Malta's Comments on the National and Consolidated Reports on the Free Movement of Workers for the year 2007

Comments on the National Report

In general terms, Malta welcomes the National Report on the Free Movement of Workers for the year 2007. Nevertheless, Malta would like to submit the following:

With regard to the section on Equal Treatment in access to employment, on page 13, the definition of discrimination in Maltese employment law which is 'any distinction, exclusion, or restriction which is not justifiable in a democratic society' is purposely not exhaustive to ensure that it can be applied to any circumstances which fall within that definition, without any limitations. This definition, in fact, offers a broader protection to employees, and does not imply, as might be inferred from the text in question, that there is any lacuna.

With regard to the section on the Recognition of Diplomas, on page 13, Malta would like to stress that the Education Act (Cap. 327), considers as one of the functions of the University 'to evaluate foreign degrees and academic distinctions'. This function was the primary responsibility of the University of Malta that was performing the task associated with the European Network of Information Centres and the National Academic Recognition Information Centres (ENIC-NARIC) in Europe. ENIC-NARIC Networks provide information on instruments for recognition of diplomas, Diploma Supplement, Credit transfer systems, ECTS. However, since the establishment of the Malta Qualifications Recognition Information Centre (Malta QRIC, which is the equivalent of ENIC-NARIC), this function is no longer the responsibility of the University. The office of the Registrar of the University deals with the evaluation of foreign degrees and academic distinctions (referred to as "diplomas" at European level) in so far as the University itself is concerned.

In relation to Chapter III on Equality of Treatment on the Basis of Nationality, and with reference to page 18 Section 2 on 'Other rights relating to free movement, Voting Rights' Malta would like to stress that footnote 3 should end with the following wording "…been resident for a period of six months, continuous or in aggregate."

With regard to Page 19 Section 3.2, the Malta Football Association (MFA) rules substantially reflect the UEFA "home-grown players" rules which do not go counter with EU legislation."

In relation to Chapter V on the Members of the Family, more specifically with reference to page 29 Section 2 on 'Access to Work', Malta would like to highlight that family members of all European Union citizens, who are exercising any of their Treaty rights in Malta and not just self-employed persons, are entitled to the rights mentioned in the said paragraph.

In the case of third country nationals, who are not family members of an EU national, their work permits are issued on the basis of labour market requirements. These permits are issued for a maximum period of one year and may be renewed also in accordance with prevailing labour market requirements. The fee for a work permit issued in respect of such persons is currently €139.76.

In relation to Chapter VII on the Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers, more specifically with reference to page 32 Section 1 on Non-Family Members/Dependents, Malta would like to stress that third country nationals for whom a visa is not required in order to enter Malta are required to apply for a residence permit to the Director for Citizenship and Expatriate Affairs in order to reside in Malta for a period exceeding three months.

With reference to page 35 section 3 on the Schengen Agreement and section 4 on the Malta-Libya Arrangement, Malta would like to underline that in the area of visa policy, one of the key elements supporting the high level of external border controls, Malta (as of 1 May 2004), fully adheres to the visa regime as laid down in Council Regulation (EC) 539/2001 and third-country nationals may enter and travel to Malta, applying the Schengen provisions since 21 December 2007, for a period of up to three (3) months within a six-month period, provided that they fulfil the entry conditions laid down in the Schengen *acquis*.

In relation to Chapter VIII on EU Enlargement, more specifically with regard to page 38, Malta would like to state that the issue of a work permit is in fact a pre-condition for the taking up of employment. However, the work permit is issued automatically and from February 2009 immediately on application.

With reference to Table 2 on page 39, Malta would like you to note that the total is incorrect (it should read (6,137).

Comments on the Consolidated Report

With regard to the section on the access to employment, on page 21, the definition of discrimination in Maltese employment law which is ‘any distinction, exclusion, or restriction which is not justifiable in a democratic society’ is purposely not exhaustive to ensure that it can be applied to any circumstances which fall within that definition, without any limitations. This definition, in fact, offers a broader protection to employees, and does not imply, as might be inferred from the text in question, that there is any lacuna.

In relation to Chapter V on the Members of the Family, more specifically with regard to page 44 paragraph 2 and Footnote 45, Malta would like to highlight that the Free Movement of European Union Nationals and their Family Members Order (LN191/07), that is the national legislation transposing Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, defines family members of the Union nationals as provided for in Article 2(2) of the Directive and ‘other family members’ as stipulated in Article 3(2) of the said Directive. Also in accordance with the provisions of the Directive and these Regulations concerned, the admission and residence of the latter category of persons (other family members) shall be facilitated, after due and proper consideration has been given to the particular case.

With regard the reference to the ‘Maltese Immigration Act’ in Footnote 45, this should read “the Free Movement of European Union Nationals and their Family Members Order (LN191/07)”.

In relation to Chapter VIII on EU Enlargement, more specifically with regard to page 76 paragraph 8,m Malta does not agree that the work permit procedures applicable to EU nationals are onerous. The application involves the filling of a straight forward one page form together,

with the production of an identification document and the payment of an administrative fee. It is pertinent to note that the issue of the relative work permit is automatic and with effect from February 2009, immediate upon application.