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# RESTREINT UE



COUNCIL OF  
THE EUROPEAN UNION

Brussels, 26 November 2002

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## REPORT

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From : the General Secretariat  
To : the Collective Evaluation Working Party  
No. prev. doc. : 13381/02 EVAL 40 ELARG 332 1 RESTREINT  
Subject : Draft revised country report on Malta

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### I. INTRODUCTION

(...)

### II. OVERVIEW OF DEVELOPMENT

#### A. Border Security

##### 1. *Formal acquis*

The Immigration Branch police officers, who are the main responsible authorities in the field of border security together with the Armed Forces of Malta (AFM) when carrying out police duties, have sufficient legal powers to carry out border checks and conduct investigations. However, at present, the civilian immigration officers / customs do not have sufficient powers e.g of search or arrest, though under the current legislation, the Principle Immigration Officer may delegate his powers to them without the need for new laws. The regularisation of the status of the civilian immigration staff at the airport is an issue which must be resolved before accession.

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At present the officers are regarded as temporarily transferred from their parent departments elsewhere in the civil service. They will need to be given a permanent status which, ideally, should include some sort of career structure e.g. the possibility of promotion. At the same time, they should be made subject to a code of conduct<sup>1</sup>. The authorities are aware of the need to resolve this issue.

Concerning the legal bases for inter-agency co-operation of law enforcement authorities and the division of tasks and responsibilities, these appear to be adequately set down in the law. The Immigration Act (2000) provides that the Principle Immigration Officer (in practice, the Commissioner of Police) has overall responsibility for border management. Other agencies - principally the AFM- assist him in the discharge of this duty. The Malta Armed Forces Act accords all the powers of a police inspector to commissioned officers of the AFM, but in practice -when individuals are apprehended- they are handed over to the police as soon as they come ashore.

The primary role of the AFM in border management (including in connection to national databases) is to ensure the integrity of Malta's airspace and waters, i.e. the maritime border and, in support of the police, to escort those interdicted at sea to the shoreline. As well as operational cooperation with the police, they exchange information with each other. The police pass to the AFM all relevant information and intelligence received from Interpol relating to movements of vessels suspected or known to be involved in the trafficking of illegal migrants as well as information on individuals suspected of being involved in the organisation of such traffic. The police also provide the AFM with information on the activities of those suspected of involvement in the transport of illegal migrants from Malta to Sicily. The AFM however has no access to police databases and there are no common databases. There is no central authority ("situation centre") responsible for systematic border and migration-related information gathering, -processing, and -distributing or for maintaining a real-time border situation picture to be able to react in time. In turn, the AFM pass information received from military sources, including through their own air and sea assets, to the police. In criminal investigations, the AFM play no part other than as a witness.

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<sup>1</sup> At present their conditions of service are less rigorous than those of the police performing border control duties.

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With regard to the visa issuing procedures at the borders, this practice is aimed to discontinue before accession. The question is largely logistical and discussions are currently undertaken at high level on how to best manage the changeover. The Twinning Project provides training for consular staff on the requirements of the Common Consular Instructions. A decision on the creation of a central issuing authority was expected to be taken end of October 2002<sup>1</sup>.

Concerning carriers' liability, the Immigration (Amendment) Bill currently before Parliament, proposes legislative provisions for sanctions against carriers providing for a maximum penalty of Lm 5000/€ 12,500 "or such other maximum sum as may be prescribed by the Minister". An assessment of their effectiveness will only be possible once the Bill has been enacted. Within the framework of the Twinning Project, the UK (expert) has discussed the issue with the Maltese authorities and has given a detailed exposition of measures that must be taken to set up the necessary administrative structures for the efficient handling of the scheme.

As to Malta's timeframe for adapting its international airport and harbours to the requirements of the Schengen *acquis* (physical separation of passengers from Schengen and non-Schengen flights), as the amount of physical work to be carried out will be relatively low -given the structure of the existing buildings- adaptations will probably be achievable over a fairly short period.

## 2. *Administrative capacity*

A number of issues remain to be resolved before accession. There is a need to improve the level of equipment available to the AFM in their border management role. This should include modern high-speed patrol vessels to replace the current ageing fleet. Some equipment, which will enhance their capacity for night operations, is being procured under the Twinning Project.

There is also a need for more accommodation for the immigration staff at the airport, to include rooms for interviews and document examination. It is understood that these will be provided within the development work to reconfigure the airport to the Schengen requirements.

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<sup>1</sup> updated information would be desirable

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At present, all supervisory immigration and AFM staff receive training in the Schengen 4-tier border security model under the Twinning Project and -within the unavoidable resource constraints of a small island state- it appears to be working reasonable effectively. All supervisory officers in the Immigration Branch of the police and the Maritime Squadron of the AFM have been given personal copies of the Schengen Catalogue.

More specifically, the following 4-tier approach is being actively pursued:

1. forgery detection training and training on the requirements, including the technical and security dimension, of the Common Consular Instructions on the issuing of visas;
2. close cooperation with Italy and its immediate North African neighbours; it is also active in the various cooperative mechanisms for the Mediterranean region;
3. training and upgrading of equipment (Twinning);
4. training in enhanced search, checks and surveillance measures is provided through Twinning.

Given its size and limited resources, Malta has a good record on repatriations/returns (e.g. recently 220 Eritreans over a 4-day period).

With regard to the creation of a comprehensive national risk-assessment mechanism and its effective implementation<sup>1</sup>, this function is the responsibility of the Assistant Commissioner of Police in charge of both the Special Branch and the Immigration Branch.

Its effective operation has been enhanced by recent practical experience gained from managing - what for Malta has been- a massive influx of irregular migrants<sup>2</sup>.

Concerning border authorities' skills and equipment to carry out border checks according to Schengen principles (especially at the airport), apart from the mentioned training some equipment (e.g. in the field of forgery detection) is also being acquired under the Twinning Project. Once delivered and deployed, the border authorities expect to be able to carry out checks according to the appropriate standard. The provision of additional accommodation at the airport will also improve this ability.

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<sup>1</sup> i.e. one chief body with main responsibility for creation and maintenance of national situational awareness and possibility and planning capacity to use all necessary resources without delay

<sup>2</sup> bound for Italy, but whose boats have foundered close to the Maltese islands

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With reference to the border checking procedure<sup>1</sup>, all immigration staff is trained in interviewing skills, document checking procedures, professional standards and procedures for admission and refusal. This enhances the standard of border checking procedures.

### 3. *Implementing performance*

In general, the quality of border security is good and improving. The current Twinning Project on border management and asylum addresses specifically issues of border security. The training of all front line immigration staff and members of the Maritime Squadron of the AFM in the requirements for securing the Schengen external border is already showing benefits. For example, there has been a marked increase in the detection of forged and falsified travel documents<sup>2</sup>.

A Schengen Project Team, comprising representatives of police, customs, Home and Foreign Affairs Ministries, AFM and the Prime Minister's Office, meets regularly to coordinate on a national scale to ensure that there are no gaps in border security.

Internationally, there is very good cooperation with Italy and a good working relationship with the North African neighbours to the south. It must however be mentioned here that there is room for improvement as regards international/bilateral cooperation on the spot (i.e. day-to-day contact with other border services at operational level): cooperation at working level with other border services is less than satisfactory: such contact at present has to be routed through Police Headquarters because immigration staff at the airport do not have access to an international telephone line.

The rapid reaction capacity in emergency situations and all weather conditions for checks on cruisers, fishing vessels and pleasure boats, has been fully tested in real-time operations over recent months. Thanks to good operational cooperation with Italy, it has improved.

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<sup>1</sup> First line checks and the method of second level checks.

<sup>2</sup> A racket using Malta as a stepping stone to the EU for Chinese illegal workers travelling on falsified Korean and Japanese passports appears to have been stopped.

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However, there is still a need for high-speed patrol vessels. Checks on cruise liners, fishing vessels and pleasure boats form the bulk of Malta's border management task and are carried out satisfactorily to well established procedures, although equipment should be enhanced.. The specific requirements of the Common Manual in this area have been the subject of training for all relevant staff under the Twinning Project.

There is no evidence that the border security system is affected by corruption. The Internal Affairs Unit of the police reportedly continues to monitor personnel on an ongoing basis.

With regard to availability of a reliable and up-to-date national border situation picture (situational awareness), as the number of actors involved is small, there is always an up-to-date appreciation of the national border situation. Training on risk analysis and intelligence-based operations is provided under the Twinning Project.

## B. Migration

### 1. *Formal acquis*

Malta has made progress in aligning its **visa policy** with that of the EU. As from October 2002, in line with the timetable established by the Government for alignment with the EU visa list, Malta has introduced visa obligations for nationals from a first group of 38 countries. It foresees introduction of visas for another group of countries (Turkey, Morocco, Egypt, Tunisia) on 1 January 2003, while nationals of Libya will be required to have a visa to enter Maltese territory as of the date of Malta's accession to the EU. Malta still needs to abolish visa requirements for Romanian citizens.

Although Malta does not yet issue airport transit visas, measures were introduced regarding the endorsement of the passports of nationals of the twelve countries requiring an airport transit visa under the Schengen *acquis*. The Immigration Police has embarked on an information campaign by including information on the new visa requirement in magazines and by informing travel agencies.

In relation to **migration**, the necessary amendments to the Immigration Act still need to be approved by Parliament. Malta should align legislation with the *acquis* on the entry, stay and work of third country nationals for study purposes as well as with the Council Resolution of 30 November 1994 on the Admission of Third Country Nationals as self-employed persons.

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Malta should strengthen and implement measures to combat illegal immigration and extend legislation to cover the issue of detention procedures concerning persons having received “deportation orders” or persons whose entry has been refused, as well as sanctions against carriers.

A readmission agreement between Malta and Italy was signed in December 2001 and will come into force by the fourth quarter of 2002. Malta is currently negotiating readmission agreements with Egypt, Morocco, Tunisia, Algeria and Libya.

The Immigration Bill provides for regulations to be made to adopt the common visa list and procedures for visa issuance. Training of relevant personnel in visa policy and practices, including the necessary IT/SIS infrastructure, is provided through a Twinning Project.

The main purpose of the Bill is to "provide for the giving effect to any international obligation that may be entered into by Malta with regard to immigration matters and to facilitate the removal of prohibited immigrants from Malta while guaranteeing adequate legal safeguards". It is essentially an enabling instrument which allows for regulations to be made in all areas covered by the *acquis*. In that sense it should be sufficient to incorporate EU instruments in the field of entry, residence, work permits, family reunification etc. though these are not specifically addressed in terms. Provision is also made in the Bill for sanctions against carriers, and penalties for facilitation, harbouring and illegally employing foreign nationals have been increased from €1250 or six months imprisonment to €12,500 or two years imprisonment.

On 1 May 2002 the Criminal Code was amended to make trafficking in persons *per se* a criminal offence. The penalties provided for are imprisonment up to 12 years or a fine of € 25,000 or both.

## **2. Administrative capacity**

Not all diplomatic and consular missions abroad are provided with security and technical equipment including on-line connections with the central immigration authorities.



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## *3. Implementing performance*

With reference to trafficking, there has been a steady stream of Maltese nationals arrested, charged and convicted since 1993. There were 3 cases in 2000 and 2 cases in 2001. Earlier this year (2002), 2 Tunisians were charged and deported. A number of foreign nationals are currently being detained and investigated for their suspected involvement in trafficking of illegal migrants through Libya.

## *4. Summary*

The process of bringing Malta's legislation and structures into line with the justice and home affairs *acquis* is in overall terms developing satisfactorily. Progress has been substantial in the area of fighting illegal immigration. The legal framework and required administrative structures are largely in place.

Malta should, however, abolish its visa-regime for Romanian nationals and align its legislation with the *acquis* on the entry, stay and work of third country nationals for study purposes as well as with the Council Resolution of 30 November 1994 on the Admission of Third Country Nationals as self-employed persons. Furthermore the measures to combat illegal immigration should be implemented and strengthened. Legislation should be extended to cover the issue of detention procedures concerning persons having received "deportation orders" or persons whose entry has been refused, as well as to sanctions against carriers.

Malta should now provide all diplomatic and consular missions abroad with security and technical equipment including on-line connection with the central immigration authorities.

## C. Asylum

### 1. *Formal acquis*

Malta withdrew its geographical limitation to the Geneva Convention in December 2001. It also lifted fourteen out of seventeen reservations made when it signed the Convention, leaving three limitations referring to the issues of refugee seamen, naturalisation and the Government's obligation to offer public relief services to refugees. Implementing legislation for the Refugees Act was adopted in October 2001, providing for the comparison of fingerprints as well as other provisions needed for compliance with the criteria and mechanisms for determining the responsible Member State (Dublin Convention).

The required legislation in relation to refugees has thus to a large extent been enacted and has entered into force. Malta should now lift the remaining reservations. It should be noted that the Social Security Order, which came into force in October 2001, states that the provisions of the Social Security Act are to apply to refugees who, under the terms of the Refugees Act, are given refugee status. Work permits are only granted on the basis of an administrative practice.

### 2. *Administrative capacity*

Following the setting up in 2001 of the Refugee Commissioner's Office, a call for applications for the recruitment of refugee officials was issued in April 2002 and a training programme, starting in September, has been designed. Both the Refugee Commissioner's staff and the Appeals Board are now functioning properly in terms of the law. Following the selection of competent staff, training is being provided to all key players in the asylum process. A further increase of the staff of the Commissioner's office and other human resources responsible for processing requests is needed in order to be able to cope with a larger influx of asylum seekers.

Malta also needs to further strengthen the Independent Review Authority for asylum seekers.

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A reception centre for illegal immigrants and refugees was inaugurated in February 2002 adjacent to, but physically separated from, the immigration detention centre. However, it is small and Malta does not have the facilities to house a large number of refugees should a crisis situation arise. Already under the present circumstances the sheer pressure of numbers means that asylum seekers are currently being housed in other, makeshift, accommodation as well (military barracks and police accommodation). A suitable solution to that problem has yet to be found although the authorities do make every effort to ensure that the conditions under which asylum seekers are held pending consideration of their applications are as humane as circumstances allow them to be.

Efforts are also needed for the integration of recognised refugees.

### *3. Implementing performance*

From January to August 2002 the Refugee Commission dealt with a total of 194 applications (corresponding to 258 persons) and expressed "recommendations" (i.e. de facto decided) on 185 cases, as follows: 176 rejections, 9 recognitions, 35 humanitarian status. Two applications had been withdrawn and seven are still pending.

The appeals procedure appears to give rise to major concerns, both from a procedural as from a substantive point of view, in consideration of the following: the Board has, according to the law, the right, but not the obligation to interview the applicant. So far, it has never proceeded to a personal hearing of an applicant. It would appear that the Board, so far, has just been endorsing the first instance decisions, without carrying out its own evaluation of the claims and of the respective first instance decisions. So far, the Board has not once decided on an appeal in the positive. Negative decisions are notified in two-line standard letters, without providing any legal or substantive reasoning regarding the specific case.

Applications for family reunification are properly considered, but according to reliable sources there have so far been no cases where family reunification has been granted.

## 4. Summary

Malta has lifted its geographical reservation to the Geneva Convention and made considerable progress in the practical implementation of asylum rights. It should now lift the remaining reservations.

An increase of the staff of the Refugee Commissioner's Office and other human resources responsible for processing requests is needed in order to be able to cope with a larger influx of asylum seekers.

Malta also needs to further strengthen the role of the Independent Review Authority for asylum seekers.

A suitable solution must be found for the problems of housing and conditions of detaining of asylum seekers. Efforts are also needed for the integration of recognised refugees. Finally, the appeals procedure gives rise to major concerns both from a procedural as from a substantive point of view.

### D. Police and Customs

#### a) Police

##### 1. Formal Acquis

Amendments to the Criminal Code were enacted by Parliament on 9 April 2002. The amendments aim to bring Maltese legislation in line with the acquis on the following aspects: trafficking of human beings; the extension of the existing provisions on corruption to include bribery of officials of foreign Governments and international organisations; the Council of Europe Criminal Law Convention on Corruption; the Joint Action of 3 December 1998 on money laundering; the Protocol of 27 September 1996 to the Convention on the Protection of the European Community's Financial Interests; measures to enable ratification of the Additional Protocol on Mutual Assistance in Criminal Matters; the simplified extradition procedure; the Joint Action of 29 December 1998 making it a criminal offence to participate in a criminal organisation in the member states of the

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EU; provisions for the offences of racism and xenophobia; child pornography on the internet; the UN Convention against transnational organised crime and its protocols against the smuggling of migrants by land, sea. Amendments to the Civil Code are being drafted in order to enable Malta to sign and ratify the Council of Europe Civil Law Convention on Corruption. Amendments to the 1960 Malta Police Ordinance were adopted by Parliament on 16 July 2002. The ordinance now contains provisions for a witness and victim protection programme, as well as measures concerning individuals who co-operate with the judicial process. The amendments to the Malta Police Ordinance also include amendments to the Arms Ordinance bringing Maltese legislation in line with the *acquis*. Malta adopted domestic legislation on data protection on 14 December 2001. Regulations were adopted in March 2002 providing for the setting up of the independent national supervisory authority and for a Data Protection Appeals Tribunal Board. A Data Protection Commissioner has been appointed for a period of five years.

Malta has established the necessary legal and administrative framework, however implementing legislation on the use of personal data by Police, Security Service and Customs still needs to be approved.

A number of other important pieces of legislation have also been introduced as of late which have had an impact on the functioning of the Malta Police Force. Significant among these is the Ombudsman Act of 1995 (Viz also under 3. Implementing performance). The implementation of the recently adopted legislation and the development of the independent supervisory authority should be monitored. Malta still needs to ratify the European Convention for the Protection of Individuals with regard to the Automatic Processing of Data.

**(...) Malta signed and ratified the European Convention of 20 April 1959 on Mutual Assistance in Criminal matters but still needs to ratify the Additional Protocol (signed on 20 November 2000) and the Second Additional Protocol to this Convention (signed on 18 September 2002).** Malta should establish a comprehensive strategy to fight new types of organised crime and to comply, as soon as possible, with the *acquis* and other international standards on the fight against the misuse of the financial systems and financing terrorism.

## 2. Administrative capacity

The Malta Police Force is the principal Law Enforcement Agency on the island. However, other enforcement responsibilities fall under the jurisdiction of the Customs Department and the Armed

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Forces respectively. The Military are permitted to perform traditional police functions in limited circumstances (e.g. evasion of customs duties, drug offences and border surveillance). The objectives of the Malta Police are the maintenance of public order and peace and the enforcement of all laws as well as the detection and apprehension of offenders. The Police Commissioner has the command, direction, management and superintendence of the Police Force under the effective supervision of the Government and may be either a civilian or career member of the force. Malta is divided into ten Police Districts, and each District is again subdivided into Divisions. The policing duties have been categorised into three major divisions reflecting the mission and objectives of the Police Force: The District Policing Division (crime prevention in towns and communities); the Protective Services Division (the protection of citizens through the enforcement of the law); and the Investigative Services Division (responsible for the detection and collection of criminal evidence).

The Malta Police Force also comprises other Branches: Traffic, the Forensic Department, the Special Assignments Group, the Immigration Police, the Vehicle Records Office, Criminal Records Office and Weapons Office. Four computerised Information Systems are currently in use by the Police Force. These are the Immigration Control System (ICS), the Police Information Reporting System (PIRS), the Weapons Registration System (WRS) and the Vehicle Registration and Administration System (VERA)

Presently, the strength of the Malta Police Force is 1800 officers, including 250 female officers. It could be considered to be large in terms of the population of Malta. However, police duties cover a wide range of tasks other than the basic responsibilities of ensuring public order, peace and the prevention and detection of crime. A large number of officers are involved in clerical or administrative duties. These additional responsibilities have placed considerable strain on staff resources of the Force and diverted resources from what should be core-policing activities. Police officers are only seen in police stations, patrolling and occasional roadblocks. Police must be moved away from administrative duties to more pro-active roles. During the past years, the Police Force has embarked on a process of reducing the number of officers doing non-core-policing duties and at the same time increasing the number of officers in the specialised branches. Civilians were employed at the airport passport control section, the Human Resources Branch, the IT section and the Technical Services Section. This process is still ongoing and the Police Force is working on replacing other police officers performing administrative duties by engaging further civilian staff. All the sections within the police force feel that they need more personnel to cope with the steadily increasing workload. One of the sections in need of more staff is the Special Assignment Group

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Section where the workload increases on a daily basis. The Special Assignment Group has a workforce of 86 and needs at least 22 more officers. The drug squad and other sectors in the Police force are not very different. Some police experts indicate that ensuring law and order and addressing the other growing challenges of police work implies a need for an increase in the number of police officers performing operational duties.

There is a need for improving the working conditions of police officers and providing the necessary equipment to facilitate their tasks. More needs to be done regarding the structural upgrading of police stations. It is important to ensure a suitable working environment which will lead to improve productivity and greater efficiency. More investments should be made to provide police stations with more modern office and communications equipment. Malta has already achieved some progress in the installation of IT networks.

Such networks and computerised information systems will provide officers with improved access to policing data for operational and administrative use. Further work however needs to be carried out in this area, in order to ensure that the information collected is accurate, available and of use to all. Malta should continue enhancing the Police Incident Reporting System (PIRS, which host a large portion of police operational data) and developing the Crime Analysis Unit which will detect criminal trends and patterns.

### *Training*

As regard recruitment of constables, a school-leaving certificate is required as a minimum academic qualification. The candidate must be at least 18 years old, and have a record of good conduct. Successful candidates complete six months of Police Academy training. The training given in the Academy consists of basic police duties. In case of recruitment of Officer Cadets, a Selection Board approved by the Public Service Commission interviews all applicants, and the successful candidates have to undergo a one year course at the University of Malta leading to a Certificate in Policing. Successful candidates are appointed as Inspector. Training of officer cadets consists of courses on criminal investigations and court procedures, forensic studies, computer studies, physiology, crime prevention and case law. As regards Superintendents and Assistant Commissioners, a Selection Board interviews applicants and marks are attributed in accordance with a selection criteria approved by the Public Service Commission. There are periodic in-service refresher courses for senior-level police officers.

At the recruitment stage there is a need to target the people with the best skills and place greater emphasis on career and performance reviews. Training is an integral part of the career of a police

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officer and therefore it is necessary to make efforts to ensure that training and the provision of specialist knowledge are high on the agenda. Particular attention needs to be given to training in the fields of forensic sciences, financial investigation and criminal analysis and to put special emphasis on ethical standards during the training period to reinforce a positive ethical culture within the Police Force.

The police should receive special training in dealing with persons from different backgrounds and cultures. It is intended to include this subject in the curriculum of the Police Academy in 2002.

### 3. *Implementing performance*

A major change in the organisational set-up in the last years was the creation of a strategically orientated top management structure. A Commission's Office, which comprises the strategy and planning function, was set up. It is responsible for assisting the Commissioner in the compilation and execution of the Force's operational strategy, and in monitoring, evaluating and controlling the Force's performance. It also assists in defining an appropriate mechanism that reviews and defines, on a continuous basis, the organisation's structure to combat crime more effectively. Malta carried out a strategic plan (1999-2001) which focused on:

- a) Motivating staff (developing staff and upgrading the working environment and equipment);
- b) Consolidating the fight against crime (strengthening the fight against drug trafficking/abuse, improved management and more efficient/effective use of resources in tackling crime); and
- c) Improving community relations (Public reassurance through visible and effective patrolling, making the Force more ethically professional, improving accountability to the public).

There is a high rate of public satisfaction with regard the performance of the police force.

Allegations of police misconduct are investigated by the police authorities and, if necessary, by the courts. The Internal Affairs Unit is responsible for receiving, investigating and acting upon complaints filed by the public. There have been some allegations of ill-treatment of non-citizens by police officers, although official investigations have not found such cases to be substantiated.



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In recent years, a number of important pieces of legislation have been introduced which have had an impact on the functioning of the Malta Police Force. Significant among these is the Ombudsman Act of 1995. A direct result of the introduction of this Act is the agreement reached between the Commissioner of Police and the Ombudsman on the role the Ombudsman would play in respect of matters concerning the Malta Police Force. It was agreed that the complainant should first file his complaint with the Force and only go to the Ombudsman if unsatisfied with the outcome of the police review. Furthermore, the office of the Ombudsman has one other key limitation: it has no executive authority over the Commissioner of the Police and can only give a recommendation. In August 2001 the Government published a white paper on police law that proposed forming a police board, composed of members of the public, to investigate complaints about police behaviour vested with independent investigating powers. Several public institutions and members of the media reacted favourably to the white paper, and the Government continues to evaluate the report's proposals. It would be useful to obtain information on developments in this area.

## *Bilateral agreements*

Malta concluded and signed bilateral co-operation agreements on organised crime with China, Greece, Sweden and Tunisia during 2001 and with Albania in 2002. Negotiations on similar agreement are ongoing with Belgium, Bulgaria, Canada, Czech Republic, Iran, Jordan, Latvia, Mexico, Morocco, Portugal, Rumania, Slovenia, South Africa, Ukraine and the United Kingdom. Malta has designated the Police unit dealing with international police co-operation as the central national body for issues related to organised crime. This unit is responsible for the channelling of enquiries received to the proper branches and sections within the Police Force. Malta has no liaison officers abroad, but it has stated that in case the need should arise it will deploy liaison officers in other states to combat any type of crime according to the rules of the Joint Action of 1996 providing for a common framework of the initiatives of the member states of the EU concerning liaison officers.

## *Crime trends*

Like all societies, Malta suffers from crime, most of which petty. It has a low rate of violent crime. Over the last years, criminal activity has been steadily on the increase. This increase is due mainly to a considerable surge in general thefts. Significant increases were recorded in thefts from retail outlets, pick-pocketing, thefts of vehicles and theft from residences. Theft from beaches, factories and armed robberies were on the decrease. Violent crimes, including murder and armed hold ups

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also decreased. When analysing patterns of crime, it can be observed that the most common types of crime occur in those areas of Malta where most economic activity takes place and where people tend to gather most, for instance, thefts from urban premises such as bars, hotels, and shops. The considerable increase in car thefts over the past years is also linked to a widespread car insurance fraud racket. However, apart from this racket, most cases of theft are linked to drug abuse. The drug abuse problem has escalated considerably over the past years in Malta. The higher incidence of drug abuse is seen as perfectly correlated with the increase in thefts, and the general upward trend of the crime rate. The months with the highest reported criminal activity were August and July. The month with the lowest crime rate was December. Other more serious crimes such as murder and rape are still relatively uncommon.

Statistical instruments for measuring crime rates should be improved. Violence against women is a problem, but the Government has taken steps to address this issue. A special police unit and several voluntary organisations provide support to victims of domestic violence. There is a hotline to assist victims of abuse through counselling and through referrals to legal assistance shelters.

The Police should continue to improve its performance in reducing crime levels. To achieve this effectively, it is of utmost importance that the police and community work together closer to combat crime, establishing partnerships with local Councils and private entities and the private sector for better law enforcement. Sustaining help from the wider community will undoubtedly improve the performance of the Force in tackling criminal offences with greater efficiency. The Police Force should assist the Local Councils in the setting up of further Neighbourhood Watch schemes, which were introduced in 1991, and in increasing the number of foot- and mobile patrols so that officers are more readily accessible to the public and can more rapidly respond in emergency situations. In 2001 the Police Force extended its Rapid Response System to ensure that mobile units can be promptly and accurately deployed at the scene of crimes and other incidents. Investment in the police force in terms of capital and recurrent expenditure, is a positive indication that the fight against crime is being stepped up.

### *Crime prevention*

There is no national approach towards crime prevention. However, the Criminal Investigation Department, although being a reactive unit, provides for the exploitation of situational crime prevention. For this purpose, this Department deploys police officers in those areas identified as most prone to crime. Although there is no national strategy, during 1999 the Malta Police Force

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published its first three-year Strategic Plan. Its main objective is to enhance the Force's planning and to give the right guidance and direction to the members of the Force. It was also designed to integrate and co-ordinate the various planning activities into a cyclical process that operates within the boundaries of a recognised time-scale, with scope for regular assessment of performance according to pre-determined goals.

## *Organised crime*

Malta is a small country, but this does not mean that crime that passes through and around Malta is not big crime. Drug trafficking in Malta started well before the nineties, with good connections with the Sicilian Mafia. The economic boom experienced in recent years, which opened the Maltese market to increased international trade meant that drug trafficking to the Islands flourished as well. Trafficking in stolen vehicles is also a matter of concern to the Police. Increased economic wellbeing has been attracting Russian individuals with connections to organised crime. These could create serious threats to the country especially if they start using Malta to support their organisations' global strategy. The Criminal Code makes it an offence for any person to promote, constitute, organise or finance an organisation of two or more persons with a view to committing criminal offences liable to be punished by imprisonment for four years or more. It is also an offence punishable with imprisonment for any person to belong to such an organisation.

(...) Malta should establish a comprehensive strategy to fight new types of organised crime and to comply, as soon as possible, with the acquis and other international standards on the fight against the misuse of the financial systems and financing terrorism.

## *Money laundering*

Malta ratified and fully implemented the 1990 Council of Europe Convention on Money Laundering on 1 March 2002. Amendments to the Prevention of Money Laundering Act providing for the establishment and the operational structure of the Financial Intelligence Units, entered into force in March 2002. The Chairman, Deputy Chairman and the other Board members of the FIU were appointed with effect from 24 January 2002. The FIU acts as a clearing house for reports on suspicious transactions and is responsible, among others, for gathering financial intelligence, analysing and supplementing reports on suspicious transactions and transmitting these reports to the Economic Crimes Unit of the Police for further investigation and possible prosecution. The administrative capacity of the FIU needs to be strengthened, in particular with the appointment of a police liaison officer. Malta is taking steps to be admitted to the OECD Working Group on Bribery

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in International Business Transactions. The Economic Crimes Unit of the Police is responsible for the collection and analysis of information related to suspicious transactions. With the setting up of the FIU, the Economic Crimes Unit will be relieved of the direct responsibility for the collection and analysis of intelligence, but it will continue to be responsible for investigations and prosecutions on the basis of information received from the FIU.

The Economic Crimes Unit's staff was reinforced in 2001 with six police officers, making a total of twenty-one officers.

## *Corruption*

Corruption is not considered a particular problem in Malta. The Permanent Commission Against Corruption Act and the Criminal Code provide the investigative and administrative basis to deal with offences of this nature. The recent amendments to the Criminal Code have aligned legislation to the Convention on the Protection of the European Communities' Financial Interests. However, certain aspects of Maltese legislation, related in particular to the definition of active corruption, criminal liability of heads of business and liability of legal persons, still need to be aligned. Malta should pay more attention to the fact that prevention through transparency and accountability standards is as important as repressive tools. See for more details chapter G. Corruption.

## *Drugs*

Maltese legislation with respect to the fight against trafficking in illicit drugs is already in line with the acquis. Malta is a party to various relevant United Nations Conventions in this area [the Single Convention on Narcotic Drugs (1961); the Protocol amending the Single Convention on Narcotic Drugs (1972), the Convention on Psychotropic Substance (1971) and the UN Convention against the Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988)]. Malta signed the Agreement on the Illicit Traffic by sea implementing Article 17 of the UN Convention against illicit Traffic in narcotic drugs and psychotropic substances on 14 September 2000. Malta signed in 2001 co-operation agreements in the fight against drug trafficking and organised crime with Tunisia, Sweden and Greece and is negotiating similar agreements with Bulgaria, Slovenia and the United Kingdom. To date, Malta has signed 14 co-operation bilateral agreements in this field.

Malta has not been and is not likely to become a significant player in the production or trafficking of illegal drugs. Drug trafficking to Malta and overall drug abuse is limited to small but increasing amounts of heroin, cocaine and ecstasy. However the country's large free-port container operations could be used for transfer of drug shipments by traffickers. Malta does not produce or have essential

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chemicals and hence is not a precursor or essential chemical source country. The fight against illicit drugs trafficking constitutes a high priority initiative for the Maltese Government. The Government of Malta maintains its serious anti-drug position through continued efforts to combat drug importation, distribution and use. Penalties for drug offences are very severe and can involve up to thirty years of imprisonment or life sentences in certain cases.

Various measures have been taken by the Maltese Government to reinforce administrative structures and legal deterrents for both traffickers and users. The Malta Security Service is the co-ordinating body for intelligence related to drug trafficking. The Security Service has as one of its main functions, the collection, evaluation and analysis of the information related to drug trafficking, money laundering and organised crime received from various sources as well as the dissemination of intelligence to other law enforcement agencies. These agencies include the Drugs Squad within the Malta Police Force, the Customs Department within the Ministry of Finance and the Armed Forces of Malta. These bodies are in communication with each other and all have access to the drug database, which is held by the Security Service. The Security Service also provides assistance in those particular cases involving long-term investigations with regard to extensive drug trafficking operations. The Police Drugs Squad was set up within the Malta Police Force to prevent, suppress and fight against drugs trafficking. In view of Government's commitment to reduce as far as possible the drug supply in Malta, funds have been allocated to the Ministry for Home Affairs, for the period 1/1/2001 – 31/12/2002, specifically for the acquisition of modern equipment required by the Drug Squad. The Customs Department within the Ministry of Finance also plays an active role in the fight against drugs. The Customs anti-drug squad has adopted risk management techniques for the selection of passengers and goods to be examined.

However, it should be emphasised that the official criminal investigation in each detected case is the exclusive responsibility of the Police Drug Squad. Modern drug law enforcement has to be based not only on raids, roadblocks and searches at port controls, but also on intelligence networks. It is imperative that personnel in intelligence units are given more adequate training in relation to intelligence gathering and surveillance of targets. The Drugs Squad should work more hand in hand with other law enforcement agencies. Training, improving international co-operation, resourcing key points at port controls, investing in modern equipment and technology, maintaining up to date intelligence databases, are key factors in the fight against drug trafficking.

The National Co-ordinating Commission against Drugs and Alcohol Abuse was set up in 1999 and is responsible for the co-ordination of government services and bodies active in the field of drug prevention. The Commission is constituted by a multidisciplinary forum of experts from different

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fields. Malta has a strategy in the fight against drugs, which focusses on the fight against drug trafficking and criminality and on prevention through social and educational programmes. Malta will participate in the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) as of January 2003. The National Commission against Drugs and Alcohol abuse will act as the European Information Network on Drugs and Drug Addiction (REITOX) focal point for the EMCDDA.

## *Terrorism*

Malta has associated itself fully with the conclusions of the extraordinary European Council of 21 September 2001. Malta ratified the 1999 United Nations Convention for the Suppression of the Financing of Terrorism on 11 November 2001.

## *Trafficking in human beings*

The amendments to the Criminal Code approved 2002, address the offence of trafficking in human beings and substantially increase the penalty for their illegal transportation.

## **b) Customs**

### **1. Formal Acquis**

A new Customs Code in line with the EC customs acquis was adopted in March 2002. The new provisions regrouped in the Customs Code replace a number of disparate texts, thereby improving internal cohesion and clarity, and mark an important advance in the alignment with the Community acquis.

### **2. Administrative capacity**

The executive powers of the customs authorities are laid down in Regulations under the Customs Ordinance. In general Customs officials have the authority to carry out checks inland and at border checkpoints. Customs officers with executive powers can arrest and detain persons. These powers also enable customs officers to carry out body searches in the areas defined in the legislation. They can also initiate investigations on customs premises e.g. identification of documents, gathering of information and contact with overseas customs investigation services for assistance. Their powers

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of interrogation are however limited. Customs officers, even those who have executive powers, refrain from interrogating suspects and limit themselves to initial questions asked by any customs officer. Detailed interrogation and investigation is always left to the Police, who have jurisdiction in criminal proceedings.

**Customs investigation powers are being hampered by present legislation. Powers to carry out searches in offices and business establishment are limited by legislation to searches in Customs areas and their immediate vicinity, i.e. along the coastline. 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 Customs Department co-operates ad-hoc with the Police and the AFM; there are no Memoranda of Understandings between these agencies. Such co-operation involves the attachment, on a full-time basis, of a Senior Inspector of Customs and a number of Customs Assistants to certain contingents of the Police and the AFM. Enhancement of mutual assistance, a better understanding of their respective functions and an increase in co-operation at operational level between these three entities is strived for and planned through seminars, workshops and joint training.**

Implementation of the Business Change Management Plan has started and will be completed by the end of 2002. In terms of administrative capacity, it is yielding good results. The Plan deals with the current organisation, structures, resource deployment, current operations, work methods and practice. It recommends more functional organisational structures and provides for the administration to interface more efficiently with national and international stakeholders. The human resources capacity of the Customs Administration is being strengthened. A training unit was set up in January 2001 and is providing training on the introduction and implementation of new legislation, and theoretical and practical training is being provided for customs personnel, i.a. on EU systems of intelligence analysis and anti-fraud and anti-drug operations. The customs Department continues to organise and strengthen its anti-fraud operations. A Central Intelligence Service is being developed which will be responsible for risk analysis in this area. Eleven members of staff have been appointed and are currently receiving training. The Intelligence Unit within the Customs Department is developing risk management techniques, to be used for declarations, goods and passengers. The Intelligence Unit selects cargo and containers for examination while the Anti-fraud and Anti-drug sections extend this technique to passengers and cargo.

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Malta should continue its efforts as regards administrative and operational capacity to implement the acquis. It is of great importance that the Business Change Management Plan is fully implemented according to schedule.

### 3. *Implementing performance*

Malta is making efforts in the implementation of the Joint Action of 29 November 1996 on co-operation between customs authorities and business organisations on combating drugs trafficking. A Memorandum of Understanding (MOU) programme with the business community has been launched. Following this programme, an MOU was signed with Sea Malta in March 2002. Similar memoranda have been drafted with the Association of Shipping Agents, Air Malta, Malta International Airport and the Malta Maritime Authority and negotiations with these organisations have started. MOUs with other organisations are being prepared. Malta has signed MOU's on mutual assistance and co-operation with France, Italy, UK and the USA. Similar agreements are also being negotiated with Belgium, China, Cuba, Czech Republic, Egypt, Estonia, Germany, Ireland, Lebanon, Libya, Lithuania, Portugal, Russia, the Netherlands, Saudi Arabia Syria, and Tunisia. A Protocol between the Malta Customs Department and OLAF on Mutual Administrative Assistance in Customs Matters was signed on 25 October 2001. This instrument will serve as a basis for the prevention and detection of activities in breach of customs legislation and eventual prosecution, through mutual administrative assistance between the competent authorities of the two parties.

A key step is to set up the computerised entry-processing system ensuring all IT interconnectivity requirements with Community systems. Effective implementation of this system is a priority. Work on the implementation of the new E-Customs 2002 project commenced in January 2002 and progress has been achieved with regard to the implementation of a new modern information technology (IT) system, in particular as regards the development of proper risk analysis systems. This new system guarantees all the IT requirements as well as other advanced functions including risk management and data warehouse requirements. Implementation is expected to be completed in July 2003.



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The human resource capacity at the Customs Department is being consolidated and upgraded. Malta should continue its efforts in combating customs fraud and economic crime, improving co-operation with other enforcement bodies, in particular with respect to enforcement of intellectual property rights. Measures should be taken in order to improve the quality of the equipment and control and examination facilities, which enable a higher level of vehicle and cargo examinations, to aid the detection of concealed illegal goods. The issues that are of major concern are:

- a) the need to have unhindered access to the free-zone by Customs Officials which is a requirement of the EU acquis. At the moment, this is not the case.
- b) the creation of an operational link between Customs at the Freeport and the newly created Central Intelligence Unit, and
- c) the safeguarding of intellectual property rights. The Malta Chamber of Commerce complained of excessive bureaucracy, lack of laboratory staff, delayed refunds and onerous charges.

#### 4. *Summary (Police and Customs)*

The Criminal Code was amended to align Maltese legislation with the acquis in matters such as trafficking in human beings, corruption, money laundering, and organised crime. A large number of police officers are involved in clerical or administrative duties. These additional responsibilities divert resources from what should be core-policing activities.

Malta Police carried out a strategic plan (1999-2001) aimed at motivating staff, consolidating the fight against crime and improving community relations. Malta has achieved progress in the installation of IT networks. There is a need for improving the working conditions of police officers and providing the necessary equipment to facilitate their tasks. There is a high rate of public satisfaction with regard the performance of the police force. Malta has a low rate of violent crime, the most common crime being (ordinary) theft. It is necessary to make efforts to ensure that training and the provision of specialist knowledge are high on the agenda. The drug abuse problem has escalated considerably over the past years. Maltese legislation with respect to illicit drug-trafficking is already in line with the acquis, and the fight against it constitutes a high priority for the Government. Malta signed several bilateral co-operation agreements on the fight against organised crime. Malta needs to strengthen its administrative capacity concerning money laundering.

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The executive powers of the **customs** authorities are limited. The implementation of the Business Change Management Plan has started and is expected to be completed by the end of 2003. The human resource capacity at the Customs Department is being consolidated and upgraded. The Customs Department continues to organise and strengthen its anti-fraud operations. A Central Intelligence Service responsible for risk analysis is being developed. Work on the implementation of the new E-Customs 2002 project commenced in January 2002 and progress has been achieved with regard to the implementation of a new modern information technology (IT) system.

Malta is making efforts to implement the Joint Action of 29 November 1996 on Co-operation between Customs Authorities and Business Organisations on Combating Drugs Trafficking.

## E. Justice

### 1. *Formal acquis*

Malta has made significant progress with the adoption of the *acquis*. Amendments to the Criminal Code which were adopted in April 2002 brought Maltese legislation in line with the provisions on making it a criminal offence to participate in a criminal organisation, on trafficking in human beings (especially women and children) and with the *acquis* on (simplified) extradition. However, a number of issues still need to be tackled.

With regard to *criminal law*, despite amendments to the Criminal Code which should enable ratification of the **two** Additional Protocols to the European Convention on Mutual Assistance in Criminal Matters, Malta has signed but not yet ratified the two Additional Protocols. Malta has not signed the European Conventions on the International Validity of Criminal Judgements and on the Transfer of Proceedings in Criminal Matters. In the area of *drugs*, Malta has signed but not yet ratified the 1995 Council of Europe Agreement on Illicit Traffic by Sea, implementing Art. 17 of the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. With regard to *terrorism*, Malta has ratified the 1977 European Convention for Suppression of Terrorism and deposited in November 2001 the instruments for ratifying the 1999 UN International Convention for the Suppression of the Financing of Terrorism. Malta still needs to ratify the Council of Europe Convention on Cybercrime. Although Malta has stated that its legislation will be in line with all EU judicial co-operation requirements by the day of accession, updated information on Malta's current

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state of play with regard to the European Arrest Warrant and other new EU initiatives<sup>1</sup> would be desirable.

In the area of *data protection*, Malta has not yet signed the 1981 Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data nor the Additional Protocol regarding supervisory authorities and transborder data flows.

In the field of *civil law*, Malta does not intend to accede to the 1954 Convention on Civil Procedure. The Legal Procedures Ratification of Conventions Act, which was enacted in February 2002, should enable ratification of the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, the Convention on the Taking of Evidence Abroad and the Convention on International Access to Justice. The Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (1996) has not been signed. Malta should take further measures to ensure implementation of the Community instruments in the area of judicial co-operation in civil matters, namely mutual recognition and enforcement of judicial decisions<sup>2</sup>.

## 2. *Administrative capacity*

There has been further progress in reforming the judicial system in that there has been a shift from the Civil and Magistrates' Court to the Small Claims Tribunal. The Tribunal's remit has been extended, particularly in the financial field<sup>3</sup>.

The main problems that the judiciary faces are the heavy workload of judges, the backlog of civil and criminal cases and the lack of sufficiently trained support staff. However, information is still needed on the number of judges, prosecutors, support staff (clerks, ushers, secretaries etc) in order to get a more exact view of the situation.

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<sup>1</sup> i.e. the setting up of Eurojust, on combating terrorism, on execution in the EU of orders freezing assets or evidence as well as on the adoption of the Protocol to the Convention on Mutual Assistance in Criminal Matters between the EU Member States

<sup>2</sup> viz. Implementing performance, practical enforcement of court decisions

<sup>3</sup> The Legal Procedures Act, which was adopted in February 2001, provides for the extension of the jurisdiction of the Small Claims Tribunal which can now review cases up to a value of Lm 1.500 whilst the jurisdiction of the Court of Magistrates has been increased to Lm 5.000.

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Members of the Maltese judiciary are not assigned just a few cases which they can hear over a short period of time. This procedure only applies to urgent cases. Once a judge is appointed, he/she is assigned some 1.600 cases. One major reason behind the huge number of cases is that by nature, the Maltese people **resort to court action at a very early stage rather than trying to settle a dispute** amicably. In any case, the backlog is not manageable for the eighteen judges who can not work in an organised manner. The backlog of criminal legal actions in Court has increased from 7.793 in December 2000 to a total of 8.282 in December 2001. There was a drop of 15% in the number of pending civil cases with a total of 13.627 cases pending at December 2001.

In February 2001, the Government approved the Law Courts Administrative Reorganisation Process, which provides for the establishment of support teams of professional and administrative assistants for each member of the judiciary. The teams should consist of a lawyer, a deputy registrar, a clerical assistant and administrative staff. Recruitment of various staff for these teams started in 2001. Yet, at present, there is still a lack of specialised support staff at the courts.

*As to a satisfactory system of training and recruitment for judges, prosecutors, as well as other categories of personnel working within the legal system, newly appointed judges are not given any form of training. Although a training programme for the judiciary is currently being set up, members of the judiciary complain that they are not consulted in the identification of the training requirements. Despite the fact that a training course for court assistants was organised in 2001, there have been complaints about the lack of training to clerks, court ushers, new marshals and deputy registrars. An efficient system of training in EC legislation for members of the relevant legal professions seems to be currently lacking. **The establishment of an academy has been planned for 2003.***

Regarding *recruitment*, the only requirement is that the person nominated must have at least 12 years experience as an advocate or 7 years as a magistrate. The procedure to nominate a judge is that the Prime Minister consults with the Commission for the Administration of Justice. The Commission's advice is not binding. The Prime Minister consults with the President of Malta who is also the chairman of the Commission for the Administration of Justice. The President invites the nominees to take up the post as judge. New judges are appointed by invitation and not on a merit basis<sup>1</sup>. In October 2002, the Prime Minister announced the appointment of three new judges. The

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<sup>1</sup> More information on this, and whether it complies with the principles of impartial judges is necessary

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Commission in fact expressed concern about one of the newly appointed judges with regard to the judge's legal credentials.

*A satisfactory statute for judges and prosecutors and favourable working conditions, in particular with regard to wages and access to case law*

Members of the judiciary claim to be satisfied with the available space and the supporting facilities. More information, i.e. on the -objective- distribution of tasks and access to case law is needed, as well as information on the statute for judges and prosecutors. With regard to wages, one major problem in finding new judges is that very few lawyers are willing to take up the post as it would decrease their income (i.e. they would have to give up their vested interests in other organisations/committees).

*A high level of transparency within the court system, including access to previous judgements*

Prior to the bribery case which took place in August this year, the general perception was that there was a satisfactory level of transparency, particularly in recent years. However, the bribery case may have changed this perception. Access to previous judgements is well provided for.

### 3. *Implementing performance*

The Code of Civil Procedure was fundamentally revised in 1995 in order to improve ensuring justice within reasonable time and establish efficient procedures. The Courts Advisory Committee - which was set up to examine the effectiveness of the 1995 amendments in the different halls- also advised that there should be a simplification of the procedure.

Today, the judicial efficiency is hindered by the backlogs though the number of civil cases pending is decreasing. Information on the *length of court proceedings, procedural delays and the quality of decisions* would be desirable.

With regard to *guarantees on independence of judges vis-à-vis the executive power*, members of the judiciary are wholly independent of the executive and the principle of the separation of powers is fully applied. However, the procedure for challenging judges and magistrates provided for by Article 738 of the Code of Organisation and Civil Procedure remains to be examined to check whether it complies with the principle of an impartial tribunal enshrined in the ECHR<sup>1</sup>.

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<sup>1</sup>In this respect, the Council Secretariat would be grateful to receive a copy of this Article

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Members of the Maltese judiciary are bound by a *Code of Ethics*. Prosecutors are bound by the Code of Advocates. However, the Parliament is currently discussing a Courts and Tribunals Procedures Bill which will not allow any judge or magistrate to exercise any other profession, business or trade or to hold any other office or position, even of a temporary or voluntary nature.

The situation in the field of justice has recently been aggravated by a *bribery* case in which the Chief Justice and another senior judge were involved. The two judges, who have resigned, are being tried for accepting bribes in return for reducing a drug trafficker's sentence on appeal. The institutional crisis which followed has caused a serious loss of *public confidence* in the judiciary and justice system. In a survey carried out in September 2002, 46.7% of the respondents said that their trust in judges and magistrates had decreased considerably and 68.7% were not satisfied with the way justice is administered in the local courts. The judiciary is facing an arduous task to regain the trust of the Maltese people. Meanwhile, in August this year, a new Chief Justice has been appointed.

Concerning *effective access for all citizens to justice including the right to defence and the existence of an effective system of legal aid*, the Code of Organisation and Civil procedures<sup>1</sup> states that no demand for free legal aid shall be granted unless there are reasonable grounds for taking or defending proceedings<sup>2</sup>. However, as the court fees have recently increased, legal aid might have to be extended.

A system for the *protection of witnesses* is currently lacking. However, the Government has discussed the need to set up an effective system and a bill should be presented.

*The courts' handling of criminal cases, respect of 'reasonable delays' (ECHR Article 6) for judicial procedures (incl. pre-trial detention, particularly as concerns minors)*

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<sup>1</sup> Section 912

<sup>2</sup> one must not possess property of any sort (excluding one's principal residence), the net value whereof amounts to or exceeds Lm 3,000 or any sum established by the Minister for Justice and published in the Government Gazette. Further, one's yearly income must not exceed the annual minimum wage.

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The present judicial administrative system has problems to respect Article 6 of the ECHR since there are frequent delays in finalising cases. However, as a result of these delays, only few constitutional cases are filed for redress. With respect to a *satisfactory policy, with sufficient means, as regards dealing with minors*, no information is available except that 'Maltese legislation addressing the policy of minors is based on Western European standards.'

More detailed information on this as well as on the courts' handling of criminal cases and on pre-trial detention would be desirable.

According to the Member States, the *criminal judicial co-operation* mechanisms are in place and follow procedures required by international conventions on criminal judicial co-operation. Most of the criminal co-operation procedures are in line with EU requirements. However, procedures need to be better implemented in order to have a more efficient structure. More information on judicial co-operation in practice (e.g. extradition, mutual assistance in legal matters) would be desirable.

As to *practical, effective enforcement of court decisions, in particular in civil matters*, in general there are no major problems and court decisions are generally respected. However, in civil matters such as child custody and maintenance payments, there have been cases where decisions were not enforced and where very little assistance was offered by the competent authorities to enforce the orders. Enforcement of court orders by police and other authorities remains somewhat patchy (fragmented). The Legal Procedures Ratification of Conventions Act was enacted in February 2002 with the aim to enable Malta to ratify the International Conventions on the enforcement of judgements in civil matters. The Courts are in principle operating within the spirits of those conventions signed but not yet in force. (...) **It is reported though, that there are sometimes shortcomings in the enforcements of decisions under the 1980 Hague Convention on Civil Aspects of Child Abduction.**

Although *alternative methods of dispute solving* exist, their use have contributed very little to decrease the backlog of cases pending in Court. A culture change would be needed to make people better use alternative means of redress rather than referring a case directly to the Courts.

A new *Data Protection* Act entered into force in March 2002 and regulations were adopted to set up an independent national supervisory authority and a Data Protection Appeals Tribunal Board. It should be monitored that the latter is well established and that attention is paid to the risk of

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conflicts of interest. It should also be monitored that the Data Protection Commissioner, who has been appointed, operates independently and without external political interference. The provisions of the Data Protection Directive are foreseen to come into force upon accession. Malta needs to implement legislation to regulate the use of personal data by Police, Security Service and Customs.

## 4. *Summary*

As to the formal *acquis*, Malta has made significant progress with the adoption but a number of issues still need to be tackled. These relate both to the area of criminal law, of civil law and of data protection.

The main problems that the judiciary faces with regard to its administrative capacity and its efficiency are the heavy workload of judges, the backlog of civil and criminal cases and the lack of sufficiently trained support staff. Training of the judiciary, including in EC law, is not yet sufficiently organised as is the training of the administrative support staff.

With regard to implementing performance, a number of issues remain to be either improved or monitored, such as protection of witnesses, the respect of reasonable delays, the confidence of the public in the judiciary and judicial system, the effective enforcement of court decisions in civil matters and the independence of the Data Protection Commissioner.

Regarding both administrative capacity and implementing performance, information on a number of issues is still needed.

## F. **Human rights**

### 1. *Formal acquis*

Malta has ratified the European Convention for the Protection of Human Rights and Fundamental Freedoms and its Protocols 1-6, 8, 10, 11 **and 13**. Malta has not yet signed the Protocols 7 and 12<sup>1</sup>. Protocol N° 9 has been signed but not yet ratified. With regard to discrimination, the amendments to the Criminal Code (in April 2002) introduced the crime of incitement to racial hatred and racist

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<sup>1</sup>These two Protocols are part of the EU *acquis*



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behaviour as well as new rights for victims of racist behaviour. Malta has at various occasions expressed its interest to participate in the activities of the European Monitoring Centre on Racism and Xenophobia. However, full transposition and implementation of the *acquis* on anti-discrimination (based on Article 13 of the EC Treaty) still needs to be ensured.

## 2. *Administrative capacity*

The judicial system is compatible with the ECHR and the Convention has been incorporated as Maltese legislation.

### *Training of police and the judiciary on human rights*

At present, no training on human rights related issues is provided (or planned) to the judiciary. Information on any training in human rights provided to police would be usefull. The same goes for information on *proper conditions of detention in prisons/pre-trial detention facilities*.

The institution of the *Ombudsman* was established in 1995. Its function is to conduct investigations on its own initiative and on complaints lodged by citizens on any action taken by or on behalf of Government departments, Parastatal organisations, Statutory Bodies or Local Councils in exercise of their administrative powers, or failure to act accordingly. Although the Ombudsman can only make recommendations, the great majority of these have been taken up so far. Overall, the Office performs its duties well.

## 3. *Implementing performance*

Malta continues to respect human rights and freedoms.

Yet, Malta experiences a limited degree of inherent racism, particularly against North Africans and some other ethnic minority groups who are responsible for 70% of all crimes committed in Malta. In a survey published on 20 October 2002, 70.3% of the respondents said that they have a general disdain towards certain races. 66.8% mentioned Arab countries as a group while 5.2% and 4.3% specifically refer to Libyans and Iraqis respectively. The social roots of these problems need to be studied and addressed at all levels of social activity in order to pre-empt future full of racial disharmony. The national curriculum for schools, recognising this problem, now includes an element to educate children on the subject of racism and xenophobia. In July 2002, a report on

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Malta published by the European Commission on Racism and Intolerance concluded that "incidents of discrimination suggest that further steps need to be taken". The adoption of comprehensive anti-discrimination legislation would be a step forward.

No information is available on *pre-trial detention* and there have been no reports on *mistreatment by police*. Regarding *complaints procedures on possible abuse by police*, a complaint may be filed with the Ombudsman who is appointed by the President of Malta in accordance with a Resolution of the House of Representatives (a two-thirds majority vote is required). The Ombudsman can investigate all police investigations excluding criminal investigations. Another alternative lies in Section 469A of the Code of Organisation and Civil Procedure which provides for judicial review of all administrative action including the police. A new system to file a complaint against members of the Force was launched on 1 January 1999. These complaints are investigated by the Internal Affairs Unit (introduced on the same day). Information on the number of complaints filed so far and their outcome would be useful.

### *Refugees/asylum-seekers*

Subsidiary legislation under the Refugees Act came into effect on 29 October 2001. It comprises the Refugees Appeals Board (Procedures) Regulations; the Asylum Procedures (Application for a Declaration) Regulation and the Asylum Procedure (Means of facilitating identification of applicant) Regulations. Malta has withdrawn its reservation with regard to the Geneva Convention on Refugees. This limitation was introduced when Malta signed the UN Convention on the Status of Refugees in 1971. However, despite this limitation, Malta had always provided shelter to refugees irrespective of origin.

The Government set up a strategy which aims to protect Malta from illegal immigrants while affording them the best possible treatment while in Malta. The number of recognised refugees in Malta stands at 132 under UNHCR, 6 recognised by the Maltese government and a further 69 refugees have been granted humanitarian protection.

On 10 October (2002), Amnesty International urged the Maltese Government to suspend deportations of Eritreans back to their country until a thorough, independent investigation has been made as to their fate and an assessment as to whether Eritreans can be forcibly returned in safety and in dignity, with full respect for their human rights. According to AI, 223 Eritreans were forcibly deported between 30 September and 3 October 2002. They were said to have been immediately

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arrested on arrival in Asmara and taken to a military camp, detained and incommunicado.

The deportees were among over 400 Eritreans who had arrived in Malta in March 2002 and who were detained on arrival. About half applied for asylum in Malta but had their claims rejected. Some 50 have submitted an appeal to the Maltese Constitutional Court which has ordered the suspension of deportations orders against the claimants. Others did not apply for asylum, reportedly hoping to be able to proceed to another country. AI received allegations that, when faced with deportation, many reportedly wanted to apply for asylum but were ignored by the authorities.

## 4. Summary

Malta has ratified almost all the human rights related *acquis* (except for Protocols 7 and 12 to the ECHR). Malta still needs to ensure full transposition and implementation of the *acquis* on anti-discrimination (based on Article 13 of the EC Treaty). With regard to administrative capacity, the judicial system is compatible with the European Human Rights Convention. At present, no training is provided to the judiciary on human rights related issues and information on training to police is needed. The Office of the Ombudsman functions well. Information is further needed on *proper conditions of detention in prisons/pre-trial detention facilities*. In general, human rights and freedoms are respected in Malta though some incidents of discrimination have occurred. More information (if any) on a number of issues, such as *pre-trial detention, mistreatment by police* and the number of complaints filed on possible abuse by police would be useful. With regard to *refugees/asylum-seekers*, subsidiary legislation under the Refugees Act came into effect on 29 October 2001 and Malta has withdrawn its reservation with regard to the Geneva Convention on Refugees. Moreover, a strategy has been set up aiming to protect Malta from illegal immigrants while affording them the best possible treatment (while in Malta). In October, Amnesty International urged the Maltese Government to suspend deportations of almost 200 Eritreans to Eritrea until a thorough, independent investigation has been made about their safety on return.

## G. Corruption

### 1. *Legislation and other relevant instruments*

Malta has ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime, and signed but not ratified the Council of Europe Criminal Law Convention on Corruption. There have been positive developments in this area over the past year, with the adoption of legislation strengthening the fight against corruption and of a Regulation setting up an independent Public Contracts Appeals Board. As regards the fight against fraud and corruption, the amendments to the Criminal Code adopted in April 2002 include provisions that will extend the offence of corruption to include bribery of officials of foreign governments and international organisations. The amendments aim at implementing the Protocol of 27 September 1996 to the Convention on the Protection of the European Communities' Financial Interests and taking into account the Council of Europe Criminal Law Convention on Corruption (1999). Corruption is an offence under the Maltese Criminal Code. Following amendments to the Criminal Code, the distinction between the public and the private sectors, as regards corruption, was removed. Where a government employee or a body established by law is found guilty of corruption, the government or the corporate body is liable for damages caused. However, certain aspects of the Maltese legislation, related in particular to the definition of active corruption (...) and liability of legal persons, still need to be aligned. Malta should pay more attention to the fact that both prevention through transparency and accountability standards is as important as repressive tools.

Malta has not yet signed the Council of Europe Civil Law Convention on Corruption. Malta will be able to accede thereto upon adoption of the proposed amendments to the Civil Code (cap.16). The draft provisions establish that any person who claims to have suffered damage as a result of corruption will have a right of action to obtain compensation for the damage suffered. This action can be brought against the persons who have committed or authorised the act or who have failed to take reasonable steps to prevent it. These provisions are also applicable to the Government, subject to certain conditions, where the act of corruption is committed by an officer or employee of the Government or a corporate body established by law. The amendments also provide for the possibility of annulment of a contract, without prejudice to the right of action to recover damages, when the contract or part thereof was concluded as a result of an act of corruption. These amendments are currently at Committee Stage in Parliament.

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The Maltese Constitution contains provisions to avoid possible conflicts of interest in cases where members of the House of Representatives are party to a government contract. A Code of Ethics of Members of the House of Representatives has been in place since 1997. It establishes standards of correct behaviour which Members are expected to observe.

Malta has taken steps to improve the openness and transparency of its procurement legislation by adopting in April 2002 a Regulation providing for the setting up of an independent Public Contracts Appeals Board. This will put an end to the current situation where the Department responsible for public procurement also hears complaints about the fairness or transparency of particular procurement processes. However, further alignment with the EU acquis in the field of public procurement is still needed and would improve the overall transparency of public procurement in Malta.

## III. CONCLUSIONS

### A. Border security

### B. Migration

### C. Asylum

### D. Police and customs

#### a) Police

The Malta Police Force should continue to invest further in its human resources. Police must be moved away from administrative duties to more pro-active roles. More investment should be made to provide police stations with more modern office and communications equipment. Further work is needed in the installation of an IT system. The Police should continue to improve its performance in reducing crime levels and achieve this effectively, and it is of utmost importance that the police and community work closer to combat crime. Statistical instruments for measuring crime rates should be improved. Malta should establish a comprehensive strategy for fighting new types of organised crime.

## RESTREINT UE

Malta needs to comply as soon as possible with the acquis and other international standards on the fight against the misuse of the financial system and the financing of terrorism.

The administrative capacity of the FIU needs to be strengthened. It is necessary to make efforts to ensure that training and the provision of specialist knowledge are high on the agenda. Particular attention needs to be given to training in the fields of forensic sciences, financial investigation and criminal analysis. It is imperative that personnel in intelligence units are given more adequate training in relation to intelligence-gathering and surveillance of targets. The Drugs Squad should work more hand in hand with other law enforcement agencies.

### b) Customs

As Customs officials' investigative powers are limited, they should be enhanced. Malta should continue its efforts to further implement the Joint Action of 29 November 1996 on Co-operation between Customs Authorities and Business Organisations on Combating Drugs Trafficking by concluding Memoranda of Understandings with other business organisations. Malta needs to ensure the timely implementation, i.e. upon accession, of its plans regarding the use of information technology for customs purposes and the mutual assistance and co-operation between Customs Administrations. Malta's efforts now need to focuss on implementing the Business Change Management Plan in order to reinforce administrative and operational capacity. Malta must effectively pursue the implementation of its information technology strategy in order to meet the targets regarding computerisation and interconnectivity with EU systems. Malta should continue its efforts in combating customs fraud and economic crime, improving co-operation with other enforcement bodies, in particular with respect to enforcement of intellectual property rights. Measures should be taken to improve the quality of equipment and of control and examination facilities, which will enable a higher level of vehicle and cargo examinations and aid the detection of concealed illegal goods. Training, improved international co-operation, resourcing key points at port controls, investing in modern equipment and technology, and maintaining up to date intelligence databases, are key factors in the fight against drug trafficking.

# RESTREINT UE

## E. Justice

The conclusions on Justice have been drafted on the basis of the information available. Yet, more information is needed on a number of issues in order to get a better view of the current situation.

As to formal *acquis*, a number of instruments in the field of criminal and civil law as well as in the area of data protection remain to be either signed and/or ratified. In most cases, ratification acts have either been deposited or either already been enacted. The main problems of the judiciary with regard to its administrative capacity and its efficiency are the heavy workload of judges, the backlog of civil and criminal cases and the lack of sufficiently trained support staff<sup>1</sup>. Also, training of the judiciary, including in EC law, is not yet sufficiently organised as is the training of the administrative support staff. More information is needed on the training so far provided, on the distribution of tasks and access to case law, as well as information on the statute and wages for judges, prosecutors and support staff. The principles of the rule of law, such as access to justice and impartiality of judges generally seem to be respected<sup>2</sup>. However, some recent developments have caused public confidence to be currently low and there are some problems with regard to the reasonable delay<sup>3</sup>. A system for the protection of witnesses is currently lacking. Criminal judicial co-operation mechanisms are in place and most procedures are in line with the EU requirements. More information on co-operation in practice would be desirable. Although in general enforcement of court decisions in civil matters is effective, in some areas this remains rather fragmented (e.g. child custody and maintenance payments). Alternative methods of dispute solving exist, but their use have contributed very little to decrease the backlog of cases pending in Court.

With regard to the formal *acquis*, in most cases, ratification acts have either been deposited or have already been enacted. Thus, it will only be a matter of time before the Conventions or Protocols enter into force. It seems that the heavy workload of judges has so far not been facilitated by a significant increase in administrative support staff, or indeed sufficiently trained support staff. The number of cases assigned to judges is very high, which makes it impossible for the small number of judges to manage the backlog in an organised manner. One major reason behind the huge number of cases is that by nature, the Maltese people **resort to court action at a very early stage rather than**

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<sup>1</sup> More information on numbers of judges, support staff etc is needed.

<sup>2</sup> The Council Secretariat would like to receive a copy of Art 738 of the Code of Organisation and Civil Procedure

<sup>3</sup> More information on this is needed too: also, what are the average length of civil and criminal proceedings, the courts' handling of criminal cases, information on pre-trial detention, the quality of court decisions in both criminal and civil cases etc. More information is further needed on the existence of a satisfactory policy for dealing with minors.

## RESTREINT UE

**trying to settle a dispute** amicably. In any case, the backlog is not manageable for the eighteen judges who can not work in an organised manner. Though the backlog of civil cases has decreased, that of criminal cases has increased. With regard to civil procedures, so far it remains unclear to which extent the revision of the 1995 amendments to the Civil Procedure Code have been effective. Members of the judiciary are wholly independent of the executive and the principle of the separation of powers is fully applied.

Confidence of the public in the judiciary and the judicial system has decreased since the bribery case in which two (senior) judges were involved. The problems in relation to the respect of reasonable delay (Article 6) are due to the backlog in cases. Though the Courts are in principle operating within the spirits of those civil law conventions signed but not yet in force, problems with regard to enforcement of court orders in matters such as child abduction so far seem to be related to the fact that little assistance was given by those authorities competent to enforce the orders. Regarding better use of alternative means of dispute settlement rather than referring a case directly to the Courts, it appears that a culture change would be needed. In the field of data protection, Malta seems to have been lacking behind though the relevant institutions have recently been set up.

Malta should continue the adoption of the current and preparation of the new acquis. The judiciary should receive more training (*inter alia*) on EU Law, and (sufficiently trained) support staff should be provided to relieve the judges from their heavy workload. To this effect, the Law Courts Administrative Reorganisation Process should be effectively carried out. Regarding independence of the judiciary, the procedure for challenging judges and magistrates provided for by Article 738 of the Code of Organisation and Civil Procedure remains to be examined to check whether it complies with the principle of an impartial tribunal enshrined in the ECHR. With regard to trust in the judiciary and legal system, this needs to be regained through a well-planned systematic approach that addresses both minor complaints and major structural deficiencies. The (future) adoption of a law limiting the extra-judicial professions of members of the judiciary might contribute positively to this issue. It may be that the the system of (free) legal aid, after the recent increase in court fees, needs to be extended. It should be monitored that the effective system of witness protection is set up. Equally, respect of the principle of reasonable delay -in both criminal and civil cases- needs to be monitored. With regard to judicial co-operation in criminal matters, procedures need to be better implemented in order to have a more efficient structure. In the area of civil law, Malta should take further measures to ensure implementation of the Community instruments in the area of judicial co-operation in civil matters and to improve implementation of the various Hague Conventions -after their ratification. The suggestion to the public to use more frequently alternative methods of dispute



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settlement could be of major benefit to the efficiency of the judicial system. Concerning data protection, it should be monitored that the Data Protection Appeals Tribunal Board is well established and that attention is paid to the risk of conflicts of interest. It should also be monitored that the Data Protection Commissioner operates independently and without external political interference. Finally, Malta needs to implement legislation to regulate the use of personal data by Police, Security Service and Customs.

### F. Human rights

Malta has ratified most of the human rights *acquis*. The judicial system is compatible with the ECHR and the Convention has been incorporated as Maltese legislation. At present, no training is provided to the judiciary on human rights related issues and information on training to police is needed. The Office of the Ombudsman functions well. In general, human rights and freedoms are respected in Malta though some incidents of discrimination have occurred. There have been no reports on *mistreatment by police* and several complaints procedures on possible abuse by police exist. With regard to refugees and asylum seekers, subsidiary legislation under the Refugees Act - arranging the asylum and asylum appeals procedures- came into effect in October last year. Moreover Malta has withdrawn its reservation with regard to the Geneva Convention on Refugees and the Government has set up a strategy which aims to protect Malta from illegal immigrants while affording them the best possible treatment while staying on the island.

Malta has only recently adopted the relevant legislation on racism and xenophobia and some legislation on discrimination remains to be transposed. Since the ECHR has been incorporated into Maltese legislation, it could be that training on it is part of the general law education. Information on any (planned) training to police on human rights issues would be desirable. Although it could well be that there have been no cases of abuse or mistreatment by police, information on e.g. the number of complaints filed against police abuse and their outcome would be useful. Information on *proper conditions of detention in prisons/pre-trial detention facilities* would also be desirable. Despite the recently withdrawn reservation of Malta with regard to the Geneva Convention on Refugees, Malta has reportedly always provided shelter to refugees irrespective of origin.

# RESTREINT UE

Malta still needs to ratify two of the ECHR Protocols which are part of the *acquis* (N°7 and 12) and needs to ensure full transposition and implementation of the *acquis* on anti-discrimination. With regard to the issue of asylum/refugees, it should be monitored that Malta continues to respect, as it has done so far, the relevant EU/international legislation (e.g. with regard to asylum applications and the notion of safe return).

## G. Corruption

In the legislative field, there have been positive developments over the past year, with the adoption of legislation strengthening the fight against corruption. However, certain aspects of Maltese legislation, related in particular to the definition of active corruption (...) and liability of legal persons, must still be aligned.

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