recommends the full implementation of the IAID audit report, both at a systems level as well as at the level of individual operation and transaction to include all EU funds (grants to Beneficiaries as

²⁹ As was actually done in May 2010.

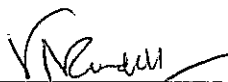
³⁰ The Guide is contractually binding on National Agencies and forms part of the reference framework of key controls.

well as EUPA operational budget) and national resources, and where pertinent, financial corrections should be made and / or procedures for recoveries initiated.

- 6.2 Further to recommendations 6.1 and 6.2 above, the Board recommends that IAID undertakes another systems and financial audit within six months to ensure that the actions taken to implement the recommendations are working effectively.
- 6.3 The Board recommends that all publicly funded organisations should be reminded of internal Government procedures, particularly those established by Cabinet regarding communication flow on EU related business, as well as national rules and procedures (in particular those concerning financial management). In this regard the Board also recommends that these procedures should be a key element of any induction / training programmes organised for all officials, particularly for headship positions, as well as persons in top management structures in any public sector organisation. Furthermore, awareness and capacity building in areas of financial control and financial management should also be consolidated in public organisations.
- 6.4 In view of the management weaknesses identified, the Board recommends a review of the structures of both the National Agency as well as the National Authority (in relation to their functions of National Authority and National Agency). The structure, level of resources (keeping in mind the volume of funds managed) as well as an analysis as to where the structure/s would be best placed within Government to function effectively and efficiently should form part of this review.
- 6.5 The Board recommends that the terms of reference for audit tasks should clearly include the obligation to give an 'audit opinion' in addition to the findings and recommendations.
- 6.6 With regard to point 5.9 above of the findings under section 5 of this document, the Board recommends that disciplinary proceedings are initiated in both cases (5.9(a) and 5.9(b)). In this regard the Board feels that the positions of the officers responsible at the National Authority (Permanent Secretary and Director Policy Development and Programme implementation) as well as the National Agency (National Co-ordinator) are no longer tenable and recommends that appropriate action is taken, in line with the applicable procedures.



Marlene Bonnici
Chairperson



Veronica Nardelli
Member



David Muscat
Member