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**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 April 2001**

**8332/01**

**RESTREINT**

**EVAL 18  
ELARG 85**

**REPORT**

From : the Collective Evaluation Working Party

To : CATS/Coreper/Council

N° Prev. Doc. : 14738/1/00 EVAL 60 ELARG 227 REV 1 RESTREINT

Subject : Preliminary country report on Malta

**I. INTRODUCTION**

**A. Introductory remarks**

In its analyses the Working Party has dealt with the progress made by each acceding country and examined shortcomings which still have to be eliminated in order to catch up with the EU "acquis" in the field of Justice and Home Affairs.

This report aims at pointing out the precise areas where the most serious shortcomings exist and where substantial efforts by the applicant country are still needed, while at the same time acknowledging progress already made and refraining from a final judgement. It can also help Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The data collected by the Collective Evaluation Working Party are being constantly added to and updated. The amount of information produced on individual subjects may therefore vary and findings as well as improvements required cannot be considered exhaustive; for this reason, an update will be presented on a regular basis.

## **II. ALIGNMENT WITH THE ACQUIS**

### **A. Border management**

In many important areas Malta is or will shortly be in line with the relevant EU acquis. In general, Malta seems to control its external borders relatively efficiently which makes the number of illegal immigrants limited at the moment. The Police, under the auspices of the Home Office, have the main responsibility for border security, and the Armed Forces of Malta, while carrying out their police tasks, work on behalf of the Police. The legal bases for effective border management are almost in place and Malta has stated that at present they do not foresee any difficulties in adopting the acquis. Drafts/white papers have been prepared to bring Maltese legal regulations in line with Schengen requirements. Most of them are underway to the domestic authorities and/or the Parliament.

Although there are no signed agreements in the field of border surveillance, co-operation with neighbouring countries, particularly Italy and France, is good.

### **B. Migration**

Clearly, Malta controls its migration fluxes - though not exactly as provided for in the EU acquis.

Generally speaking, the "restrictive" part of the EU acquis is, to a certain extent, implemented. Thus, work permits are managed almost as prescribed by the EU acquis. Likewise, persons overstaying, or landing without permit, are effectively prosecuted, and moreover are detained and expelled in keeping with human rights, at least as far as "prohibited immigrants"<sup>1</sup> are concerned. Such issues as marriages of convenience are known and dealt with. Moreover, national passports are secure.

Besides this (rather ancient) "Maltese acquis", the first signs of formal alignment may be the bilateral agreement on readmission between Malta and Italy, which must however still be signed and ratified.

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<sup>1</sup> According to the Immigration Act, the persons who land without authorisation or who are found staying illegally inside the country are deemed "prohibited immigrants".

## **C. Asylum**

In 1971 Malta ratified (with reservations) the 1951 Geneva Convention and the 1967 Protocol. Until 2000, although there was no legislation on asylum, there was actual practice, be it rather particular (Cases processed by an NGO, decisions taken by the UNHCR office in Rome, refugees not entitled to work and resettled in other countries). In this context, 100 to 300 cases were processed yearly in those days, and police at the border are now accustomed to receiving applications and passing them on to a third authority. This actual practice will be useful when the time comes to implement the new provisions. In June 2000 the Refugees Act was approved by Parliament, and is due to enter into force in the first quarter of 2001. It will align Malta's formal provisions to the EU ones, except for the reservations to the Geneva Convention.

## **D. Police and Customs**

The Maltese police and the Customs Department are well-established institutions, which have extensive training programmes at their disposal. Police officers enjoy high esteem of the population. Information technology and communication equipment meet recent requirements and are considered adequate.

The project on "Customs/Tax change management" has started. It aims at putting the customs administration in a position to fully implement the acquis in this area by strengthening the legal, administrative and operational capacity of the Customs Department. The project should lead to harmonisation with the acquis within 2 or 3 years.

Although Malta has no Pre-accession Pact on Organised Crime with the EU, the Maltese authorities are strongly committed to co-operate with EU countries in the fight against organised crime. At present, Malta has signed bilateral agreements on police co-operation and on combating illicit trafficking in drugs and organised crime with a number of Member States and with other countries. Similar bilateral agreements with other Member States and countries are at various stages of negotiation.



Malta has in place a legal framework, which more than adequately meets the requirements of the Vienna Convention to combat money laundering, backed up by an equally strong general framework of supervision in the financial sector.

## **E. Justice**

Although the number of courts is high and the system slightly complicated, the judicial system is sound and based on a clear division of powers among the executive, legislature and judiciary. The principle of independence of the judiciary (including the Attorney General and legal prosecutors) is strongly respected. The judicial system is in general considered as stable and reliable and accepted by the people. There are no reports of corruption, bribery or abuse of influence within the judiciary.

Training in EU Law exists, as well as basic information technology equipment and a law library, accessible for both the judiciary, advocates and the public.

Access to court, (free) legal aid and interpretation are provided for. The Constitution requires a fair public trial before an impartial court. Defendants enjoy a presumption of innocence. They may confront witnesses, present evidence, and have the right of appeal.

### III. SHORTCOMINGS

#### A. Border management - Securing external borders

##### *1. General description*

The Republic of Malta is the smallest among the candidate countries, with an area of 316 square kilometres. This is almost ten times smaller than Luxembourg and almost thirty times smaller than Cyprus. The total length of Malta's coastline is 140 kilometres and the territorial sea is 12 nautical miles wide. The distance between Malta and the nearest point in Sicily is 93 km. The distance from the nearest point on the North African mainland (Tunisia) is 288 km.<sup>1</sup> Sea border surveillance is absolutely the most vital part of the border security system. Due to its geographical position, Malta is a potential future transit area for illegal immigration.

Luqa airport is the only international airport in Malta and it is a central entry point in Malta. Malta has one big seaport/free port on the east coast<sup>2</sup>. This harbour also contains a yacht harbour. Malta harbour is one of the most important container ports in Mediterranean. Any person entering Malta has to do so through one of these legal points of entry.

There is no separate border control body in Malta, but the Police (a total of 1800 police officers of which 154 are responsible for border control), which fall under the Home Office, together with the Armed Forces of Malta (AFM, Office of the Prime Minister), are responsible for border security. The Police Commissioner is the main immigration authority in Malta and while carrying out his immigration control tasks the AFM are under his command. The co-ordination between these two organisations is said to be working efficiently. The AFM are responsible for patrolling the territorial waters, whereas the Police (154 persons) are responsible for entry and exit control. The AFM Airwing supports sea border surveillance with aircraft. Sea border surveillance is purely military in nature.

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<sup>1</sup> Statistics: The official website of the Maltese Government

<sup>2</sup>. And one on the Island of Gozo from June to September

The legal bases for border management are the Immigration Act (2000) and the Police Ordinance and its amendments. The powers of the AFM have been defined in the Armed Forces Act/Assignment of Powers. The tasks of the AFM are specified in the White Paper of June 1997 which states that among the principal tasks the AFM is responsible for ensuring the integrity of Maltese airspace and Maltese waters, with the specific aim of detecting illegal immigration in Maltese waters.

### *Legislative gaps*

At present, legislation does not provide for sanctions against carriers of persons arriving without valid travel documents. A provision to this extent will be included in the proposed new Immigration Act. Data protection legislation is not yet in line with EU-regulations.

### *A need for a more coherent border security strategy and specialisation*

In principle, all elements for effective border security are present in Malta. The basic operational structure, where the police has the main responsibility for border security and the Customs and the AFM are also involved, is said to be reasonable. In addition to their *standard defence roles*, the AFM provide *military assistance* to government departments, e.g. aid to the police force and the Customs Department. However, at the earliest possible occasion following any operation, the case is immediately handed over to the Police or Customs, as applicable. E.g. in the case of the arrest of a ship carrying illegal migrants at sea or carrying contraband cargo, the case is handed to the Police or Customs as soon as the ship berths alongside in port. The AFM do not carry out investigations ashore or any other subsequent prosecution. While the structure of the sea border authority is military in nature, its real, actual performance in sea border security is close to that of a coast guard enforcing police law.

The above mentioned system gives rise to some concern. The sea border surveillance system is not fully integrated in the wider national border security system. The basic surveillance, priorities and operations are carried out without illegal immigration- and smuggling-related risk analyses and usage of information provided by the national and international police intelligence system. The approach of the AFM towards border security is narrow<sup>1</sup> and military-minded and contains no police aspects. Members of the AFM operate under the direction, command and control of the Commander of the Armed Forces; the police is not present. It is therefore currently not possible to speak of a specially trained border police organisation as referred to in Conclusion number 25 of the Tampere European Council; immigration control and crime prevention are not the main tasks of the AFM.

The powers of the AFM staff are limited with regard to criminal investigation. Even though co-operation between the Police and the AFM is said to be good, the AFM has no access to police databases and there are no common databases. The Maltese authorities are currently investigating ways of connecting the AFM to the SIS and to what extent. The effectiveness of border security is not the best possible and the capability for rapid reaction as well as stable long-term development may be difficult if the aims and priorities of these two organisations remains different.

The Maltese authorities are aware that they will need to monitor and review the training, organisation, effectiveness and resources available for border security in the future as demand may increase and impede their capacity to function effectively.

#### *Need for better management of information flows*

The exchange of information between the law enforcement authorities is said to be good. However, there are no common databases and the relevant authorities are not connected to each other via a reliable ADP-system. There is no central authority ("situation centre") responsible for systematic border and migration related information-gathering, -processing and -distributing as well as for maintaining a real time border situation picture in order to be able to react in time. Management of information flows is insufficient and it would be advisable to set up an information centre with the necessary connections to solve these problems.

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<sup>1</sup> The AMF's role is to catch smugglers and bring them to the competent authorities.

It is also noticeable that the role of Customs in the field of border security is quite limited. Co-operation should be improved between all law enforcement agencies in order to achieve a more solid national system. Since Customs have good contacts with their international counterparts and probably a lot of intelligence information available, they may constitute a real benefit in respect of criminal intelligence and risk analysis work.

### *Inadequate equipment*

Due to its geographical position, sea border surveillance is one of the most important tasks of the Maltese border authorities. The current capability for sea border surveillance is good but limited due to the resources available. In case illegal immigration or smuggling intensifies, the current system will not be capable of handling the situation. The current radar system does not cover all coastal waters and the operational ability of the mobile units at nights and in all weather conditions is limited. The flow of information as well as co-operation between mobile units and the commanding centre needs to be improved.

There is lack of modern equipment at the ports of entry to detect forged travel documents, as well as of a fingerprint identification system. Moreover, upgrading the existing computer network is necessary for the forthcoming SIS installations.

### *Checks at border crossing points*

The basic procedure for border checks is in principle functional but not yet in line with Schengen requirements. There is an urgent need to improve the technical system, skills of staff as well as checking procedures. The risk analysis and profiling methods are still not effective. Personnel responsible for "first line" check need more training and equipment. A proper "second line" of control should be created and equipped with high level document experts and UV-lamps, docuboxes, finger print devices, cameras, PC-soft- and hardware, manuals for international travel documents etc. There is also a need for co-operation with other countries' authorities responsible for border checks at the ports of entry. The checking procedure at the harbours (containers) requires more detailed analysis. Not all cruise passengers are properly checked at the moment.

## *Training*

Basic training of police officers is carried out in the Academy of Criminal Justice. Border-related training has been assigned to both the Police Academy and – as an in-service training programme – to the Police HQ and the immigration branch itself. However, no real assessment of the country's training needs in this area in the light of Malta's accession to the EU has been made. For the moment, personnel responsible for controlling borders should be qualitatively reinforced, in particular AFM personnel. According to Maltese sources, special training on the detection of false documents has been organised at local level. Since there is still a great lack of basic equipment and also of more sophisticated equipment, the need for more training in this very important area of border control is obvious.

Police officers have also received some training on migration issues. However, one serious gap is training of border personnel in this field. This should include the civilian staff at the airport passport control and uniformed officers (police and army) who may have to assume responsibility for border security and who may be the first people to come into direct contact with asylum seekers.

## **B. Migration**

### *1. General description*

The Immigration Act of 1970 as amended, regulates entry, refusal of entry, and removal, rather than admission and stay.

1.2 million tourists yearly board the island, most of them EU nationals and Americans, but also Libyans (37000 in 1999) and Russians (23000).

As to legal migration, the population of Malta included about 5 000 legal residents in 1999, consisting of persons in possession of a work and residence permit, and of "exempt status" (notably spouses of citizens of Malta.)

As to illegal migration, current figures are low, and a priori are not expected to boost/soar (due to the size of the island and its homogeneous population), even in the prospect of accession, at least where illegal stay is concerned. However, illegal transit could be a problem in the future, since the current role of Maltese networks for illegal immigration from North Africa towards (notably) Italy, is known/acknowledged by part of the Maltese authorities.

## *2. Adjustments to visa policy.*

45 countries belonging to the EU "black" list are not visa required in Malta, including not only remote Commonwealth countries but also countries which are deemed risk-countries in the EU, as far as illegal migration and even terrorism are concerned.

No agenda was announced by Malta in order to align its policy in this essential area. (However, recently Maltese authorities gave information that countries such as Lybia, Egypt and Tunesia will be visa-required upon accession.)

In addition, the airport transit visa is not set up as required in the Acquis.<sup>1</sup>

## *3. Shortcomings in visa-issuing procedures*

Consuls are not authorised to issue visas. As a result, consulates are not connected (whether on-line or not) to police databases, nor do they have, at present, much need of equipment to detect false documents. Visas are granted at the border, but figures are unavailable. The whole issue is far from EU/Schengen regulations on secured visa procedures.<sup>2</sup> No agenda was announced for alignment thereto, while this can hardly be achieved in one day.

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<sup>1</sup> It does not apply to persons remaining within the airport premises.

<sup>2</sup> Of course, before issuing the visa (stamp) at the border, there is, as a rule (but not always) a central processing. However, since Malta does not have consulates in a number of countries, and since Malta has no co-operation agreements with foreign embassies for issuing visas, many applications are made by letter, contrary to the acquis.



#### 4. *Lack of admission rules*

In general, admission issues are based on practice only, and not on Laws.

Short term residents (students, workers and their family members...) are not dealt with in the Law. (As to practice, as far as it is known, it does not always comply with the *acquis*.) Likewise, long-term residents, without formal rights, are dealt with at the discretion of the authorities, and in addition are not entitled to work. The only category enjoying rights, i.e. the "exempt persons" which include spouses of Maltese citizens, can lose their "exempt status" under conditions which are rather severe, as well as being entirely discretionary.

Therefore, the whole matter of admission in Malta is not in keeping with the principle of the Rule of Law, nor with the various relevant EU resolutions.

#### 5. *Shortcomings in the fight against illegal immigration, and in readmission and expulsion issues*

There are no provisions for sanctions against carriers or for confiscation of the proceeds in case of illegal work. Practice is also deficient (no fingerprints are taken and held; vessels have been seized, but not a single alien trafficker was arrested, while information about arrests of Maltese traffickers remains unclear.)

Malta has no readmission agreement with any country at present.

As to expulsion, irrespective of "prohibited immigrants" (See above, Alignment), persons having received "deportation orders" on the one hand and persons whose entry is refused on the other hand, may be detained at the airport or on board a vessel without any regulation, deadline, or intervention of Justice. This is not in keeping with the *acquis* (ECHR).



## C. Asylum

### 1. General description

(See also *Alignment, C. Asylum*)

The reservations Malta made to the Geneva Convention are related to welfare assistance and integration of refugees and to acceptance of refugees of non-European origin. The latter is not implemented in practice, but Malta systematically resettles recognised refugees to third countries.<sup>1</sup> Rejected asylum seekers are also resettled by UNHCR or by the Government, rather than being expelled.

As regards the future procedure, which is due to enter into force in 2001, applications can be made "at any time". The "Refugee Commissioner" processes the case and issues a "recommendation" to the Minister who takes the decision. If the Commissioner recommends acceptance, the Minister may either accept it, or appeal. Appeals may be lodged within two weeks with the "Refugee Appeals Board". The Board's decision is suspensive and final. There is no judicial appeal, except if based on the Constitutional provisions on fundamental human rights<sup>2</sup>. The concepts of manifestly unfounded procedure, of safe third country and of safe country of origin have been introduced, providing the grounds for a possible "accelerated procedure". The principle of non-refoulement, applicable to all foreigners and not only to asylum seekers, is quoted, as well as humanitarian protection.

Asylum seekers will have to reside in specified places. A work permit may be issued to them. (Currently, welfare arrangements are mainly carried out by Church groups. Asylum seekers are sometimes detained together with criminals.)

Refugees will be granted residence permits (which do not entitle them to work without special authorisation issued in a discretionary way.) The possibility of family reunification is provided for, if the family members are already in Malta or "if they join" the refugee in Malta.

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<sup>1</sup> Despite Malta has announced its wish to lift the reservations, the Act of June 2000 still makes a clear mention thereof.

<sup>2</sup> This exception does not apply in an accelerated procedure.

## 2. *Still pending unsettled questions.*

The new Act does not raise concern, nor does Malta's ability to implement it properly.

However, an actual independence of the "Refugee Appeals Board" will require evaluation, when the time comes.<sup>1</sup> The matter is of importance, since notably this Appeal body is the very final decision-taker in accelerated procedures.<sup>2</sup>

Finally, the Maltese reservations to the Geneva Convention are not unimportant. As a result, refugees have poor access to work and unclear access to family reunification<sup>3</sup>, and more generally to systematic and informal resettling in third countries. Whether this policy is compatible with the *acquis* (ECHR, Dublin Convention) is doubtful. It is clear that Malta has limited absorption capacity. At least the possibility of resettlement should not influence the decision to grant or refuse Refugee Status, and the risk thereof should be taken into account. Besides, resettlement policy is better be supported by international Acts.

## 3. *Preparation for accession to the Dublin Convention*

The prospect of accession to the Dublin Convention has been taken into account in part in the Act of June 2000. In addition, some tools already exist (central register of foreigners, on-line connections at border crossing points) but central storage/comparison of fingerprints and a central visa database must still be established, as well as legislation on data protection.<sup>4</sup> The 1981 Strasbourg Convention still has to be ratified.

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<sup>1</sup> Consisting of 3 persons appointed by the Prime Minister. The conditions of their removals are strictly defined.

<sup>2</sup> And since the relative importance the Act devotes to these (fully described) procedures, is likely to multiply their use.

<sup>3</sup> Family members can join, but have no right to do so, nor has clearly the Refugee the right to ask for it.

<sup>4</sup> Access, entry, modification or deletion of data is regulated by internal police protocols only.

## **D. Police and customs**

### **1. Police**

#### *a. Structure*

The main law enforcement agencies in Malta are the Police, the Armed Forces and the Customs. The powers of Customs are limited to effect searches in the Customs area and along the immediate foreshore. Interrogations and prosecutions are however also carried out by the Police. The Armed Forces of Malta also have the same duties as the Police during searches in limited circumstances (e.g. evasion of customs duty and drug offences). However, any person found in contravention of the law has to be surrendered to the Police for investigations.

There are 'ad hoc' arrangements between these agencies; when necessary they work closely together.

The Malta Police are a component of the Ministry of Home Affairs and are headed by a Commissioner of Police. They are organised in two regions and ten districts. Special police units include the Criminal Investigation Department, the Drugs Squad, the Economic Crimes Unit, the Forensic Laboratory, the Vice Squad, the Strategy and Planning Unit, The Mounted Section, the Traffic Branch and the Security Department, including the Immigration Branch, the Computer Section and the Interpol National Central Bureau.

In 1995, an agreement was reached between the Commissioner of Police and the Ombudsman on special processes to be followed in instances of complaints against the Force. The Office of the Ombudsman has non-executive authority over the Commissioner of Police. In instances of corruption, the Ombudsman is empowered to bring in the Permanent Commission Against Corruption to investigate the case. In January 1999, an Internal Affairs Unit was established to investigate all complaints made against members of the Police Force.

The National Drugs Intelligence Unit (NDIU) is an intelligence-gathering agency comprising the Malta Police, the Customs Department and the Armed Forces of Malta, incorporated within the Security Services, whose main task is to collect intelligence to combat drug trafficking and money laundering. The Malta Security Service is also assigned to assist the police and collect information in areas of organised crime, espionage, terrorism and protection of national security.

Malta has no liaison officers posted abroad and no foreign officers are posted in Malta. Secondment of liaison officers to Europol should in future be possible. Malta does not yet have a Pre-accession Pact on Organised Crime with the EU. Practical measures following the principles listed in the Pact have either been adopted or are under preparation. Action has already been taken to explore the possibility of Malta concluding a bilateral co-operation agreement with Europol. A Europol liaison office will be set up within the Police Special Branch.

Malta must adopt a law on personal data protection before it can participate in Europol. According to the most recent information available, the Information Practices Working Group submitted a draft White Paper on Information Practices Legislation to Government on 4 April 2000. This covers three Bills: the Data Protection and Privacy Bill, the Electronic Communications and Transactions Bill and the Computer Misuse Bill. The Data Protection Bill is currently at Committee stage in the Maltese Parliament.

*b. Staff, training and equipment*

The current police strength is 1800 members. The Maltese population stands at around 360,000. This means that, on average, there is one police officer for every 200 citizens. The police are well organised in community policing, tactical operations and investigative branches.

The police enjoy high esteem of the Maltese population, which was highlighted in a survey of March and April 1998 (published in May 1998).

So far, there has never been any complaint of corruption.

The basic training, at all levels, is well conceived and adapted to the needs of the police. However, gaps of technical training have been identified with regard to Forensic Science; basic and further training in the field of financial investigations as well as training in the use of information technology in the area of economic crime; criminal analysis and profiling. The Special Assignment Group needs training with regard to techniques of intervention, negotiating with hi-jackers, etc.

c. Organised Crime<sup>1</sup>

Criminality in Malta is low by international standards. It is not believed that formal organised crime groups operate on the island. Nevertheless Malta has been active in introducing measures to address organised crime, providing the legislative framework necessary to provide assistance to countries where this is a problem.

Malta was among the first states to sign the UN Convention on Organised Crime in manifestation of its determination to associate itself with the international strategy to combat organised crime. Malta intends to introduce such legislative, administrative and organisational measures as may be necessary in order to implement the provisions of the Convention.

Malta has signed bilateral agreements on police co-operation and on combating illicit trafficking in drugs and organised crime with a number of Member States and with other countries. Similar bilateral agreements with other Member States and countries are at various stages of negotiation.

In 1999, according to the annual police report, 1,150 files were opened for investigations in general crime. Concerning the Criminal Investigation Department, there were 295 Court prosecution cases and 405 persons prosecuted.

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<sup>1</sup> The order in which the different types of crime are listed does not imply any ranking of their seriousness or importance

d. Drug-related crimes

Drug dealing is mostly domestically based although the narcotics being dealt are usually imported. There is no tradition of narcotics production. The authorities consider that the drug problem is manageable as the market is considered small, and, though it generates large illegal proceeds, they consider it does not present a major money-laundering problem. In 1999, 207 persons were arraigned for being in possession of drugs and 109 for trafficking drugs.

e. Trafficking in human beings

There is no known trafficking in human beings or child pornography.

f. Corruption

According to Maltese authorities, the problem of corruption does not arise within the police. However, personnel are monitored continuously. So far, there has never been any complaint of corruption, and the only cases investigated by the Internal Affairs Unit were complaints against personnel who either failed to enforce the law or failed to render the requested service.

The Permanent Commission against Corruption set up by the Government to fight corruption in the public administration seems to work slowly and its effectiveness could be improved. The office of the Ombudsman, which investigates allegations of corruption, continues to function well.<sup>1</sup>

g. Money Laundering

It is suspected that the major sources of illegal proceeds generated in Malta come from drug dealing and fraud and it is believed that the most common form of money laundering at present is that of local drug traffickers using local banks to launder the proceeds of their criminal activity within Malta. Offences of fraud, however, may have cross-border content and could lead to the transfer of illicit funds from abroad to Malta.

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<sup>1</sup> Commission's 2000 Regular Report

The Police Economic Crimes Unit is responsible for the investigation of money laundering cases, economic crime and computer crime. It totals 19 staff, which seems insufficient for pro-active policing in its field. The Police Drug Squad also investigates certain money laundering cases, which originate from police investigations into drugs related predicate offences. In 1999, 599 offences of economic crime were prosecuted including 18 under the Money Laundering Act (674 in 1998, including 13 for money laundering).

The Financial Intelligence Unit (FIU) is in the process of being established. A working group has drawn up a detailed report with specific recommendations on the setting up there-of. The Minister of Finance approved the report after it was circulated among the authorities concerned. A Bill laying down the legislative framework required for the setting up of the FIU is being drafted. In the meantime premises have been identified and plans are underway to cater to its financial and infrastructural needs (furnishing, communications, IT equipment, software etc.).

The Maltese system of nominee companies is perceived as an obstacle for the identification of beneficial owners in Maltese registered companies. It has been identified as a weakness in Malta's comprehensive anti-money laundering system.

While the entire nominee regime is being reviewed to address the problems that have been identified in this area, the regulators of the financial sector (the Central Bank, the Malta Financial Services Centre and the Stock Exchange) have given directives ad interim to banks and other operators in the financial sector to refuse to do business with nominee companies which are not willing to identify the beneficiary owners. In this way the financial operator will be able to identify any suspicious transactions performed by nominee companies and file a report with the Police and, eventually, with the FIU.

#### *h. Cyber crime*

Malta has no specific legislation relating to high-tech and computer criminality. Electronic communication legislation, which is expected to cover the combating of Cyber crime, is being drafted. A new Computer Misuse Bill, published in a white paper in May 2000, remains to be adopted by the Parliament.



## 2. Customs

The Customs Department is part of the Ministry of Finance. The number of staff is about 700. The Investigations Branch is divided into five Sections: Anti Fraud, Anti Drugs, Intelligence, Legal Office and Duty-free Cars.

The Customs Department and the Police collaborate within the Security Service, which in effect involves the attachment on a full time basis of a Senior Inspector of Customs and a number of Customs Assistants together with certain contingents of the Police and the Armed Forces of Malta. There is no formal agreement between the Customs Department and the Police, but enhancement of mutual assistance between the two Departments is planned through joint training workshops and lectures.

Important developments, based on a gaps and needs analysis, are underway and should lead to harmonisation with the acquis within 2 or 3 years. The project on "Customs/Tax change management", financed with the pre-accession funding, has started. It aims at putting the customs administration in a position to fully implement the acquis in this area by strengthening the legal, administrative and operational capacity of the Customs Department. It also includes technical support for a central intelligence unit, development of investigation and enforcement policy, establishment of effective intelligence teams and provision of modern technology to support enforcement. The implementation of these activities is planned to start in 2001.

The Commission (June 2000) presented a proposal for a Council Recommendation on "Negotiations with Malta for a protocol on mutual administrative assistance in customs matters".

Furthermore, Malta is preparing to ratify the International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences (Nairobi Convention).



Customs investigators are in various cases being hampered by current legislation. One problem is that Customs is not allowed by law to effectuate searches in premises for documents or computer software. Powers to effectuate searches in offices and business establishments are limited by legislation to searches in Customs areas and along the immediate foreshore. Customs are not empowered to detain and interrogate offenders, as this is the responsibility of the Police. Customs depend entirely on the Police when it comes to interrogating and prosecuting. The activities of the "Customs/Tax change management" project include harmonisation of customs legislation with the whole Acquis.

Malta has not signed any Memorandum of Understanding (MoU) with economic operators in combating drug trafficking since present legislation does not cover them. In a draft bill to amend Customs Ordinance provisions have been made to give MoU's a greater legal basis. At present, Malta is in the process of making the necessary preparations for the implementation of Memoranda of Understanding with a number of business organisations by the end of 2001.

For information on data protection please see chapter D.1.a structure in the part on Police co-operation.

## **E. Justice**

### **1. The judicial system**

#### *a. Structure*

The courts have been divided into Superior and Inferior Courts (Superior and Inferior indicate the extent of jurisdiction). In criminal matters, the Inferior Courts have jurisdiction to try infringements, offences and crimes subject to relatively short prison-sentences (i.e. petty crimes). They also conduct the preliminary enquiry in all indictable offences.

In addition to the Constitution, there are the Criminal Code, the Code of Police Laws, the Code of Organisation and Civil Procedure, the Commercial Code and the Civil Code.

The legal system is composed as follows: the Constitutional Court, the Court of Appeal, the Criminal Court, the Court of Criminal Appeal, the Civil Court (divided into First and Second Halls), the Courts of Magistrates, the Gozo (other island) Court, the Small Claims Tribunal and the Juvenile Court. Furthermore, there are Commissioners of Justice (small infringements), a Rent Regulation Board, the Rural Leases Control Board and the Land Arbitration Board. There is no administrative court but recourse and judicial review of administrative actions is possible.

The office of the Attorney General is a public office provided for in the Constitution as part of the executive, but is independent thereof. His salary and allowances are borne by the Consolidated Fund. In the exercise of his authority to institute, undertake and discontinue criminal proceedings, and within his other powers conferred on him by law, in his individual judgement, he is not subject to the direction or control of any authority. He is appointed by the President acting in accordance with the advice of the Prime Minister and has to be qualified for appointment as a judge of the Superior Courts; he shall vacate his office at the age of sixty. The Constitution prescribes the conditions for his removal from office.

The functioning of the courts is generally slow, both in terms of judicial processes and execution of judgements. Especially the number of civil cases pending is substantial, and their duration is very long. Judges are overloaded and have to handle more cases than can possibly be expected from them. There are concerns about the judiciary's ability to deliver justice within a "reasonable time" (cf. ECHR (Art. 6) and the Maltese Constitution). The backlog of cases seems to be more a problem of judicial practise than of shortcomings in legislation.

As judges are overburdened, there are also delays in passing judgements. Although judges try to hear cases in the shortest possible number of sittings (the Code of Procedure requires a maximum of two), this rarely happens in practice. Some advocates exploit the situation as there is considerable freedom for parties to produce evidence and the possibility to file additional pleas even at an advanced stage of proceedings, thus causing further delays. Also, the enforcement of certain judgements can pose problems of delay (e.g. when debtors have no money, the creditor will have to resort to a more complex, expensive and time-consuming procedure).

Some measures have been taken to counter such delays, such as arbitration and mediation as alternative methods of dispute settlement. Also, judges have been given additional powers to regulate the proceedings so as to avoid unnecessary delays and to defeat attempts by a party to bog down proceedings (requirement of written pleadings, preliminary hearing, limitation of appeals etc). Other measures include the creation of a Commission for the Administration of Justice, the broadening of jurisdiction of the inferior courts and the setting up of special tribunals (small claims). However, these measures have not yet produced significant results.

Other significant reasons for the slowness of the system are the shortage of legal office staff in the judiciary and court personnel, the lack of adequate equipment and modern technology.

According to one report -especially- judges do not consider the backlog of cases and the long pending periods of cases as something that can endanger the trust in the system. However, the shortcomings in the efficiency of the judicial systems have recently been addressed by the political authorities whereby the President of Malta stated at the beginning of 2000 that, 'if nothing is done to reform its functioning, the system is going to collapse'.

b. Independence and appointment

There are no shortcomings to mention.

c. Resources, training and remuneration

The main reasons of the slowness of the system are the shortage of office staff in the judiciary and the court personnel, the lack of adequate (modern) equipment. However, according to one report, increasing the number of judges would entail increasing the number of administrative and support staff. Apart from the costs involved, this would create problems of physical space, since the size of the courts does not easily allow for an increased number of judges. Allocated funds are said to be spent on training rather than premises<sup>1</sup>. Training in /updated informing on EU Law, its policies and institutions is both needed for the judiciary and the advocates. Courses on how to improve court administration are recommended to the judiciary.

As for human resources, some difficulties have emerged with regard to staff assigned to the sessions. It is very difficult to replace the deputy registrars, who are particularly qualified, in case of absence. As one of the results of the 1995 reform of the Civil Procedure Code, the idea emerged among court administration officials to have one personal “team” for every judge consisting of a Deputy Registrar, a Hall Clerk, a Court Marshall and an Usher. For various reasons, this has not been achieved. Due to the shortage of staff, legally trained personnel is - on a case by case basis - shifted to mere administrative functions and vice versa. This causes administrative shortcomings or gaps since staff members have to work on tasks for which they are not (or over-) qualified.

The computerisation of the courts would (most probably) improve both access to legal sources and administrative managerial aspects and would probably make the handling of cases more effective and expedite.

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<sup>1</sup> which is not necessarily bad

d. Commercial and Real Estate Registers

No information available.

**2. Criminal Law and Procedure (including human rights)**

General aspects

Although legal aid, the right to a fair trial and interpretation are provided for, the right to a speedy trial in 'reasonable' time is only provided for in criminal matters. It has been reported that certain persons detained by the police in Malta did not have access to a lawyer from the very outset of their custody and that conditions of detention and medical care are unsatisfactory. However, other reports mentioned the basic and human rights to be fully respected, so further practical information on this point would be desirable.

Maltese law does not contain a definition of a criminal organisation but it is considered that the provisions of the Joint Action are partially covered (by the law) as there are specified offences to which the term conspiracy applies. It is envisaged to extend the concept of conspiracy to all serious crimes. Furthermore, as to racism and xenophobia, there are plans to enact legislation which seeks to address the phenomena in a more comprehensive manner.

Judicial Co-operation

Malta considers that manpower difficulties may restrict the number of liaison magistrates that Malta could have.

According to one Member State, previous problems with regard to co-operation (in particular concerning extradition) have diminished. Another Member State mentions that with regard to mutual assistance, the co-operation so far has not raised any doubts as to Malta's willingness to fulfil its international obligations to the best of its ability. Contacts take place in a normal fashion and there are no language problems.

### Conventions

Maltese law covers active and passive corruption, but not in the private sector. Malta plans to introduce legislation to that extent. The present definition of a Public Officer/ Servant cannot be applied to Community Officials. A bill to extend the existing provisions of the Criminal Code relating to bribery of government officials to officials of foreign governments and international organisations is soon to be presented to Parliament. This should enable ratification of the relevant Council of Europe and OECD Conventions.

Malta has ratified the European Convention on Extradition and its protocols, but not the protocols to the European Convention on Mutual Assistance in Criminal Matters. The European Convention on the International Validity of Criminal Judgements requires the adoption of a particularly complicated and detailed law in order to be implemented in the Maltese legal system, even though it could be accepted in principle. The same goes for the European Convention on the Transfer of Criminal Proceedings in Criminal Matters (1972) and the Convention between the EU Member States on the Transfer of Proceedings in Criminal Matters (1990). Their implementation shall require the national law to be considerably changed.

### Bilateral Agreements

No information available.

## **3. Civil Law and Procedure**

### General aspects

As only in criminal matters there is a right to a trial in 'reasonable' time, the number of pending civil cases and their duration is substantial (viz. Structure).

### Community Acts/Conventions

Concerning the adoption of conventions in the field of judicial co-operation in civil matters, the existing legislation is undergoing a complete review to identify where it may not comply with the relevant *acquis*.

With regard to the Convention of 26 May 1997<sup>1</sup> (now the Council Regulation on the Service in the Member States of Judicial and Extrajudicial Documents in Civil or Commercial Matters), documents are presently transmitted through the Ministry of Foreign Affairs by Officers of the Attorney General. Service by post will be accepted in Malta provided that the Office of the Attorney General receives a copy of the Act to be served and details of the person to be served.

With respect to the Rome Convention, Malta has to prepare the necessary legislation in order to allow for swift implementation of the convention after accession, specifically in relation to the courts, which may be designated for that purpose. Malta has not yet been invited to join the Lugano Convention but would like to become party to it.

More information is needed on a number of legal instruments<sup>2</sup>.

### Conventions

Malta has not yet ratified the Hague Convention of 1965 on Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, but a bill is being drafted in order to be able to ratify it. Regarding the Hague Convention of 25.10.1980 on International Access to Justice, the bill to accede to this convention is still in the drafting stage.

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<sup>1</sup> The Convention of 26 May 1997 on the Service in the EU Member States of Judicial and Extra-judicial Documents in Civil and Commercial Matters is replaced by Regulation n° 1348/2000 of 29 May 2000 which will enter into force on 31 May 2001

<sup>2</sup> -Joint Action of 22.11.1996 concerning Measures Protecting against the Effects of the Extra Territorial Application of Legislation Adopted by a third country, and actions based thereon or resulting therefrom; Convention of 25.5.1987 abolishing the Legalisation of Documents in the Member States of the European Communities; Convention between the Member States of the EC of 6.11.1990 on the Simplification of Procedures for the Recovery of Maintenance Payments



Accession to the Convention on Civil Procedure (The Hague 1954) is still being studied. According to the Attorney General, most of the provisions of this Convention are covered by the Convention on the Service Abroad of Judicial and Extra-Judicial Documents in Civil and Commercial Matters, the Convention on the Taking of Evidence Abroad in Civil or Commercial Matters and the Convention on International Access to Justice and thus if Malta concedes to these three Conventions, it considers that accession to this one would be of limited use.

More information is needed on a number of Conventions<sup>1</sup>.

### Bilateral agreements

From the information received, mutual assistance with Malta does take place but on a small scale. Therefore, little can be said about practical difficulties in the proceedings. There are reports, however, that the Maltese authorities usually take a fairly long time (1 year or more) to deal with requests.

### Data Protection

Malta should adopt legislation on data protection as soon as possible. In April 2000, the Maltese Information Practices Working Group submitted a draft White Paper on Information Practices Legislation to the Government. This covers three bills: the Data Protection and Privacy Bill, the Electronic Communications and Transactions Bill and the Computer Misuse Bill. The Data Protection Bill is currently at committee stage in Parliament, and therefore there is no independent supervisory authority.

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<sup>1</sup> 1958 UN Convention on the Recognition and Enforcement of Foreign Arbitration Awards, 1965 Washington Convention governing Disputes concerning Investments between States and Individuals of other States, 1956 UN Convention on Enforcement of Maintenance Claims Abroad



## **IV. CONCLUSIONS**

### **A. Border management**

Malta is a special case in the field of border management. Due to its geographical position it may become a very important route for illegal immigration into the EU-area. On the other hand it is possible to create effective border management because Malta is an island. At the moment no sufficiently reliable border security system exists yet along this future external border of the EU. Main gaps are lack of an overall strategy and inadequate equipment for blue border surveillance and travel document control as well as a shortage of a SIS-compatible ADP-system. More specific training of personnel responsible for border security is also necessary.

There is no separate and specially trained border police in Malta. These tasks are divided between the Police and the Armed Forces of Malta. The Police has the main responsibility for border police tasks and the AFM carries out its police tasks on behalf of the Police. The current structure for border security might give rise to concern in terms of efficient implementation of the acquis. It must be monitored whether the interests as well as the priorities of the AFM coincide with those of the police in the field of internal security, in order to avoid a situation in which there is no consistent and coherent approach to border security and only a limited capability for rapid reaction. This could especially be a problem if the border situation and the illegal immigration situation worsens. Continuous and necessary long-term development of the border security system could also be endangered if nobody is responsible for the system as a whole. There is a need for more precise identification and clarification of responsibilities in the field of border security.

### **B. Migration**

The migratory risk is not high in Malta, considering its features and its experience in dealing with Migration.

The security risk is far higher. Malta currently regulates migration in a very different way from the EU. Notably, North Africa is currently visa-free, except Algeria, (which enjoys, incidentally, a free visa regime.) Moreover, checking 1.2 Million persons at the border only is clearly not what is required by the acquis.

Therefore Malta has to require visas from risk-countries, and either equip its consulates properly in order for them to issue consular visas, or allow foreign consulates to do so on their behalf. This important adjustment should be made in time for allowing evaluation before accession, since proper implementation can hardly be achieved overnight.

Finally, in order to comply with the Copenhagen criteria (Rule of Law, Human Rights), Malta still has to establish appropriate legislation on what happens to a foreigner after legal entry.

### **C. Asylum**

The actual independence of the Appeals body will require evaluation. The state of technical preparation for implementing the Dublin Convention is lagging behind.

Finally, the Maltese reservations to the Geneva Convention are not unimportant: as a result, the archipelago systematically resettles its refugees and, consequently, grants them poor rights, when it comes to access to work and to family reunification. The objective reasons thereof have the virtue of being clear. However, Malta still has to present proposals on how it intends to bring this in line with the Acquis.

### **D. Police and customs**

The problem of organised crime could aggravate in Malta upon accession. Therefore, taking measures to meet this challenge should be continued with an aim to strengthen the law enforcement authorities, in particular by appropriate training in the fields of forensic science, financial investigations and criminal analysis as well as reinforced staffing of the Economic Crime Unit. A comprehensive strategy for combating organised crime should be established.

It is recommended to establish a Financial Intelligence Unit (FIU) as foreseen by the Maltese authorities. The review of the necessary changes to be made to the current legislation to prevent money laundering, in order to comply fully with the FATF recommendations in the field of nominee companies, should be pursued.

Malta needs to ratify the Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (Strasbourg, 1981) and to adopt domestic legislation on data protection before it can participate in Europol.

In the area of customs co-operation, effectiveness could be improved by updating the relevant legislation to give wider powers to Customs investigators. If prosecution is to remain a Police responsibility, closer collaboration in the preparation of Court cases is essential.

Mutual assistance between the Customs Department and the Police is organised through joint training workshops and lectures. However, a formal police/customs agreement in the fight against drugs should be established.

The Maltese customs administration should continue its preparations for and the foreseen implementation of a Memoranda of Understanding programme on the co-operation between customs authorities and business organisations in combating drug trafficking.

Efforts to improve the efficiency of the customs computer network will have to be pursued, with a view to bringing it in line with the EU Customs Information System.

## **E. Justice**

In general, the functioning of the courts and judicial proceedings remain slow. This applies both to the judicial process and to delays in executing judgements. There is a large backlog of (civil) cases some of which have been pending for many years. The current system leads to inefficiency and delays in civil litigation. Although independence of the judiciary is well secured, the system of courts (11 different courts) seems rather complicated.

Main reasons for the above-mentioned slowness of the system are the shortage of office staff in the judiciary and court personnel and the lack of adequate equipment and modern technology. Continuous and up-to-date training of the judiciary and advocates in EU law must be enhanced, and training of the judiciary in administration of courts would be useful.

The premises are currently hardly sufficient to house the judiciary and its administrative staff.

Although legal aid, the right to a fair trial and interpretation are provided for, the right to a speedy trial is not part of the Constitution and only in criminal matters is there a right to a trial within 'reasonable' time. Malta is well on its way to align its legislation to the relevant acquis, though in some areas implementing legislation and further alignment is needed (corruption, extradition, international validity of criminal judgements, transfer of criminal proceedings in criminal matters). In some areas implementation of Conventions shall require considerable changes to the national law.

The number of pending civil cases and their duration is substantial. Concerning judicial co-operation in civil matters, the existing legislation is being completely reviewed for compliance with the relevant acquis. Malta still needs to align its legislation in a number of areas and should adopt legislation on data protection as soon as possible.

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