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## DECLASSIFICATION

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Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.

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# RESTREINT UE



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 20 December 2002 (31.01)  
(OR. en)**

13381/2/02

REV 2

EXT 1

**RESTREINT UE**

EVAL 40

ELARG 332

## **EXTRACT FROM REPORT**

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From : the Collective Evaluation Working Party  
To : Coreper/Council  
No. prev. doc. : 13381/1/02 REV 1 EVAL 40 ELARG 332 RESTREINT  
Subject : Revised country report on Malta

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### III. CONCLUSIONS

#### **A. Border security**

Good progress has been achieved and in the main, border management in Malta meets the basic requirements. However, the operational links between immigration police and other authorities are not fully satisfactory. The police are not authorised to instruct and supervise the civilian immigration staff at the airport. Another problematic link is that between the Armed Forces of Malta (AFM) and the immigration police. A direct connection to allow tactical data flow management and risk analysis is lacking. The legislation concerning carrier sanctions and liabilities as well as visa issuance at the borders is not in place yet.

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Malta is currently on one of the major routes for smuggling people into the Member States. It is already being used as a platform by traffickers. Once the internal border checks between Malta and other Member States have been lifted the pressure on Malta will be serious. This pressure has to be contained with a comprehensive and efficient set of border security measures. Given Malta's size, the borders can be managed with a reasonable effort.

The civilian immigration staff should be brought into closer contact with the police. The shortcomings in the tactical coordination of blue border surveillance should be addressed. A tactical situation/command centre should be established. The immigration police at the airport should be provided with direct communications with other international airports. The legislation concerning carrier sanctions and liabilities as well as visa issuance at the borders needs to be amended.

## B. Migration

Malta has made good progress since the last report in terms of bringing legislation and structures in the field of migration in line with the *acquis*. The following points however still require adapting.

Malta still has a visa-regime for Romanian nationals; this must be abolished in due course.

As current legislation on the entry, stay and work of third country nationals for study purposes is not in line with the *acquis* nor with the Council Resolution of 30 November 1994 on the Admission of Third Country Nationals as self-employed persons, this must be brought in line before accession. Measures to combat illegal immigration are not or insufficiently implemented; therefore efforts must be made to ensure effective and efficient implementation thereof.

Legislation does not at present cover detention procedures for persons under "deportation orders" or persons who have been refused entry, nor does it include sanctions against carriers; these procedures and sanctions must be incorporated in Maltese legislation before accession.

Since not all diplomatic and consular missions abroad are equipped with security and technical equipment including on-line connections to the central immigration authorities, efforts should be undertaken to provide these missions with the necessary equipment and training in their use.

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## C. Asylum

In the field of asylum, Malta has made considerable progress in practical implementation since the previous report. It has lifted its geographical reservation on the Geneva Convention, but there are still three remaining reservations, which will have to be lifted before accession.

There is a shortage of staff and other resources at the Refugee Commissioner's Office which will be necessary to process requests in order to be able to cope with the likely increase in the influx of asylum seekers; efforts should continue to recruit a sufficient number of competent staff in this area. As problems also exist concerning housing and the general conditions of detention of asylum seekers, efforts should also continue to find a suitable solution. The role of the Independent Review Authority for asylum seekers requires strengthening. Integration of recognised refugees poses difficulties; this too should form a focal point for the authorities.

Finally, the appeals procedure gives rise to major concerns both from a procedural and from a substantive point of view, considering that the Appeals Board has thus far never proceeded to a personal hearing of an applicant nor has it ever decided favourably on an appeal. Negative decisions are notified without any legal or substantive reasons being given. The (procedural) functioning of the Board should therefore be reviewed to make it (more) effective and get it working properly.

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## 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 the utmost importance that the police and community work together more closely 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.

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 Cooperation between Customs Authorities and Business Organisations on Combating Drugs Trafficking by concluding Memoranda of Understanding with other business organisations. Malta needs to ensure

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the timely implementation, i.e. upon accession, of its plans regarding the use of information technology for customs purposes and mutual assistance and co-operation between Customs Administrations. Malta's efforts now need to focus 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 to combat customs fraud and economic crime, and improve cooperation with other enforcement bodies, in particular with respect to the 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 cooperation, 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.

### E. Justice

The conclusions on Justice have been drafted on the basis of the information available. However, 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 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, nor is the training of the administrative support staff. More information is needed on the training so far provided, on the

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

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distribution of tasks and access to case law; information is likewise needed on the statutes and salaries of 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>1</sup>. However, some recent developments have caused public confidence to be low at present and there are some problems with regard to the principle of reasonable delay <sup>2</sup>. A system for the protection of witnesses is currently lacking. Criminal judicial cooperation mechanisms are in place and most procedures are in line with the EU requirements. More information on cooperation in practice would be desirable. Although in general enforcement of court decisions in civil matters is effective, in some areas it remains rather fragmented (e.g. child custody and maintenance payments). Alternative methods of dispute settlement exist, but their use has done little to reduce 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 eased by any 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 for the huge number of cases is that traditionally, 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 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 how far the revision of the 1995 amendments to the Civil Procedure Code has been effective. Members of the judiciary are wholly independent of the executive and the principle of the separation of powers is fully applied.

Public confidence in the judiciary and the judicial system has fallen since a recent bribery case involving two (senior) judges. The problems in relation to compliance with the reasonable delay rule (Article 6) are due to the backlog of cases. Though the Courts are in principle operating within

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<sup>1</sup> The Council Secretariat would like to receive a copy of Art 738 of the Code of Organisation and Civil Procedure.

<sup>2</sup> More information on this is needed too: also, what are the average lengths 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.

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the spirit of those civil law conventions which have been signed but are 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 is given by the 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 lagging behind though the relevant institutions have recently been set up.

Malta should continue the adoption of the current *acquis* 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 of 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 activities of members of the judiciary might contribute positively to this issue. It may be that the system of (free) legal aid, after the recent increase in court fees, needs to be extended. It should be checked that an effective system of witness protection is set up. Equally, respect for 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 cooperation in civil matters and to improve implementation of the various Hague Conventions - after their ratification. The suggestion that the public make more frequent use of alternative methods of dispute settlement could be of major benefit to the efficiency of the judicial system. Concerning data protection, it should be checked that the Data Protection Appeals Tribunal Board is well established and that attention is paid to the risk of conflicts of interest. These should also be monitoring to see 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 the Police, the Security Service and Customs.



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## 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 for 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 - setting out 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 general legal education. Information on any (planned) training for 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 of police abuse which have been filed and their outcome would be useful. Information on *proper conditions of detention in prisons/pre-trial detention facilities* would also be desirable. Despite the fact that Malta has only recently withdrawn its reservation on the Geneva Convention on Refugees, Malta has reportedly always provided shelter to refugees irrespective of origin.

Malta still needs to ratify two of the ECHR Protocols which are part of the *acquis* (No 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, there should be checks to see 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 concept of safe return).

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## 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, still need to be aligned.

There is no anti-corruption programme; a long-term national anti-corruption strategy should be developed indicating main priorities and focussing on prevention, investigation and law enforcement as well as public awareness and education. Malta should pay more attention to the fact that prevention through transparency and accountability standards is as important as repressive tools.

No improvement has been noted in the effectiveness of the Permanent Commission against Corruption, in fact there has been a significant decrease in the number of cases initiated by it over the last two years. The impact of its reports is moreover significantly reduced by the fact that its reports are confidential and must be handed over to the Minister of Justice, who decides on whether or not they are rendered public and whether or not legal action is to be brought against those involved. There is a need to develop effective implementing capacity, particularly in the fight against corruption. The Government needs to take appropriate measures to ensure the effectiveness of the Commission in its fight against corruption.

It is necessary to put special emphasis on ethical standards during the training period to reinforce a positive ethical culture within the Public Service. Malta should organise specialised education and training for the investigating staff of the Police Force on how to detect and investigate financial/economic crime, including corruption.