

**REPORT**  
**on the Free Movement of Workers**  
**in Malta in 2004**

Rapporteur: Dr. Joanna Drake  
and Dr. Gabriella Pace

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## General Remarks

As regards the Commission's comments on the Maltese report:

- A. Points 1 – 3 are being seen to and actioned by Nijmegen, as per email correspondence with Paul Minderhoud. Also, re Chapter 3 issue, the list of posts for which Maltese nationality is required remains unavailable – have checked again
- B. Even if I was advised that these could have been provided at a later stage, I started working on some of the other points too.

### **Re: difference between “residence document” and “residence permit”**

See p.4-5 of report: The residence document is issued to *dependents of EU citizens who are third country nationals*; the residence permit is issued to *Union citizens* and is defined as including an authorisation of any type, whether of a temporary nature or otherwise or whether given for a special or *ad hoc* purpose, and which gives the right of residence in Malta.

Re other issues, further clarifications re the implementation of the issues identified in points (1) and (2) were sought from the competent authorities. The Maltese Employment and Training Corporation and the Home Affairs Ministry were contacted, however no reply was received to date (reason probably being that most people are out on Christmas leave).

However, as advised, I will continue following up for the 2005 report.

## **Chapter 1**

### **Entry, Residence and Departure**

#### *Texts in force*

Entry and residence into Malta is regulated by the Immigration Act (Chapter 217 of the Laws of Malta) and the secondary legislation issued thereunder The Immigration Act, first issued in 1970, essentially restricts, regulates and controls immigration into Malta and also makes provision for a number of other ancillary matters, such as the issue of work permits to foreigners.

The main amendments to the Immigration Act, in order to bring it in line with the European Union's *acquis* on entry and residence were introduced via Legal Notice 248 of 2004 and Legal Notice 205 of 2004, both of which came into force upon Malta's accession to the European Union on the 1 May 2004.

Legal Notice 248 of 2004, the European Union (Construction and Amendment of Laws) Order, was published on 30 April 2004 and extended the applicability of the Immigration Act to nationals of other EU Member States. Probably the most significant amendment introduced through this Legal Notice is the revised definition of Border Agreement which in section 4(ii) is defined as follows:

“‘Border Agreement’ means an agreement to which Malta is a party, or any rule in or under the Treaty providing for common border controls and free entry and exit of persons lawfully with the territory, into and from each of the territories of the Member States or States parties to the agreement, and Border Agreement State and citizen of a Border Agreement State shall be construed as such.”

LN 248 of 2004 also amended the Immigration Act, enabling the competent Minister to make Regulations in order to:

- a) grant and regulate the right of any citizens of a Member State or their dependents to enter, remain and reside in, and leave Malta;
- b) grant and regulate the right of such persons to seek employment and work in Malta and to establish, provide or receive such services in Malta;
- c) grant and regulate the aforementioned rights to any person and his dependents who is lawfully in the territory of any state which is bound by a Border Agreement.

Legal Notice 205 of 2004, the Immigration Regulations, was published on 1 May 2004 and came into force on the same day. These Regulations grant EU citizens the right to seek employment, work and reside in Malta. They also implement the provisions of EC Regulation 1612/68 on the free movement of workers, EC Regulation 1251/70 on the right of workers to remain in the territory of a Member State after having been employed in that state, EC Directive 68/360 on the abolition of restrictions on movement and residence within the Community for workers from the EU Member States and their families, EC Directive 90/364 on the right of residence and EC Directive 64/221 on the co-ordination of special measures justified on grounds of public policy, public security and public health.

As a rule, there shall be no border checks on Maltese citizens and EU citizens entering or leaving a border crossing point, provided that this shall not affect the obligation of any person to hold and carry such permits and documents required. The competent authorities may also exercise police powers under Maltese law throughout Maltese territory. However,

it shall also be possible for the competent Minister, in the interests of public policy or national security, to provide that for a limited period border checks appropriate to the situation be carried out at the border crossing point, provided that the other Member States shall be informed at the earliest opportunity. When border checks are carried out, every person shall be subject to at least one check carried out with a view to establishing identity on the basis of the travel documents required. Citizens of the Union, including Maltese nationals, their vehicles and objects shall only be subjected to random border checks and these shall include the verification of the travel documents and of the other conditions governing entry and residence, including the documentation, and also checks to detect and prevent threats to the national security and public policy.

Section 3 of the Immigration Regulations grants all EU citizens and their dependents the right to enter, remain and reside in Malta as well as to seek or take up employment or self-employment. EU citizens are entitled to enter and leave Malta simply on production of a valid identification document, which includes a valid passport, identification card, travel document or any other appropriate document as the Minister may designate. Where EU citizens intend staying in Malta for a period exceeding three months,<sup>1</sup> a residence permit will be issued. The Regulations provide that the Principal Immigration Officer is obliged to decide, as soon as possible, whether or not to grant or refuse the first residence permit or renew the same. In any event, the said decision is to be taken within six months from the date of application and, pending this decision, the applicant is allowed to remain in Malta.

It is worth noting that the documents referred to in the Immigration Regulations are issued by the Police Immigration Authorities, except for the work permit which, until the 31 July 2005 was issued by the Citizenships and Expatriate Affairs Directorate. With effect from 1 August 2005, responsibility for the issue and renewal of employment licences to foreign nationals (both non-Maltese EU nationals and third country nationals), has been assumed by the Employment and Training Corporation (ETC). The document, which is also in the form of a residence permit, is also endorsed by the Police authorities.

The Immigration Regulations also distinguish between the residence document and the residence permit. The former is issued to dependents of EU citizens who are not themselves citizens of the Union;<sup>2</sup> the latter is issued to Union citizens and is defined as including an authorisation of any type, whether of a temporary nature or otherwise or whether given for a special or ad hoc purpose, and which gives the right of residence in Malta. The document issued, whether a residence permit or a residence document, is in fact to specify whether the residence has been taken up on a long-term or permanent basis or whether it is for work, study or any other purpose. When an individual wishes to modify the reason for which a residence permit or a residence document has been issued, an application is to be submitted to the Principal Immigration Officer, who shall issue the new permit or document accordingly.

In the case of the migrant worker, entitlement to a residence permit and/or residence document for the purpose of employment shall be evidenced by production of a valid identification document with which the Union citizen entered Malta, and the production of an employment licence (issued in order to enable the said citizens to take up employment<sup>3</sup>). With

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1 This three month period may be extended to six months where one can prove that one is genuinely seeking employment and has real prospects of securing a job within that six month period.

2 This will be tackled in Chapter IV of this Report.

3 The employment licence for citizens of the European Union can be obtained within ten days and costs range from €60 for a permit for one year to €180 for a permit valid for an indefinite term.

regard to dependents, the required documents are a valid identification document; a visa, if they are citizens of a third country whose citizens require a visa when crossing the border crossing point; a document issued by a competent authority of the home state or the state from which such dependents came, proving their relationship to the worker; and a document issued by the competent authority of the home state or the state from which the dependents came, testifying that they depend on the worker or that they share the same residence in that country.

Reproducing the contents of Directive 68/360, the Immigration Regulations provide that residence permits are issued for a period of five years from the date of issue and are automatically renewable upon expiry. Furthermore, breaks in residence for a period not exceeding six months, as well as absence on military leave will not in any way affect the validity of the permit. Residence may be revoked where the worker becomes voluntarily unemployed and such revocation may be extended to his dependents as the case may be.

The Principal Immigration Officer is bound to facilitate the admission of family members, if such persons are economically dependent upon the citizen of the Union or share the same abode in the home country. The definition of 'dependent' under the Immigration Regulations is divided into two, namely a. definition of "dependent" for the purposes of the right of residence and for the right of employment. Dependents for the purposes of the right of residence, who have the right to accompany an EU national when settling in Malta, are defined as the spouse and descendants under 21 years of age or who depend on them as well as dependant ascendants. However, if the EU national settling in Malta is a student, it shall not be possible for ascendants to accompany the said student. For the purposes of the right of employment, dependents are defined as the spouse and children under 21 years of age or who are dependant on such person.

The Immigration Regulations also make it clear that the holding of a residence permit or a residence document does not, in itself, in any way entitle the holder thereof to purchase or hold property in Malta.<sup>4</sup>

Where the migrant Union citizen is a worker employed in Malta, dependents shall, even if they are third country nationals, have the right to install themselves with him, and for such purposes, they shall be issued with a residence permit or a residence document subject to the same rights and conditions as the person of whom they are dependents, including the right to take up an activity as an employed person in Malta, provided that the worker shall have available for his dependents, accommodation considered as normal for Maltese workers. However, nowhere in the Regulations is 'normal accommodation' defined or explained further, presumably leaving the matter to be decided on a case-by-case basis, thus leaving room for discretion by the competent authorities.

In cases where a residence permit is issued for the purpose of work, such residence permit may not be withdrawn solely on the grounds that the worker is no longer employed, either because he is temporarily incapable of work as a result of illness or accident or due to his being involuntarily unemployed. However, if he has been involuntarily unemployed for a period exceeding twelve consecutive months at the first renewal date, the subsequent period of residence may be restricted to a period of less than five years but more than twelve months, on the advice of the Employment and Training Corporation (ETC).

A Union citizen entering Malta to take up employment for a period between three and twelve months and who is employed by a Maltese employer or by a person lawfully provid-

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4 The acquisition of immovable property by aliens and non-Maltese EU citizens is discussed in further detail in Chapter 2 ('Equality of Treatment').

ing services in Malta, shall be entitled to apply for a temporary residence permit the validity of which shall be limited to the duration of expected period of employment. In the case of seasonal workers, a residence permit shall likewise be issued to a seasonal worker employed for a period exceeding three months for the expected duration of the seasonal work. The period of employment shall be shown in the work licence.

With regard to a Union citizen entering Malta to take up employment lasting for less than three months, whether seasonal or otherwise, (s)he shall not be entitled to a residence permit but may stay in Malta for the duration of the work period solely on the basis of a work licence. In all cases however, completion of the formalities for obtaining a residence permit shall not hinder the immediate commencement of employment under a contract lawfully concluded by applicants having the right to take up employment in Malta, provided that they are in possession of a work licence.

With regard to the right to remain, the Regulations faithfully transpose the contents of EC Regulation 1251/70 on the right of workers and their families or successors to remain in the territory of a Member State after having been employed in that state.

The Immigration Regulations also include provisions relating to the rights of those who are not gainfully occupied, thereby transposing the contents of EC Directive 90/364 on the right of residence. A Union citizen and his dependents who do not otherwise enjoy the right of residence in Malta shall nonetheless have the right to reside in Malta. In such cases, the Principal Immigration Officer shall issue such persons with a residence permit and/or a residence document valid for a maximum period of five years. Upon expiry, the said permit or document is automatically renewable, provided that the Union citizen and those dependents actually accompanying him are covered by sickness insurance in respect of all risks in Malta; have 'sufficient resources' to avoid their becoming a burden on the social assistance system in Malta during their period of residence; and provide evidence to that effect, along with a valid identification document when submitting the application for the residence permit.

'Sufficient resources' have been established as an amount higher than the level of resources indicated by the Ministry responsible for Social Policy as being the minimum means which determine the grant of social assistance<sup>5</sup> to Maltese nationals and taking also into account the personal circumstances of the applicant and, where appropriate, the personal circumstances of accompanying dependents. The Regulations also stipulate that if the foregoing criteria cannot be applied, resources shall also be deemed to be sufficient if they are higher than the level of the national minimum social security pension<sup>6</sup> payable by the Government of Malta at the time of application.

The Immigration Regulations also transpose the contents of EC Directive 64/221 on the co-ordination of special measures justified on grounds of public policy, public security and public health. Section 3(4) expressly provides that the Principal Immigration Officer shall not refuse entry into Malta, nor shall he refuse to issue or renew a residence permit, residence document, or any stamp or visa, as the case may be, to which migrants may be entitled, nor shall he refuse or deport such persons, except this is justified on grounds of public policy, public security or public health. The expiry of the identification document used by an EU citizen and his dependents to enter Malta and the failure of such persons to obtain a resi-

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5 The current threshold in respect of a single person is approximately €14,000 and approximately € 23,000 for a married person.

6 The current maximum rates for the national minimum pension are approximately € 108 per week for a man maintaining a wife and approximately €93 per week for any other person.

dence permit or a residence document as the case may be, shall not, by itself, justify removal from Malta.

Where necessary, the Principal Immigration Officer may also request information concerning any previous criminal or conduct certificate of the applicant. Such information can be requested from the home State of the applicant or any other Member State. However, any such refusal or deportation must be based exclusively on the personal conduct of the individual concerned, and any previous criminal records shall not in themselves constitute grounds for the taking of such measures. Where this kind of information is requested from the Maltese competent authority by another Member State, the competent authority shall reply within two months of receiving the request.

When the Principal Immigration Officer refuses entry or refuses to issue a first residence permit to any EU citizen on grounds of public health, reference may only be made to the diseases and disabilities mentioned in any regulation issued under articles 44 and, or, 50 of the Prevention of Disease Ordinance. Diseases or disabilities occurring after a first residence permit has been issued shall not, by themselves, justify refusal to renew the residence permit or removal from Malta.

Where an application is refused, the applicant shall be officially notified of any decision to refuse the issue or renewal of a residence permit or of a decision to remove him from Malta, in which case, the individual shall be asked to leave Malta within a particular period. Unless this is contrary to the interests of the security of Malta, the applicant shall also be informed of the grounds upon which the decision taken in his case is based. Except for cases of urgency, the period within which the unsuccessful applicant must leave Malta shall be not less than fifteen days if the person concerned had not been granted a residence permit and not less than one month in any other case.

It has been indicated by the Ministry of Justice and Home Affairs in Malta that since 1st May 2004 there have been no cases of deportation of EU nationals or their dependent family members from Malta. Neither have there been, in respect of the same period, any cases of refusals to enter or to issue resident permits in respect of EU nationals or their dependent family members.



## Chapter II Equality of Treatment

### *Texts in force*

#### *The Constitution*

In Maltese legal tradition, the concept of discrimination was more of a constitutional law matter rather than anything else. Section 45(1) of the Constitution of Malta establishes a broad and generic principle of protection against discrimination and prohibits the enactment of any law that is discriminatory either of itself or in effect. Subsection (2) of the same section goes on to provide that

“no person shall be treated in a discriminatory manner by any person acting by virtue of any written law or in the performance of the functions of any public office or any public authority”.

Section 45 (3) defines the term ‘discriminatory’ as

“...affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.”

Subsection (4) identifies a number of limitations to the general abovementioned prohibition against discrimination, including the condoning of legislative provision meting out discriminatory treatment with respect to “persons who are not citizens of Malta”. This clearly appears to be contrary to Malta’s equality obligations in terms of the EU’s *acquis communautaire* and specifically with regard to the free movement of persons. Nevertheless, the effects of this seemingly broad licence to the Maltese legislator to discriminate on the basis of nationality are neutralized by virtue of section 65(1) of the Maltese Constitution which, with regard to Parliament’s power to make laws, provides that such laws must be

“...in conformity with full respect for human rights, generally accepted principles of international law and Malta’s international and regional obligations in particular those assumed by the Treaty of Accession to the European Union signed in Athens on the 16th April, 2003”.

In fact, article 2 of the Treaty of Accession stipulates that the provisions of the original Treaties, including the EC Treaty and the Treaty on European Union, as well as amending or supplementary legislation, shall be binding on Malta and shall apply accordingly. This is reiterated in section 3(1) of the European Union Act (Chapter 460 of the Laws of Malta) which reinforces the binding nature of Malta’s EU obligations under the Treaties and provides, in subsection (2) thereof that:

“Any provision of any law which from the said date is incompatible with Malta’s obligations under the Treaty or which derogates from any right given to any person by or under

the Treaty shall to the extent that such law is incompatible with such obligations or to the extent that it derogates from such rights be without effect and unenforceable.”

*The European Convention for the Protection of Human Rights and Freedoms*

The European Convention Act, 1987 (Chapter 319 of the Laws of Malta) bolsters the protection from discrimination in the Maltese Constitution and embraces the human fundamental rights and freedoms set out in the European Convention for the Protection of Human Rights and Freedoms and its First, Second, Third and Fifth Protocols as part of the Laws of Malta. Article 14 of this Convention provides that

“the enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status”.

Admittedly, the protection under the Convention reaches further than that in the Maltese Constitution, which in section 45(3) defines “discriminatory” as

“affording different treatment to different persons attributable wholly or mainly to their respective descriptions by race, place of origin, political opinions, colour, creed or sex....”

However, over the years, legislative enactments have come to stretch this concept beyond mere constitutional parameters. These mark important developments of the concept because they seek to widen protection against discrimination committed not only by the State but also by private individuals rendering it a significant consideration in certain aspects of one’s everyday life.

*Voting Rights*

By virtue of Act 16 of 2003, the provisions of the Local Councils Act (Chapter 363), particularly those relating to eligibility for election and voting rights, were extended to European Union citizens whose name appears in the last published European Union Electoral Register and who have not been convicted of any offence connected with the election of members of Local Councils.

The criteria for an EU citizen to be registered as an eligible voter are listed in section 11 of the European Parliament Elections Act (Chapter 467 of the Laws of Malta). A person shall be eligible for registration in the European Union Electoral Register if the following five cumulative conditions are satisfied:

- a) he is a national of a Member State whose name does not appear in the Electoral Register; and
- b) he is requested to be, and is, in possession of an identity card in accordance with the Identity Card Act; and
- c) he fulfils the requirements listed in article 57(b) and (c) of the Constitution.<sup>7</sup>

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<sup>7</sup> The conditions referred to in section 57 (b) and (c) of the Constitution of Malta are that he has attained the age of eighteen years, is resident in Malta and has, during the eighteen months immediately preceding his registration, been resident for a continuous period of six months.

## *Malta*

Provided that for the purposes of this paragraph residence in any Member State shall be deemed to be residence in Malta;

- d) he declares that he will exercise his right to vote for election of members of the European Parliament in Malta only; and
- e) he has not been deprived of the right to vote in his Home Member State,

Furthermore, by virtue of section 14, an EU citizen shall only be entitled to remain so registered if, besides satisfying the abovementioned requirements, a declaration is made to the Electoral Commission stating:

- a) that s/he is resident in Malta;
- b) his/her nationality;
- c) the date on which s/he took up residence in Malta or in any other Member State;
- d) his/her address in Malta;
- e) the locality or constituency in his Home Member State or any other Member State, if any, on the Electoral Roll of which his/her name was last registered;
- f) that s/he will exercise his/her right to vote in Malta only;
- g) that s/he has not been deprived of his/her right to vote in his/her Home Member State.

In addition, the EU citizen must show the said Commission a valid identity document.

### *Acquisition of Immovable Property*

With regard to the acquisition of immovable property by non-Maltese EU citizens, Malta was the only country in the 2004 enlargement to negotiate and obtain a permanent arrangement retaining restrictions on the acquisition of property in Malta by non-Maltese residents. This is reflected in a Protocol annexed to Malta's EU Accession Treaty. By virtue of this arrangement, Maltese and other EU citizens, on a non-discriminatory basis, will not be granted authorization to purchase a second property in Malta, unless they have resided in Malta for at least five years prior to acquisition and obtained the necessary permit. In accordance with section 6(1) of the Immovable Property (Acquisition by Non-Residents) Act (Chapter 246 of the Laws of Malta), this permit may be granted by the Minister if in the opinion of the Minister, it is in the public interest or is otherwise appropriate to grant such permit. With regard to the acquisition of the first property, both Maltese and non-Maltese EU citizens who have resided in Malta for a continuous period of five years do not require any permit.

This permanent derogation has been reflected in amendments introduced to the Immovable Property (Acquisition by Non-Residents) Act, by virtue of the Various Laws (Amendment) Act (Act 9 of 2003). Section 2 of the Immovable Property (Acquisition by Non-Residents) Act defines a resident of Malta as an individual who is a citizen of Malta or another Member State who has been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition; or the spouse, of whatever nationality and wherever resident, of a citizen of Malta or another Member State where such spouses are acquiring together on the same deed.

The law also makes clear<sup>8</sup> that any person (whether Maltese or any other EU citizen) not fulfilling the five-year continuous residence requirement is to be considered as a non-

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<sup>8</sup> In section 2 of the said Act, a "non-resident person" is defined as including:  
"(a) any individual who is not a citizen of Malta or of another Member State; or

resident for the purpose of the acquisition of immovable property in Malta by such person. The fact that such Maltese or other EU citizen are in possession of a valid residence permit is irrelevant.

#### *Employment and Industrial Relations*

Under the Employment and Industrial Relations Act (2002) (hereinafter “EIRA”), Chapter 452 of the Laws of Malta, protection from discrimination is granted to an employee or prospective employee against his employer or prospective employer by virtue of the ordinary law of the land.

Part IV of the EIRA, 2002 is entitled “Protection Against Discrimination Related to Employment”. Section 2 of the EIRA defines discriminatory treatment as

“any distinction, exclusion, or restriction which is not justifiable in a democratic society including discrimination made on the basis of marital status, pregnancy or potential pregnancy, sex, colour, disability, religious conviction, political opinion or membership in a trade union or in an employers’ association.”

It is immediately evident that the definition of discriminatory treatment for the purposes of this Act does not include any reference to nationality. Therefore, it can be inferred that an EU citizen alleging discrimination with regard to access to employment and working conditions would have to rely upon to the relevant provisions in the Constitution of Malta or the equal treatment provisions in the EC Treaty which are directly applicable.

The Employment and Training Services Act (Chapter 343 of the Laws of Malta) has always been in line with EU Regulation 1612/68 as it does not specifically limit the number of foreigners that employers can hire and it does not discriminate against expatriates. The Act, particularly Sections 13 and 15 thereof, obliges the Employment and Training Corporation (ETC) to refer, amongst other things, persons for employment according to their registration priority. The Act requires parastatal companies to refer their vacancies to the ETC or through a public examination duly advertised in the Government Gazette.

Training grants granted under the Business Promotion Act (Chapter 325 of the Laws of Malta) do not discriminate against foreign nationals. Similarly, the Employment and Training Services Act does not discriminate against foreign nationals in the provision of vocational training services. With regard to access to vocational training, it was formerly the practice not to allow foreign nationals to participate in courses and apprenticeships run by the ETC. However post-accession, EU nationals can participate in the training schemes organised by the ETC and may notify their intention to work in Malta through the ETC.

#### *Social Security*

Equality of treatment in the case of social security is provided for by virtue of the European Social Charter Order (Legal Notice 204/1999). Section 2 of this Legal Notice extended the application of the provisions of the Social Security Act to nationals of countries which are party to the European Social Charter and who have their ordinary residence in Malta.

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*(b) a citizen of Malta or of another Member State, even in either case, if in possession of a valid residence permit, who has not been resident in Malta for a minimum continuous period of five years at any time preceding the date of acquisition....”.*

*Education of Children of Migrant Workers*

Legal Notice 220/2003 regulates the education of children of migrant workers. For the purposes of these Regulations, a migrant worker means any person who carries out or has carried out an activity in Malta, in an employed or self-employed capacity, and who is a citizen of an Agreement State.<sup>9</sup> The Migrant Workers (Child Education) Regulations, through section 3(1) ensure equal access to free tuition<sup>10</sup> in State schools as well as the teaching, as adapted to the specific needs of such children, of any of the official languages Malta. By virtue of these Regulations, children of migrant workers must be residing in Malta, and they must be of compulsory school age as well as dependents of a migrant worker.

With regard to training, the Employment and Training Services Act does not preclude children of non-Maltese EU nationals from being admitted to apprenticeship and vocational training courses.

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9 By virtue of the definition in section 2 of these Regulations, an Agreement would include the Malta-EU Accession Treaty, in so far as the latter grants reciprocal rights of entry, residence and general rights of free movement to the respective citizens of the participating countries.

10 In Malta, the education of Maltese citizens who are of compulsory school age is free in the case of State schools.

## Chapter III Employment in the Public Sector

### *Texts in force*

Broadly speaking, the Public Service consists of staff recruited under the authority of the Public Service Commission (in legal parlance, known as public officers) who serve in Ministries and Departments and are subject to a common framework of rules and regulations.

The wider public sector includes many public corporations, statutory authorities and other entities which are not part of the Public Service. Teachers in state schools, for instance, are public officers; university lecturers are not. Police officers are also members of the Public Service, but soldiers are not.

The Public Service Commission is established under Section 109 of the Constitution of Malta and exercises its functions through:

- a) the Public Service Commission Regulations, 1960. (These regulations are currently being revised.)
- b) the Public Service Commission (Disciplinary Procedure) Regulations, 1999
- c) a number of Instruments of Delegation, made in terms of section 110 of the Constitution, which empower heads of department or other authorities to exercise certain functions relating to appointments and discipline, subject to the overview of the Commission.

The primary role of the Public Service Commission is to give advice and to make recommendations to the Prime Minister in the making of appointments to public offices, in the removal of persons from such offices and in the exercise of disciplinary control over public officers.

In so far as the Public Service (Ministries and Departments) is concerned, all recruitment is open to Maltese and EU nationals subject to the exceptions stipulated under article 39(4) EC, in accordance with the criteria set out by the jurisprudence of the European Court of Justice, namely:

- posts which involve the exercise of powers conferred by public law; and
- posts which involve responsibility for the safeguarding of the general interest of the State.

A list of posts which meet these criteria has been drawn up centrally and determines when a Maltese-only nationality requirement is inserted in a call for applications. This list was not available at the time of completing this report.

Generally speaking, in addition to citizenship requirements as outlined above, public calls for the filling of posts in the Public Service request that applicants must also:

- a) be able to communicate in the Maltese and English languages;
- b) be in possession of a warrant, qualifications, practice or experience;
- c) be of good moral character (for this purpose, applicants from within the Public Service, must produce a Service and Leave Record Form; those applying from outside the Public Service must produce a recent Certificate of Conduct, issued by the Police or other competent authority not earlier than six months from the closing date of the applications, and state whether they have ever been in Government Service, giving details).

Public sector entities outside the Public Service normally function autonomously within the parameters of the law and Government policy where recruitment procedures are concerned. The Maltese Government is currently in the process of finalising Guidelines for Public Sector entities to ensure that recruitment and selection procedures conform with Malta's obligations as an EU Member State in this regard.

With regard to the assessment criteria, selection processes run by the Public Service Commission are based on the merit principle. This means that the individual and relative suitability of a candidate for a particular post, assessed on the following criteria, taking into account the duties and responsibilities of the post to be filled:

- related professional/administrative/technical knowledge;
- relevant experience including previous performance, where applicable;
- abilities/skills required in the job;
- qualifications;
- personal qualities.

Selection criteria for particular posts approved by the Public Service Commission are made available on request at the Office of the Public Service Commission in Valletta.

With regard to the recognition of diplomas for access to the public sector, it is normal practice for calls for applications to be framed in such a way as to indicate that where a specific qualification is requested, equivalent qualifications are accepted. Selection boards regularly seek the advice of the competent authorities where this is necessary to assess the equivalence of qualifications obtained from abroad.

In its Communication "Free Movement of Workers – Achieving the Full Benefits and Potential" of December 2002, the EU Commission recommends that eligibility for public sector posts should be assessed not on the basis of whether applicants have qualifications equivalent to those required, but whether they are eligible for comparable posts in their own country. When asked how the Maltese Government is proposing to implement this EU Commission recommendation, the reply received was to the effect that, given that this Commission document is not legally binding on Member States, the Maltese Government prefers to continue basing itself directly on the European Community's relevant *acquis* and jurisprudence of the European Court of Justice.

In cases where the Public Service post concerned requires candidates to possess specific qualifications or to have carried out specific training programmes, recruitment to virtually all posts allows for the recognition of equivalent qualifications. Exceptions are limited to instances where the *Burbaud* case does not apply. For instance, the grade of Houseman is normally filled directly by those who obtain the degree of Doctor of Medicine of the University of Malta. The *Burbaud* situation does not arise for the following reasons:

- appointments in this grade are for a fixed term of two years only, at the end of which incumbents have to apply for selection to the grade of Medical Officer;
- although the housemanship is considered at law to be an integral part of the requirements for the warrant to practice as a medical doctor in Malta, doctors who qualify elsewhere in the EU can obtain a warrant without going through a local housemanship;
- once the EU-originating applicants hold a local warrant, they can compete on equal grounds for selection as Medical Officers, provided that they meet the necessary requirements.

Public sector entities outside the Public Service do not appear to be using recruitment procedures that would contravene the Court's ruling on the *Burbaud* case. However, the Guidelines referred to earlier and which are currently being finalised are addressing this matter amongst others.

In so far as the recognition of professional experience and seniority is concerned, the information provided by top officials in the Public Service is to the effect that current practices appear to be in line with requirements of the *Burbaud* judgement, but no further details were revealed at this stage. Nonetheless the Guidelines mentioned above, once finalised, should provide further insight in this regard.



## **Chapter IV**

### **Family Members**

#### *Texts in force*

Entry and residence into Malta of third country nationals is regulated by the Immigration Act (Chapter 217 of the Laws of Malta) and the secondary legislation issued thereunder. Section 6 of the Immigration Act empowers the Principal Immigration Officer to grant leave to enter or leave to remain (temporary residence) to any person arriving in Malta, under such conditions and for such period as may be deemed proper to establish.

#### **Family Members**

As far as non-EU/EEA citizens are concerned, an entry visa may be required from some countries that do not have a free movement agreement with Malta. Non-EU citizens always require a work permit in order to work in Malta. The work permit can be obtained within three months and costs range from 60 Euros for a permit valid for one year to 132 Euros for a permit valid for three years. If a Non-EU citizen wishes to be employed in Malta, s/he must have a genuine prospect of securing employment before entering Malta. Once a prospective employer has been identified, the applicant will be issued with a residence permit that shall be valid for a fixed period of time (which shall be valid from 3 to 6 months as determined by the Immigration Police) until the work permit is issued.

The Principal Immigration Officer shall refuse leave to enter Malta to any person seeking to enter Malta and who must be in possession of a visa but in fact is not in possession of such visa. Article 8(2) of the Immigration Act empowers the competent Minister to make regulations in order to:

- a) list the countries whose nationals will be required to be in possession of a visa for any stay for such period of time as may be prescribed, or whose nationals will be exempted from such requirement;
- b) regulate the issue of visas or other forms of authorisation and make provision for different types of visa including visas for single or multiple entry or re-entry;
- c) make provision for and regulate the issue of visas at the border;
- d) make provision for and regulate the revocation of visas;
- e) regulate the issue and revocation of emergency travel documents to persons who hold the nationality of such states as may be prescribed.

However, all third country nationals entering Malta and who have shown that they are in possession of the necessary documents are issued with a residence document. A residence document is defined by the Immigration Regulations (Legal Notice 205/ 2004) as including a permit issued to dependents of citizens of the Union, who are third country nationals, and in particular includes an authorisation of any type, whether temporary or not, or whether given for a special or ad hoc purpose, giving the right of residence in Malta. Just like a residence permit, a residence document is to specify whether the residence has been taken up on a long-term or permanent basis or whether it is for work, study or any other purpose. When an individual wishes to modify the reason for which a residence document has been issued, an application is to be submitted to the Principal Immigration Officer, who shall issue the new

document accordingly. The Principal Immigration Officer cannot refuse entry into Malta, or refuse to issue or renew a document, or any stamp or visa, as the case may be, to which a third country family member of a Union citizen is entitled. Neither is the Principal Immigration Officer entitled to deport such persons, except where such refusal or removal is justified on grounds of public policy, public security or public health.

### **Non-Family Members/Dependents**

The Immigration Regulations provide for a different procedure with regard to third country nationals who are not dependents of EU citizens. In April 2000, Malta upgraded its computerised passport issuance system and introduced additional security features on passports. Third country nationals who are not dependents are issued with a uniform residence permit, which is an authorisation of any type giving the right of residence in Malta to this category of third country nationals. A uniform residence permit shall not include temporary permission for residence in Malta for the purpose of the processing of an application for asylum or an application for a uniform residence permit.

A third country national may be permitted to enter Malta for a visit the duration of which shall not exceed three months provided s/he satisfies all the following conditions

- a) is in possession of a valid passport;
- b) is in possession of a valid visa, as required by the Common Consular Instructions;
- c) submits, before entry into Malta, documents substantiating the purpose and the conditions of the planned visit;
- d) has, even if in possession of a valid visa, sufficient means of support, both for the period of the planned visit as well as to return to his country of origin or to travel in transit to a third state into which his admission is guaranteed, or is in a position to acquire such means legally;
- e) has not been reported as a person to be refused entry; and
- f) is not considered to be a threat to public policy or national security.

In default, a third country national shall be refused entry into Malta except where the Principal Immigration Officer considers that it is necessary to admit him/her on humanitarian grounds, or in the national interest, or in honour of the international obligations of the Maltese Government; or (s)he holds a uniform residence permit and/or a re-entry visa, as may be required, issued by a Member State, in which case, (s)he shall only be allowed entry into Malta for the purpose of transit. The same applies if the third country national holds a Schengen visa when entering Malta from a Schengen State, provided that if (s)he is returning to a Schengen State, the validity of the Schengen visa covers the period to be spent in Malta and his/her return to the Schengen State from which he arrived, or, where (s)he is not returning to a Schengen State, (s)he has sufficient means and the necessary documents to cover his/her stay in Malta and the rest of his journey.

A third country national for whom a visa is not required shall be entitled to enter into and move freely in Malta for a period of three months, provided that the Principal Immigration Officer may extend the said period.

### **The Schengen Agreement**

As with all the other new Member States of the 2004 enlargement, Schengen is not fully implemented in Malta since it is not yet a full member of this Agreement.

The new Member States cannot become full members of Schengen until the Schengen Information System II is put in place EU-wide. Preparations for Malta to join the Schengen borderless area are at an advanced stage and it has been mentioned in the local press that there are good prospects that Malta will be joining together with the first wave of new entrants, which is foreseen for the end of 2007.

Malta's geographical position as an island state on the periphery of the EU mandates more stringent preparations as Malta's borders will eventually become part of the external borders of the EU. Also as a result of Malta joining the Schengen area, its official data of blacklisted entrants will have to be shared as part of the Schengen Information System (SIS).

The purpose of the Schengen Agreement is to remove all controls on persons at the EU's internal borders and to harmonise controls at its external borders. EU Member States had agreed on a common list of countries requiring a visa. Malta's visa policy had to conform with this list upon accession. This means that post-1 May 2004, visas had to be introduced for certain countries, such as Libya, whereas, prior to accession, Libyan citizens only needed an identity card to enter Malta.

The imposition of a visa requirement on Libyan citizens clearly raised some concern among the members of the Maltese business community with interests in Libya. These concerns were taken into account in setting up the necessary arrangements to issue visas. Thus, it is possible to issue long term visas which would be geographically limited to Malta. This is permissible under the Schengen Agreement.

Visas for entry into Malta are now also a valid permit for entry into the EU (normally, for up to three months). A draft Malta-Libya agreement was also drawn up in November 2004. This draft agreement enables the issue of multiple-entry visas for a period not exceeding six months. It also stipulates that visas would be issued within a maximum of five days, thereby taking into consideration the concerns expressed by several businessmen. At the time of submission of the present draft, it does not appear that this agreement has been finalised.

## **Chapter V**

### **Follow-up of Recent ECJ-Judgements**

#### **Free Movement in the Sports Sector**

Article 9 of the Competition Rules of the Malta Football Association (MFA) has recently been the subject of controversy in Malta due to claims that these rules contravene the principles of free movement of persons enshrined in the EU Treaties. The rule in question stipulates as follows:

“Article 9

**Who may play in Competitive Matches Organised by the Association**

(i) Only “bona fide” players are permitted to play in competitive matches.

(ii) A “bona fide” player is any amateur or non-amateur player who is registered to play in accordance with the rules and regulations of the Association and with those of FIFA, is not under a suspension which renders him ineligible to play and who is otherwise, in accordance with the rules and regulations of the Association and those of FIFA, eligible to play in a competitive match in which he takes part.

(iii) (a) In the case of competitions organised by the Association, only male players are permitted to play in those competitions organised for male players whilst only female players are permitted to play in those competitions organised for female players.

(b) Furthermore, in the case of matches of competitions organised for the Senior Team of Member Clubs, at least eight (8) players, who prior to having played their first match for the Senior Team of their Member Club were duly registered with the Association in accordance with rule 79 of the MFA Statute and with any Member Club and/or Club affiliated with the Gozo Football Association for at least three (3)

seasons, including the season during which their first registration with a Member Club or Club affiliated to the Gozo Football Association was made, and who during each of such three (3) seasons were eligible to take part with their Club in the youth and/or the junior competitions organised by the Association and/or The Youth Football Association and/or the Gozo Football Association, must form part of the team on the field of play at the start of the match.

In the case that any of these eight (8) players is substituted, such a player may only be substituted by a player who is likewise so qualified as above-mentioned. However, such a player may also be substituted by a player who is not so qualified as above mentioned both in the case that at the time that such a substitution is made there are in the team less than three (3) players who are not so qualified as above mentioned and in the case that after such a substitution is made there will still be in the team no more than three (3) players who are not so qualified as above-mentioned.

This rule shall not apply to those players who on the 1st February 2004 were duly registered with the Association in accordance with rule 79 of the MFA Statute and with a Member Club or with a Club affiliated to the Gozo Football Association if on the 1st February 2004 such players were in accordance with the FIFA rules and regulations qualified to play for the Association in a FIFA or UEFA competition for national teams.

(c) Furthermore, in the case of matches of competitions organised for teams other than the Senior Team of Clubs, at least nine (9) players, who in accordance with the FIFA rules and regulations are qualified to represent the Association in a FIFA or UEFA competition for national teams must form part of the team on the field of play at the start of the match. If any of these players is substituted, such a player may only be substituted by an-

other player who is likewise qualified in accordance with the FIFA rules and regulations to represent the Association in a FIFA or UEFA competition for national teams.

(d) If a player takes part in a competitive match in breach of any of these provisions, such a player shall be deemed to be 'non bona fide' for the purpose of such a match."

This rule has been interpreted to the effect that while non-Maltese football players, including those from EU Member States, can register with local football clubs without any limit, this is subject to a requirement that at least eight home-grown players must be playing on the field at any point in time during a football match in local competitions. Assuming that home-grown players are likely to be Maltese nationals, this means that, in practice, under current Malta Football Association rules, no more than three "foreign" players can play at any point in time during a football match.

These rules have given rise to claims that they constitute a breach of applicable European legislation and European Court of Justice jurisprudence, particularly the *Bosman* ruling. The MFA, on its part, has rebutted these allegations. In an official pronouncement,<sup>11</sup> the MFA President declared that "The primary objective [of the MFA rules] is to safeguard Maltese football, particularly the youth sector" and that it appears that the principle of the "specificity of sports" in the European Constitution supports this objective.

In an article published in *The Times*<sup>12</sup> on the 24 February 2005, the MFA President stated that these rules

"will force clubs to maintain local regional identity and the link between them and the local community. Furthermore, these rules will enforce more Clubs to contribute socially to their community by using their resources for training young football players with all the benefits that such initiatives may bring about to the communities within which these operate."

Furthermore, he asserted that [since *Bosman*]

"there has never been a case... that dealt with restrictions imposed to protect local youth sports",

and that the Advocate General Lenz's Opinion in the *Bosman* case and the Court ruling itself

"may also lead one to conclude that the protection of the sports youth sector is something very laudable."

The implication therefore is that the MFA enunciated these rules in the belief that the *Bosman* ruling does not preclude it from restricting the number of non-Maltese players in domestic competitions in so far as the very *raison d'être* of these rules is the protection of the sports youth sector.

On its part, the European Commission has confirmed that it is making enquiries with Maltese authorities to obtain further clarifications on the issue, with a view of establishing whether the MFA rules are discriminatory or not vis-à-vis non-Maltese EU nationals.

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11 MFA Press Release dated 13 July 2004.

12 A daily newspaper in Malta published in the English language.

**Nationality Condition for Access to the Posts of Captains and First Officers of Ships Flying the Maltese Flag**

The Merchant Shipping Act (Chapter 234 of the Laws of Malta) regulates access to the posts of Master and Seaman of sea vessels flying the Maltese flag. A ‘Master’ is defined as including every person (except a pilot) having command or charge of a ship; a ‘Seaman’ is defined as including every person (except masters, pilots and apprentices) employed or engaged in any capacity on board a ship.

As an open register, Malta does not impose any nationality restrictions on crews of ships registered under its flag. This is reflected in the provisions of the Act which do not restrict access to these posts to Maltese nationals. It therefore appears that Maltese legislation in this field conforms to the recent pronouncements of the European Court of Justice in Case C-405/01 (*Colegio de Oficiales de la Marina Mercante Española v. Administración del Estado*) and Case C-47/02 (*Albert Anker, Klaas Raas, Albertus Snoek v. Bundesrepublik Deutschland*).

## **Chapter VI**

### **Policies, texts and/or practices of a General Nature with Repercussions on the Free Movement of Union Citizens**

*Texts in force*

#### **Mutual Recognition of Qualifications**

The mutual recognition of professional and occupational qualifications is a corollary to the provisions on the free movement of workers. The basic principle here is that if an EU citizen is qualified to practice a profession or occupation in his or her home country, that EU citizen should be entitled to practice such profession or occupation in another Member State.

Prior to accession, the Maltese legal system already included a distinction between the recognition of professional and academic qualifications. The Education Act (Chapter 327 of the Laws of Malta) provides for the academic recognition of qualifications at University level to be granted by the Registrar of the University, on behalf of the Rector of the University. Other academic qualifications, including trade competence certificates and non-degree trade diplomas, are assessed by the Education Division within the Ministry of Education as well as other statutory bodies.

Malta was partly aligned with the *acquis* on the mutual recognition of professional qualifications and in preparing for EU accession, legislative changes were needed with regard to the strengthening of the professional regulatory framework and the setting up of formal infrastructure for the recognition of specialised training. The National Academic Recognition Information Centre (NARIC) of Malta was set up in February 2001 to act as the national co-ordinator required under the general system Directives

#### *The General System of Recognition*

A number of amendments were nonetheless necessary to transpose Directive 89/48/EEC (general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration) and Directive 92/51/EEC (second general system for the recognition of professional education and training to supplement Directive 89/48/EEC). The mutual recognition of regulated professional qualifications is now catered for by the Mutual Recognition of Qualifications Act (Chapter 451 of the Laws of Malta), published in 2002, and in subsidiary regulations as well as amendments to the legislation governing particular professions. This Act, which aligned the Maltese system with the EU's general system of recognition, came into force upon accession, and applies to the professions and professional activities listed therein, provided that an applicant shall not be entitled to practise a regulated profession or a regulated professional activity unless s/he fulfils the conditions for the taking up or pursuit of that profession or activity.

The recognition of qualifications for those professional activities that are regulated by law is granted by the designated authority set up by the specific law in question, for example, the Medical Council in the case of the medical professions and the Warrants Board in the case of teachers. The designated authorities for the fifty-nine professions in Malta that would fall under the general system Directives are listed in the Schedule to the Mutual Recognition of Qualifications Act. A designated authority for a regulated profession shall consider an application as soon as it is reasonably practicable, and shall notify the applicant of its deci-

sion, together with the reasons upon which it is based, within four months of receipt of all the relevant documents.

At the centre of the Maltese system of mutual recognition is the Malta Qualifications Recognition Information Centre whose functions include:

- a) the evaluation of diplomas;
- b) the provision of assistance to designated authorities, learning institutions and individuals, counterpart bodies and other interested parties in the comparative analysis and evaluation of qualifications;
- c) the collection and dissemination of information related to professional and vocational qualifications;
- d) the promotion of recognition of Maltese qualifications abroad;
- e) the enforcement and facilitation of the application of the articles regarding comparability of higher education, professional and vocational qualifications;
- f) the facilitation of academic mobility; and
- g) the promotion of transparency of qualifications.

The Mutual Recognition of Qualifications Act also provides for a right of appeal from decisions on the recognition of qualifications to a Mutual Recognition of Qualifications Appeals Board.

Non-regulated professions are dealt with by the Malta Professional and Vocational Qualifications Regulations (Legal Notice 215/2000), issued under the Employment and Training Services Act (Chapter 343 of the Laws of Malta). These Regulations provide for the setting up of the Malta Professional and Vocational Qualifications Awards Council, established on 25 October 2000. The Malta Professional and Vocational Qualifications are classified in five levels of competence as indicated in the Schedule to the Regulations, describing the skills and knowledge needed to be able to perform work at a specific level effectively. The Council shall be guided by these levels in classifying national standards of knowledge and skills competence for each occupational area.

This Council is responsible for assessing and maintaining standards for non-regulated professions. It is responsible for establishing a framework for the recognition and award of vocational qualifications based on knowledge, skill or competence to be acquired by learners. Furthermore, it promotes and facilitates life-long learning access, transfer and progression, and fosters the recognition abroad of professional and vocational certificates awarded in Malta. This framework will provide for the certification of those activities not regulated in Malta but regulated in another Member State in line with Directive 99/42/EC (recognition of qualifications in respect of the professional activities).

The Malta Professional and Vocational Qualifications Awards Council also has the power to set up any Professional and Vocational Standards Assessment Boards that may be required. To date, around eight Professional and Vocational Standards Development Boards have been set up and these are responsible for the overseeing of professional education and training and the recognition of pertinent qualifications. The functions of the Assessment Boards are:

- a) to design assessment procedures appropriate to the particular areas of competence;
- b) to conduct assessments to ensure the attainment of standards of professional and vocational competence;
- c) to ensure rigorous and consistent assessment; and
- d) to submit a detailed report after every assessment session to the Council



The provisions of the Malta Professional and Vocational Qualifications Regulations clearly do not apply to those occupations the exercise of which requires the granting of a warrant or of a certificate, or a registration in accordance with any other law. These professions include, amongst others, the legal profession, architects, healthcare professionals and veterinary surgeons, all of which are regulated by the relevant sectoral legislation.

## **Sectoral Legislation**

### *Lawyers*

The profession of advocate in Malta is regulated by the Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta). The Code formerly laid down that advocates need to be in possession of the necessary academic qualifications obtained from the University of Malta as well as Maltese citizenship. A one-year training period with a warrant holder is required before being granted a warrant. A warrant is then issued following an examination by a board composed of two judges.

Legal Notice 273/2002, the Mutual Recognition of Qualifications of Legal Profession Regulations, adopted in 2002 and subsequently amended by Legal Notices 55, 170 and 248 of 2004, came into force on the 1 May 2004. These Regulations aligned the Maltese legal framework relating to the legal profession with Directive 77/249/EEC (effective exercise by lawyers of freedom to provide services) and Directive 98/5/EC (facilitating the practice of the profession of lawyer on a permanent basis in a Member State other than that in which the qualification was obtained). These amendments also removed the Maltese nationality requirement as well as the necessity that legal training is carried out only at the University of Malta.

A legal professional who has obtained professional qualification in the home Member State, and wishes to establish himself and practise the profession of lawyer in Malta, shall register with the designated authority. The Schedule to the Mutual Recognition of Qualifications Act identifies the President of Malta as the designated authority. The designated authority shall register the legal professional upon presentation of a certificate attesting to his registration with the competent authority in the home Member State.

By virtue of these Regulations, post-1 May 2004, EU nationals who are qualified to practice as lawyers in another EU Member State will be able to opt to exercise their profession in Malta under the title of the home Member State or the professional title applicable in Malta, in line with the provisions of Directive 98/5/EEC. Where a legal professional is practising in Malta under the home-country professional title, such title shall be expressed in the official language of his home Member State, in an intelligible manner and in such a way as to avoid confusion with the professional title used in Malta.

A legal professional practising under the home-country professional title in Malta may, at any time, also apply to have the degree recognised with a view to gaining admission to the legal profession in Malta and practising it under the professional title corresponding to the profession in Malta and shall not start to so practice before such recognition is obtained.

*Architects*

The *Periti Act* (Chapter 390 of the Laws of Malta) regulates the profession of perit (architect) in Malta. A warrant to practise the profession of perit is granted upon the recommendation of a Warrants Board based on criteria laid down by the Act.

Legal Notice 274 of 2002, the Mutual Recognition of Qualifications of Perit Regulations, was adopted in 2002 and subsequently amended by Legal Notices 172 and 248 of 2004. These Regulations aligned the Maltese legal framework relating to the profession of perit with Directive 85/384/EEC (mutual recognition of qualifications in architecture, and measures to facilitate the effective exercise of the right of establishment and freedom to provide services) and came into force on accession. These amendments allow the two-year period of training required by the *Periti Act* to be undertaken in another EU Member State and also removed any existing discrimination on the basis of nationality.

These Regulations set out the Minimum core subjects in the field of architecture and civil engineering, as well as the minimum requirements which must be satisfied by education and training received. The infrastructure to implement the *acquis* in this area was in place before accession. The *Periti Warrants Board* within the Ministry for the Environment will register EU nationals who possess the necessary professional qualifications to exercise the profession of perit.

*Medical and Paramedical*

The requirements for health care professionals to exercise their profession in Malta were laid down in the Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta). However, its contents were partly replaced by the Health Care Professions Act (Chapter 464 of the Laws of Malta), which was published in 2003 and came into force on accession.

The Health Care Professions Act regulates all health care professions, with the exception of veterinary surgeons, and aligned Maltese legislation with Directive 93/16/EEC (free movement of doctors and the mutual recognition of their qualifications), Directive 78/686/EEC (mutual recognition of the formal qualifications of practitioners of dentistry), Directive 78/687/EEC (co-ordination of provisions in respect of the activities of dental practitioners), Directive 85/432/EEC (co-ordination of provisions in respect of the activities in the field of pharmacy), Directive 85/433/EEC (mutual recognition of the formal qualifications in the field of pharmacy), Directive 80/154/EEC (mutual recognition of the formal midwifery qualifications), Directive 80/155 (co-ordination of provisions in respect of the activities of midwives), Directive 77/452/EEC (mutual recognition of the formal qualifications of nurses responsible for general care) and Directive 77/453/EEC (co-ordination of provisions in respect of the activities of nurses responsible for general care).

In Part VIII, the Health Care Professions Act deals specifically with the registration of citizens of EU Member States. All health care professionals in Malta must be registered with one of the four professional regulatory bodies, namely the Medical Council, the Nursing and Midwifery Board, the Pharmacy Board and the Board for the Professions Supplementary to Medicine. Doctors, dentists, pharmacists, midwives and pharmacy technicians are required to hold a warrant to practise their profession in Malta. These regulatory bodies were originally set up by the Department of Health (Constitution) Ordinance (Chapter 94 of the Laws of Malta), which was subsequently repealed in part by the Health Care Professions Act which now regulates the composition of these bodies.

Academic training requirements for health care professions, formerly laid down by the Education Act (Chapter 327 of the Laws of Malta) and its subsidiary legislation were in line with the *acquis*, except for the practical training period required for doctors and pharmacists. The training requirements for all health care professions are now regulated by the Health Care Professions Act. Local training requirements, with effect from the fourth quarter of 2002, for undergraduate and post-graduate levels provided by the Faculty of Medicine and Surgery, the Faculty of Dentistry and the Institute of Health Care at the University of Malta, and are conducted in line with the *acquis*. The Health Care Professions Act also provides for the recognition, by the University of Malta, of the one-year pre-registration practical training period (housemanship) for doctors in line with Directive 93/16/EEC and for a mandatory six-month in-service training period for pharmacists in line with Directive 85/433/EEC.

The necessary structures and systems for accreditation of post-graduate qualifications and training obtained both in Malta and overseas are provided for by the Health Care Professions Act. Administrative measures to recognise specialist training and qualifications are also in place. Specialist Accreditation Committees were set up for the formal recognition of training. Medical and paramedical professional qualifications are certified for equivalence by one of the four regulatory bodies. All health care professionals whose training was completed or commenced prior to the date of accession have been guaranteed acquired rights. These persons also include health care professionals who had to interrupt their career prior to accession.

The four regulatory bodies within the Ministry of Health which regulate the Medical, Pharmacy, Nursing and Midwifery professions as well as professions supplementary to medicine are responsible for assessing the equivalence of professional qualifications obtained in EU Member States and for registering these professions.

Between 1 May 2004 and 30 April 2005, the Medical Council, one of the four professional regulatory bodies for the healthcare professions, processed 27 requests from doctors and medical specialists from EU Member States to practise in Malta. These were as follows: 17 cosmetic surgeons from France, 3 doctors from Germany, 3 doctors from Italy and 1 doctor from the Netherlands. The Medical Council also received and processed applications from 2 British doctors who were registered for a period of two years. During the same period, the Medical Council also received and processed a request from a German dentist. From this it therefore appears that out of the 27 requests received, only 2 were registered. In both cases, registration was for a two-year period only.

#### *Veterinary Surgeons*

Maltese veterinary surgeons receive their training overseas, since training in veterinary surgery is not available in Malta. A warrant is required in order to practise as a veterinary surgeon in Malta. The Medical and Kindred Professions Ordinance (Chapter 31 of the Laws of Malta) used to regulate the profession of veterinary surgeon. Practitioners are required to register with the Medical Council. The profession is however now regulated by the Veterinary Services Act (Chapter 437 of the Laws of Malta), which was adopted in 2002 and came into force upon accession. The new Act established and consolidated the requirements in the veterinary field, veterinary medicinal products, feeding stuffs and zootechnical requirements and for the regulation of the veterinary profession. It also transposed Directive 78/1026/EEC (mutual recognition of the formal qualifications in veterinary medicine) and Directive 78/1027/EEC (co-ordination of provisions in respect of the activities of veterinary surgeons).

Part VI of the Veterinary Services Act refers to the provision of professional veterinary services in Malta and section 43 provides that no person can practise as a veterinary surgeon unless :

- a) in possession of a warrant to practice from the President of Malta; and
- b) the name is registered in the Veterinary Surgeons' Register.

The Act also provides for the setting up of the Veterinary Surgeons' Council with the following functions and duties:

- a) advise and make recommendations to the President of Malta concerning the grant of warrants to veterinary surgeons to practice their profession;
- b) keep a Register in respect of such profession and professions and trades supplementary to the veterinary profession;
- c) prescribe and maintain professional and ethical standards for the veterinary profession and professions and trades supplementary to the veterinary profession;
- d) advise the Minister on any matter, including legislation, affecting such profession;
- e) advise the Minister on the issue of licences for the running of veterinary practices, veterinary clinics, veterinary hospitals, veterinary laboratories and other veterinary establishments;
- f) advise and make recommendations to the President of Malta concerning the suspension or withdrawal of warrants to veterinary surgeons who are found to be in breach of the obligations or conditions laid down under the Veterinary Services Act;
- g) plan, monitor and organise professional training of veterinary surgeons and professional proficiency tests for veterinary surgeons in private veterinary activities;
- h) carry out expert supervision of private veterinary activities;
- i) co-operate in the preparation of programmes of educational and expert training; and
- j) carry out such other functions as may be assigned to it from time to time.

## **Chapter VII**

### **EU Enlargement**

Although formal (and documented) Malta-EU relations had commenced in 1970 with the signing of the Malta-EEC Association Agreement, as subsequently supplemented by various other protocols and amending instruments, an analysis of their contents reveals that no provisions on the free movement of persons were ever included.

On 27 June 2002, Malta concluded its negotiations in the sensitive area of free movement of persons, securing a special safeguard that may be applied in the event of a big influx of EU workers into Malta. At the same time, however, Maltese citizens are still able to enter and seek work in other EU countries, and this as from the first day of membership.

Malta has obtained a deal which is different from that obtained by the other new Member States. For a period of seven years after membership, Malta will be able to apply safeguards on the right of EU nationals to work in Malta. The seven-year safeguard will apply until 2011 and essentially allows Malta to withhold the issue of work permits in the event of a potential disruption to its labour market which is of an urgent and exceptional nature. Restrictions can be imposed if an inflow of EU workers may put a strain on the local labour market, even if in certain sectors only. In such cases, it is up to Malta to determine when such cases arise and when restrictions may be imposed. In imposing restrictions Malta will be able to act unilaterally, and does not require prior authorisation from the EU.

Malta has also been allowed to maintain a work permit (also known as employment licence) system, but merely in order for the Maltese authorities to be able to monitor the domestic labour market with a view of anticipating potential disruptions to the labour market as explained in the paragraph above. Work permits are therefore to be issued automatically and work permits should in no way constitute a pre-condition for the taking up of employment. .

After this seven-year period, in the event of a disproportionate influx of EU workers, Malta may still seek a remedy, but this time acting through the EU institutions, rather than unilaterally. This arrangement, after the first seven years, would apply indefinitely and would cover Malta's future position at any time, in the event of possible difficulties relating to the free of movement of workers into Malta. This agreement was confirmed in a Joint Declaration between Malta and the EU which is annexed to Malta's Treaty of Accession. This special arrangement is also reflected in article 5(7) of the Immigration Regulations (LN205/2004). It must be said that Malta is not the first to get a Declaration of this kind. This declaration has already been used in the case of Austria in 1995. Interestingly, after ten years of membership, Austria has never felt the need to resort to it.

This means that Malta's requests with regard to the free movement of workers were both accepted by the EU. Malta was the only candidate country that sought and obtained an arrangement of this nature. It must also be noted that restrictions on non-EU nationals who seek work in Malta continue to apply even post-membership. These are not affected by Malta's membership of the EU.

With regard to the procedure related to the issue of an employment licence, the application must be signed by a Director or a person holding a senior management position in the establishment where the EU/EEA national is to be employed. In the case of entertainers and other performers, applications must be received at least ten days before the performer/s is/are due to start working in Malta, and application for extension must be submitted one month before it is due to expire. The explanatory notes relating to applications for employment licences, issued by ETC and dated 1 August 2005, clearly stipulate that a person may not

## *Malta*

take up employment before he is in possession of an employment licence. This appears to contradict the automaticity of the issuance of a work permit implied earlier. It also appears to be in breach of applicable EU rules and relevant case-law.

## Chapter VIII

### Statistics

*Fig. 1 Total Work/Resident Permits Issued in Malta to New EU Member State Citizens (1995-2000)*

Citizenship	Year					
	1995	1996	1997	1998	1999	2000
Czech	7	13	13	10	12	6
Cyprus						
Estonia						1
Hungary	7	10	6	1	4	5
Latvia						7
Lithuania						
Poland	17	16	16	11	9	13
Slovakia					3	11
Slovenia		1	3	1	3	2
<b>Total</b>	<b>31</b>	<b>40</b>	<b>38</b>	<b>23</b>	<b>31</b>	<b>45</b>

*Fig. 2 Work/Residence Permits Issued in Malta to New EU Member State Citizens by Sex (2001-2004)*

Citizenship	Year											
	2001			2002			2003			2004		
	m	f	T	m	f	t	m	F	t	m	f	t
Czech	7	5	12	7	5	12	12	1	13	11	9	20
Cyprus			0	1	1	2			0		1	1
Estonia		1	1	1	3	4	2	1	3		1	1
Hungary	3	4	7	2	1	3	6	2	8	14	5	19
Latvia	39	2	41	28	2	28	21	4	25	21	6	27
Lithuania	1	3	4	1	2	3	3	2	5	1	6	7
Poland	7	9	16	15	8	23	14	11	25	21	16	37
Slovakia	8	9	17	7	9	16	11	11	22	18	11	20
Slovenia	1	1	2			0	2	1	3		3	3
<b>Total</b>	66	34	100	60	31	91	71	33	104	86	58	144

Statistics revealed in February 2005, in response to a Parliamentary Question<sup>13</sup> show that at the end of February 2005, a total of 2693 foreigners (non-Maltese EU nationals and third country nationals) were in possession of an employment licence. Fig. 3 below shows the number of EU nationals holding a work permit in February 2005, by country. Fig.4 then shows the number of work permits held in February 2005 by nationals from the EEA, candidate countries and a selection of other non-EU countries.

<sup>13</sup> Parliamentary Question No. 10885.

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*Fig. 3. Total Work/Resident Permits Issued in Malta Held by EU Member State Citizens (Feb. 2005)*

<b>February 2005</b>	
<b>Citizenship</b>	<b>Number of Work Permits Held</b>
Austria	38
Belgium	27
Czech Republic	16
Cyprus	1
Denmark	23
Estonia	1
Finland	8
France	44
Germany	157
Greece	7
Hungary	8
Ireland	19
Italy	126
Latvia	8
Lithuania	5
Luxembourg	1
Poland	25
Portugal	4
Slovakia	24
Slovenia	5
Spain	8
Sweden	63
The Netherlands	38
United Kingdom	392
<b>Total</b>	<b>1,048</b>



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*Fig. 4. Total Work/Resident Permits Issued in Malta Held by Other Nationals (Feb.2005)*

<b>FEBRUARY 2005</b>	
<b>Citizenship</b>	<b>Number of Work Permits Held</b>
<b>Candidate Countries</b>	
Bulgaria	114
Croatia	24
Romania	20
Turkey	57
<b>EEA States</b>	
Iceland	2
Norway	10
Switzerland	13
<b>Other States</b>	
Australia	17
Bosnia-Herzegovina	81
China	246
Egypt	38
India	100
Libya	124
Nigeria	31
Pakistan	18
Russia	120
Serbia and Montenegro	260
Somalia	24
Thailand	22
The Philippines	68
Tunisia	18
Ukraine	41
United States of America	20
<b>Total</b>	<b>1,468</b>
Other States	177

## **Chapter IX**

### **Social Security: The Relationship of Regulation 1408/71 and 1612/68**

Social Security in Malta is regulated by the Social Security Act 1987 (Chapter 318 of the Laws of Malta). The Social Security Act is undoubtedly one of the most complicated statutes in Maltese legislation. It lists the benefits that persons who satisfy the conditions stipulated thereunder would become eligible to and could therefore claim. The Act does not discriminate on the basis of nationality. Eligibility for benefits normally depends on the contributions made by a person to the social security system in Malta. Non-contributory benefits are conditional on other factors depending on the benefit being sought, but no nationality requirement is included.

In the light of the above coupled with the fact that the provisions of Regulations 1408/71 and 574/72 became directly applicable in Malta by virtue of the Malta-EU Accession Treaty (signed in Athens on 16 April 2003), no amendments to the Act were effected post-accession. In other words, in the event that a Union citizen claims a conflict between the Social Security Act and Regulation 1408/71 (with respect to the issue of the co-ordination of social security systems) (s)he would have to rely on the direct applicability of the Regulation/s in question.

The Department of Social Security informs that the Regulations are fully operational in Malta. An International Relations Unit has been set up within the Department of Social Security in order to deal specifically with issues related to the application of regulations 1408/71 and 574/72. The Department of Social Security has expertise in the coordination of social security matters with other countries on a bilateral level, gained from years of coordinating four bilateral agreements with Australia, Canada, United Kingdom and The Netherlands. Following Malta's accession to the European Union on 1 May 2004, the Department of Social Security is also responsible for the implementation of the EU social security regulations which are much more comprehensive in their scope than the abovementioned bilateral agreements. Moreover, the obligations they impose on the institutions responsible for their implementation may have serious financial repercussions on social security expenditure.

The principles of the EU's social security regulations imply the exchange of information between social security institutions. An effective and coherent co-ordination system of social security schemes between Member States is therefore essential in order to achieve the objectives of the regulations. This is the responsibility of the competent authority in each Member State.

As of 1 May 2004, the International Relations Unit acts as the liaison body between the competent units within the Department of Social Security handling claims under the EU regulations and its counterparts in all the other Member States. It also supervises and monitors the on-going implementation process, while disseminating information to the general public about various related issues. The International Relations Unit also offers advice and assistance relating to entitlements abroad. Staff has been trained on the application of such Regulations. Furthermore, a Twinning Light Project has been initiated with the specific aim of providing further training to staff. Office manuals are being drawn up to strengthen the administration of such Regulations by officers within the said Department. At the time of the completion of this report the Office Manuals were not yet available.

The benefits that may be claimed, by virtue of the EU's social security regulations, from Malta's Department of Social Security are sickness and maternity benefits, invalidity bene-

fits, old age and death pensions, benefits and pensions relating to accidents at work and occupational diseases, death grants, unemployment benefits, family benefits and family allowances for employed and unemployed persons, and benefits for dependent children of pensioners and for orphans. These aforementioned social security benefits are paid by the Department of Social Security in cash. However, sickness and maternity benefits also include benefits in kind. These refer to medical assistance: the Maltese National Health Scheme is free for all, and given that in 1979 there was a statement of policy in Parliament that declared that payment of the Maltese social security contribution gives right to the services provided under our health scheme, such services fall under the provisions of EU Regulation 1408/71.

This also means that the provisions of Maltese legislation create obligations on the Department of Health and the Department of Social Security to provide for health care or benefits to persons insured under the Maltese scheme, whether they are working in Malta or in another EU country. Moreover, it is to be noted that by virtue of EU Regulation 859/03, with effect from the 1st. June 2003, third country nationals who were legally residing in an EU Member State are now also covered by the provisions of Regulation 1408/71.

The implementation of Regulation 1408/71 has so far proceeded quite smoothly in Malta. Since 1 May 2004, the Department received around 100 applications for unemployment benefits and pensions and around 60 forms for posted workers from other member states. Approximately the same number of claim forms and double the number of posting forms have been sent to other Member States.

A rather difficult and unforeseen issue has developed with regard to posted workers. Most of the EU-15, being cautious of a large influx of migrant workers from the Eastern European Countries, obtained a transitional arrangement restricting the freedom of movement of workers and subjected migrant workers to controls. This arrangement did not include Malta and Cyprus. This has presented employers based in the EU-15 with the opportunity of setting up 'satellite' companies in Malta for the purpose of recruiting employees from the East European Countries and then posting them immediately to the country where the 'mother' company is situated.

This appears to have developed into a way of by-passing the transitional arrangements when a company situated in an EU-15 Member State wants to recruit workers from the new East European Member States.

This activity appears *prima facie* legal, but it has certain social security consequences that have created some difficulty. The companies involved have claimed that their workers are being posted from Malta and that, as such, by virtue of Regulation 1408/71 they should be subject to Maltese social security legislation. The Department of Social Security in Malta is therefore receiving applications for E101 certificates for such workers, to be presented to the authorities in the other country and which will excuse the payment of social insurance contributions in that country. In any such case which arises, the Department will be following the approach adopted by the European Court of Justice in *Fitzwilliam* (C-202/97) and will be looking closely to establish the precise nature of the activities of the company here in Malta. If these cannot be said to constitute "habitual and significant" activities, then E101 certificates will not be issued. In particular the presence of an administrative base in Malta will not, in itself, be regarded as satisfying this criterion.

Another series of cases which has arisen concerns third country nationals employed in international transport, particular long-distance lorry drivers. Following the extension of the personal scope of the Regulation to include third country nationals as of 1st July 2003, such drivers could in principle be covered provided they were lawfully resident in a Member State

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and were in a situation involving more than one State. With respect to the latter applications, the Department has taken the stance that the criteria for lawful residence were not being satisfied by third country nationals of the said transport companies. Consequently, these workers could not be regarded as resident in any Member State and are consequently deemed to fall outside the scope of Regulation 1408/71. This means they would therefore fall within the remit of applicable Maltese legislation.

## Chapter X Establishment, Provision of Services, Students

### Establishment and Services

Section 7 of the Immigration Regulations (Legal Notice 205/2004) refers to the right of entry for the purposes of self-employment, establishment and the provision or receipt of services. Any citizen of the Union may enter Malta to establish himself in Malta in order to pursue activities as a self-employed, as well as to provide or receive services. Furthermore, any dependents<sup>14</sup> benefit from derivative rights, thereby acquiring the same rights as the Union citizen upon whom they depend. The Principal Immigration Officer is to facilitate the admission of any family member, if such family member is economically dependent upon the citizen of the Union, or his spouse, or was sharing the same abode in the home country.

The right of residence for persons providing and receiving services shall be of equal duration with the period during which the services are provided or received. If such period exceeds three months, a residence permit shall be issued; where the period does not exceed three months, the identification document with which the individual concerned entered Malta shall suffice to cover his stay. With regard to dependents who are not citizens of the Union, a residence document shall be issued. Furthermore, both the Union citizen as well as his dependents shall have the right to remain permanently in Malta, subject to the procedures outlined in Chapter 1 of this Report.

By virtue of section 7(8) of the Immigration Regulations, no citizen of the Union or his dependent can pursue activities as a self-employed or provide services, unless such person -

- a) is a bona fide self-employed person;
- b) operates from a registered address and satisfies all other requirements that are normally required of a self-employed Maltese national, including all matters relating to registration and taxation; and
- c) has the ability to support himself and any dependents accompanying him.

All natural or legal persons require a trade licence to pursue an economic activity in Malta. The Trading Licences Act (Chapter 441 of the Laws of Malta) was adopted in 2001 and came into force in May 2002. The Trading Licences Act makes provision for the regulation of commercial activities and for matters ancillary to or connected with such activities and introduces provisions intended to allow EU companies or nationals who are established in any other Member State to provide services in Malta. This Act streamlined the procedure relating to the issue of trading licences in line with the *acquis communautaire* and devolved the issue and transfer of licences to the respective regulatory authorities. Post-accession, all EU nationals have access to all activities requiring a licence. Furthermore, the issue and transfer of licences for those business activities restricted in number, due to physical, geographical, demographic, economic or other logistic limitations, is also now open to EU nationals post-accession.

The Commerce Division (incorporating the former Department of Trade), the Department of Health within the Ministry of Health, the Department of Agriculture within the Ministry for Agriculture and Fisheries, the Police Department within the Ministry for Justice and Home Affairs, the Malta Tourism Authority, the Malta Maritime Authority, the Malta Trans-

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<sup>14</sup> The concept of 'dependent' has been defined in Chapter 1 of this Report.

port Authority and the Malta Resources Authority, are responsible for the regulation and administration of sectoral trade licences. Licences are generally issued in terms of administrative policies that include norms for their transfer, as well as for amendments and other requirements. Prior to the enactment of the Trading Licences Act, Malta operated a trade licensing system regulated by the Code of Police Laws (Chapter 10 of the Laws of Malta) and by established administrative practices and procedures.

With regard to companies and branches of non-Maltese companies, the competent authority for registration purposes is the Registry of Companies within the Malta Financial Services Authority (MFSA). The legislation regulating the registration of companies is the Companies Act (Chapter 386 of the Laws of Malta), enacted in 1995. The provisions of this Act did not contain any discriminatory provisions based on nationality with regard to the establishment of companies in Malta.

## **Students**

Section 8 of the Immigration Regulations grants citizens of the Union the right to reside in Malta for the purpose of following a course of education, including vocational training. Their right of residence shall be subject to the following conditions:

- a) the citizen of the Union must be enrolled in a recognized educational establishment for the purpose of following a course of education, including a vocational training course;
- b) the citizen of the Union and accompanying dependents are to be covered by sickness insurance in respect of all risks in Malta; and
- c) the citizen of the Union is to make a declaration of resources or must otherwise give an assurance to the Principal Immigration Officer that he has sufficient resources to avoid becoming a burden on the Maltese social assistance system during his period of residence and that of his dependents.

A Union citizen seeking entry into Malta for study purposes must provide sufficient proof of compliance with the abovementioned conditions to the Principal Immigration Officer at the time of entering into Malta.

As in the case of the self-employed and service providers, the dependents of a student shall be entitled to accompany him, to reside in Malta and to take up any employed or self-employed activity in Malta, even if they are not themselves citizens of the Union. However for the purposes of entry into Malta for study purposes, the term dependent does not include ascendants of the student or of the spouse.

The rights of residence enjoyed by Union citizens moving to Malta for study purposes shall continue for the duration of the course of studies. A residence permit in this case, issued upon application to a citizen of the Union, shall be limited in duration to the particular course of studies, where the duration of such course is shorter than one year, or to a period of one year on a renewable basis if the course of studies is longer in duration. Dependents of the student shall also be entitled to such permit, but if they are not Union citizens they shall be issued with a residence document which has the same validity as that issued to the Union citizen.

Entitlement to a residence permit and/or a residence document shall be evidenced as follows for the student:

- i) a valid identification document;

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- ii) proof that the student has been enrolled in a recognized educational establishment for the principal purpose of following a course of education or a vocational training course;
- iii) proof that the student is covered by sickness insurance;
- iv) a declaration that the student has sufficient resources.

With regard to the dependents of the student, the following documents are required:

- i) a valid identification document;
- ii) a visa, if the dependents are not citizens of the Union but of a state whose citizens require a visa when crossing the border crossing point;
- iii) proof of the relationship with the student and, where applicable, of dependence on him;
- iv) proof that each dependent is covered by sickness insurance;
- v) a declaration by the student that he has sufficient resources.

### *Student Maintenance Grants*

The Students' Maintenance Grants were established by virtue of the Post-Secondary and Tertiary Student Grants Regulations (Legal Notice 165 of 1999). This Legal Notice as subsequently amended by Legal Notices 171 of 1999, 180 of 2000, 193 of 2001 and 204 of 2003, lays down the conditions, a student must satisfy, in order to qualify for these grants.

These Regulations provide for the setting up of a Students Maintenance Grants Board (SMBG) responsible for the Management of the allocation of maintenance grants to students at postsecondary and tertiary levels, and for making policy recommendations. Section 2 of these Regulations defines a maintenance grant as

“the financial benefits paid to post-secondary and tertiary students to facilitate and promote the continuation of the pursuit of all forms of full-time post-secondary education”.

The following are entitled to receive maintenance grants:

- i) full-time students joining post-secondary courses, on or after the 1st October, 1999, mentioned in Part I of the Schedule to the Regulations;
- ii) full-time students joining the University of Malta on or after the 1st October, 1999 to follow an undergraduate course indicated in Part II of the Schedule to the Regulations;
- iii) full-time students joining the University of Malta on or after the 1st October, 1999, to follow any one of the post-graduate degree courses indicated in Part II of the Schedule to the Regulations.

### *Post-Secondary Students*

Part I of the Regulations deals with the eligibility of post-secondary students for a Maintenance Grant. By virtue of section 3 of the Regulations, the student must fulfil the following conditions:

- a) be a full time student;
- b) be a Maltese citizen or have at least one parent who is a Maltese citizen;
- c) have resided in Malta for a period of not less than five years from the date of commencement of the relative course of studies;
- d) have completed his/her term of compulsory education;
- e) attend regularly and make satisfactory progress.

Maltese citizenship of the student or of at least one of the parents therefore clearly appears to be a prerequisite for eligibility for a maintenance grant. Students attending Post-Secondary institutions receive LM 100 (approximately € 240) at the start of each academic year of the course. They also receive LM 40 (approximately € 100) every month for nine months from October till June. Moreover, section 6 of the Regulations makes it possible for students who, due to proven hardship, are deemed by the SMBG to qualify for a supplementary maintenance grant, to receive an additional fixed monthly rate. They are in fact entitled to LM 60 (approximately € 150) instead of LM 40.

#### *University students*

Part II of the Regulations deals with the eligibility of University students for a Maintenance Grant. Again, Maltese citizenship of the student clearly appears to be a prerequisite for eligibility for a maintenance grant. By virtue of section 3 of the Regulations, the student must fulfil the following conditions:

- a) be a full time student;
- b) be a Maltese citizen;
- c) have resided in Malta for a period of not less than five years from the date of commencement of the relative course of studies;
- d) be under 30 years of age at the time of commencement of the course;
- e) attend regularly and make satisfactory progress.

Where a student is over 30 years of age and satisfies all the abovementioned conditions, the student may qualify for a maintenance grant where he/she is the principal breadwinner in a household and the SMBG deems that he/she is deserving of a maintenance grant.

First Year University Students receive a once only grant of LM 400 (approximately € 1000). All University Students, who qualify for the grant, then receive LM 200 (approximately € 500) at the beginning of each academic year throughout their course of studies. They will also receive LM60 (approximately € 150) every month for nine months between October and June. University students who qualify for the Special Maintenance Grants are entitled to double this amount and will receive LM 120 (approximately € 300) every month instead of LM 60.

Since 2003, the capital part of the grant, namely the LM 100 paid to post- secondary Students, the LM 200 to University Students and the LM 400 one-time grant to first year University Students, are paid into a student card while the monthly payments continue paid in the usual manner, that is, by cheque or bank transfer. The card should be used mainly for books. But it can also be used for the purchase of items such as a computer and/or computer programmes that could be of assistance to students in their studies.

#### *Implications of Bidar Judgment (Case C 209/03 decided on 15th March 2005)*

As a result of the Bidar judgement, it appears that the ECJ considers that a student who is lawfully resident in a host Member State, cannot be discriminated against, either overtly or covertly. It also established that once a student satisfies the criteria for European citizenship (art. 18 EC) and lawful residence under Directive 90/365 (namely, a derived right of residence, which in turn means that the student is no burden on the State and is in possession of



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a sickness insurance), then no discrimination on grounds of nationality (art. 12 EC) may be allowed vis-a-vis such student, even in terms of maintenance grants.

The Court established that differentiation with respect to maintenance grants may only be established by a Member State with regard to

- a) students who have gone to another MS for study purposes only, and
- b) only on the basis of objectively justifiable purposes.

It considered that a three year residence in the host country prior to the commencement of studying and to have been “settled” there as being more readily satisfied by nationals of the host MS rather than other EU nationals, and therefore discriminatory.

On the basis of the above, it is submitted that the Maltese Regulations on Maintenance Grants may be deemed to fall foul of this case law on at least two counts:

- a) the requisite of Maltese nationality, and
- b) a 5 year residence period in Malta

## Chapter XI Miscellaneous

### Maltese citizenship

The acquisition of Maltese citizenship is regulated by the Maltese Citizenship Act (Chapter 188 of the Laws of Malta). This Act provides for the acquisition of citizenship by birth or descent, by registration after marriage to a Maltese citizen or to a person who has become a Maltese citizen, as well as by naturalisation.

Part IV of the Maltese Citizenship Act, added by Act 4 of 2000, deals with multiple citizenship. Section 7 of the Act clearly provides that it shall be lawful for any person to be a citizen of Malta, and at the same time a citizen of another country. This means that an individual can have dual nationality and thereby be both a Maltese citizen, as well as a citizen of any other EU Member State. This therefore means that under Maltese law, the acquisition of the citizenship of another country will not bring about, automatically or otherwise, the forfeiture of Maltese citizenship.

By virtue of section 8 of the Act, it shall also be possible for an individual to reacquire Maltese citizenship by registration. Any person who, prior to the coming into force of the amendments introduced by Act 4 of 2000, was to have ceased to be a citizen of Malta because of the possession or acquisition, voluntary or involuntary, of any other citizenship, shall be entitled to be registered as a citizen of Malta. Such registration can be made by submitting an application to that effect and upon taking an oath of allegiance. Furthermore, any person who was formerly, at any time, a citizen of Malta, resided in any country outside Malta for an aggregate period of at least six years, subsequently acquiring or retaining the citizenship of any other country, shall be deemed not to have ever ceased to be a citizen of Malta.

Notwithstanding this, there still exists an anomaly with regard to voting rights. The legislation currently in force provides that a person must have resided in Malta for six out of the previous eighteen months in order to be deemed an eligible voter. This essentially means that a number of persons who would normally be entitled to vote but who by reason of the fact that they happen to be employed in another EU Member State or even with the EU institutions, may in fact lose their right to vote in Malta. This is one of the issues currently being addressed in an exercise set to reform the electoral laws and which is being led by the three main political parties in Malta.<sup>15</sup> No information as to tabled solutions was publicly available at the time of finalisation of this first draft report.

### Teaching

Postgraduate and graduate courses including elements of the Community's Free Movement of Persons *acquis* have been offered at the University of Malta, by the Faculty of laws, the Faculty of Arts and the European Documentation and Research Centre, since 1993. A module focusing specifically on the EU's *acquis* on the Free Movement of Persons is also offered, on an optional basis, as part of the curriculum leading to the Degree of Doctor of Laws.

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<sup>15</sup> The *Partit Nazzjonalista* (in government), the Malta Labour Party and the *Alternattiva Demokratika* (Greens).

