REPORT
on the Free Movement of Workers in Malta in 2007

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Introduction

In 2007, the three major developments relate to the publication of the *Free Movement of European Union Nationals and their Family Members Order,* Malta's joining of the Schengen area and the publication of the *Recognition of Professional Qualifications Regulations* which implement the provisions of Commission Directive 2005/36 EC as amended by Commission Directive 2006/100 EC.

The *Free Movement of European Union Nationals and their Family Members Order 2007* (Legal Notice 191/2007), published on 20 July 2007, transposes the content of the provisions of the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which amends Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (2004/38/EC).

It revokes and replaces Part II of the Immigration Regulations with respect to nationals of the EU only, with effect from the day it is published. The Immigration Regulations shall continue to apply to those countries whose nationals have freedom of movement in the European Union, but in respect of whom the provisions of Directive 2004/38/EC are not yet in force.

The *Recognition of Professional Qualifications Regulations* (LN 422/2007) were published under the Mutual Recognition of Qualifications Act (Cap.451). These Regulations came into force on 1st January 2008. These Regulations implement the provisions of Commission Directive 2005/36 EC as amended by Commission Directive 2006/100 EC. These Regulations apply to all nationals of a Member State and citizens otherwise legally entitled and authorised, wishing to pursue a regulated profession in a Member State, including those belonging to the liberal professions, other than that in which they obtained their professional qualification, on either self employed or employed basis.

The recognition of professional qualifications allows the migrant to gain access to, and pursue in Malta the same profession as that for which he is qualified in the home Member State under the same conditions as nationals. These Regulations shall also apply to a third country citizen in possession of the status of long term resident within a Member State or on being a family member of a citizen of a Member State exercising the right to free movement within Member States. Any person benefiting from the recognition of professional qualifications shall have the knowledge of languages necessary for practising the profession in Malta.

The 21st of December 2007 marked another historical milestone for Malta and Gozo since, on this date, the smallest EU Member State joined the Schengen area along with another eight EU Member States, namely the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. On this day, these countries lifted their land and sea borders, which means that persons travelling between these countries, as well as between these countries and the other Schengen states, are no longer subject to border controls. Malta's geographical position as an island state on the periphery of the EU mandated more stringent preparations as Malta's borders would have eventually become part of the EU's external borders.

Chapter I
Entry, Residence, Departure

The 20 July 2007 saw the publication of the *Free Movement of European Union Nationals and their Family Members Order 2007* (Legal Notice 191/2007). This Legal Notice transposes the content of the provisions of the Directive 2004/38 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, which amends Regulation (EEC) No 1612/68 and repealing Directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (2004/38/EC).

LN 191/2007, issued by virtue of the powers conferred by article 4(2) of the European Union Act, revokes and replaces Part II of the Immigration Regulations with respect to nationals of the EU only, with effect from the day it is published. The Immigration Regulations shall continue to apply to those countries whose nationals have freedom of movement in the European Union, but in respect of whom the provisions of Directive 2004/38/EC are not yet in force.

A. ENTRY

Texts in force

Entry 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.

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 the 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.

By virtue of section 3(1) of LN 191/2007, a Union citizen may enter, remain and reside in Malta, seek and take up employment or self-employment therein, and shall enjoy equal treatment as Maltese nationals within the scope of the Treaty. Such right is also applicable to family members accompanying or joining the Union citizen, including those who are not nationals of a Member State. The Director for Citizenship and Expatriate Affairs may refuse, terminate or withdraw any such right in the case of abuse of rights or fraud.

Section 2 of LN 191/2007 defines *'family member'* as meaning the spouse, provided it does not include a party to a marriage of convenience; the direct descendants who are under the age of 21 or are dependants, and those of the spouse; the dependent direct relatives in the ascending line and those of the spouse. It also defines 'other family member' as meaning a person who, irrespective of his nationality, in the country from which he has come, is a dependant or a member of the household of the Union citizen having the primary right of residence; or a person who, for serious health reasons, strictly requires personal care by the Union citizen, or the partner with whom the Union citizen has a durable relationship, unless such relationship is in conflict with the public policy of Malta.

Section 3(2) of LN 191/2007 expressly provides that, subject to limitations justified on grounds of public policy, public security or public health, a Union citizen and his family members accompanying or joining him, may enter and leave Malta simply with a valid identification document in the case of Union citizens and a valid passport in the case of third country family members. Where appropriate, family members who are not nationals of a Member State shall be required to have an entry visa, which shall be issued free of charge as soon as possible and on the basis of an accelerated procedure, unless they are already in possession of a valid residence card, and no entry or exit stamp shall be placed in the passport of such family members in possession of a valid residence card. The Principal Immigration Officer shall give every reasonable opportunity to a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents available, to obtain the necessary documents or have them brought to him or to corroborate or prove by other means that he is covered by the provisions of Part II of LN 191/2007, entitled 'Entry and residence of citizens of the Union, family members and other family members'.

A Union citizen who arrives in Malta and who is not covered by the provisions of section 31 of the Immigration Act, applicable to places of accommodation, shall, within one month of his arrival, report his presence in Malta to the Principal Immigration Officer by reporting at any office designated by the Principal Immigration Officer, and shall be issued with an acknowledgement in writing of such report.

Judicial practice

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 refusals to enter in respect of EU nationals or their dependent family members.

B. RESIDENCE

Texts in force

Residence in 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, 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 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 the 30 April 2004 and extended the applicability of the Immigration Act to nationals of other EU Member States.

A Union citizen and his family members accompanying or joining him may reside and move freely within Malta on the same conditions as Maltese nationals for a period of three months without any conditions or any formalities, commencing on the date of entry. This three-month period is extendable to a six-month period, in the case of a person who provides evidence that he is genuinely seeking employment and has a genuine prospect of securing employment by the end of the said period of six months. Provided that a Union citizen and his family members shall so reside as long as they do not become an unreasonable burden on the Maltese social assistance system.

An EU citizen shall not be entitled to social assistance during the first three months of residence; where a person provides evidence that he is genuinely seeking employment and has a genuine prospect of securing employment within six months, the said period is extended to six months. This shall not apply in the case of workers, self-employed persons, persons who retain such status and members of their families. Neither shall an EU citizen be entitled, prior to the acquisition of the right of permanent residence, to maintenance aid for studies, including vocational training, consisting in student grants or student loans..

By virtue of section 4(1) of LN 191/2007, an EU citizen and his family members, even if such family members are third country nationals, may take up residence in Malta for a period longer than three months. Without prejudice to any rights which family members or other family members may enjoy, they may reside in Malta only for as long as the right of residence of the Union citizen continues and the applicable conditions continue to subsist.

Section 5 of LN 191/2007 refers to family members who have retained the right of residence. The death of the Union citizen, his departure from Malta, his divorce recognised under the Marriage Act, or annulment of his marriage shall not affect the rights of residence of his family members who are nationals of a Member State. Neither shall the death of the EU citizens affect the right of residence of his family members who are third country nationals and who have been residing in Malta as family members for at least one year before the Union citizen's death. The death of the Union citizen or his departure from Malta shall not affect the right of residence of his children or of the parent who has actual custody of the children irrespective of nationality, if the children reside in Malta and are enrolled at an educational establishment for the purposes of studying, until the completion of their studies.

With regard to the right of permanent residence, section 6 of LN 191/2007 provides that a Union citizen who has resided legally for a continuous period of five years in Malta, as well as his family members who are not nationals of a Member State and who have legally resided with him in Malta for a continuous period of five years, may reside permanently in Malta. Such right, once acquired, shall not be subject to any of the conditions provided for in articles 8 (relating to residence and employment), 9 (relating to residence and self-employment), 10 (relating to residence for study purposes) or 11 (relating to residence by other persons):

The Director for Citizenship and Expatriate Affairs may request proof of continuous residence. By virtue of section 6(3) of LN 191/2007, continuity of residence shall not be affected by temporary absences not exceeding a total of six months in each year; or by absences of a longer duration for compulsory military service; or an absence for a period of up to twelve consecutive months for important reasons including pregnancy and childbirth, serious illness, study or vocational training, or a posting in another Member State or a third country.

Once permanent residence is acquired, the Union citizen and his family members shall only lose the said status through absence from Malta for a period exceeding two consecutive years.

Section 6(5) of LN 191/2007 then provides a list of persons who shall enjoy permanent residence in Malta prior to the completion of the continuous period of five years of residence. These are:

(a) a worker or self-employed person who, at the time of his termination of employment, has reached retirement age, provided that such person has been working in Malta for at least twelve months prior to the termination of his employment and has resided in Malta continuously for more than three years;
(b) a worker who has ceased paid employment to take early retirement, provided that such worker has been working in Malta for at least twelve months prior to the termination of his employment and has resided in Malta continuously for more than three years;
(c) a worker or self-employed person who has resided continuously in Malta for more than two years and has stopped working as a result of permanent incapacity to work, provided that the required minimum residence period shall not apply if such incapacity is the result of an accident at work or an occupational disease entitling him to a pension for which an institution or body in Malta is wholly or partially responsible;
(d) a worker or self-employed person who, after three years of continuous employment and residence in Malta, works in an employed or self-employed capacity in another Member State, while retaining his place of residence in Malta to which he returns, as a rule, at least once a week.

Periods of employment spent in another Member State in which such person concerned has worked or is working, shall be regarded as having been spent in Malta. Furthermore, periods of inactivity for reasons beyond one's control, periods of inactivity due to illness or accident, and periods of involuntary unemployment duly recorded by the employment agency, shall be treated as periods of activity as a worker or self-employed person.

A citizen of the Union and his dependent family members shall not be required to be in possession of a registration certificate or a residence card before the expiry of three months from the date of their arrival in Malta. However, upon the expiry of three months from the date of their arrival in Malta, they shall apply for a registration certificate to the Director for Citizenship and Expatriate Affairs, who shall issue a registration certificate immediately, stating the name and address of the person registering and the date of the registration. Registration certificates, and permanent registration certificates shall be issued free of charge. The provisions of this Order shall be without prejudice to the provisions of any law regulating the acquisition of property in Malta by non-Maltese nationals and a registration certificate or residence card shall not, by itself, entitle the holder to acquire or hold property in Malta over and above what is regulated by the Immovable Property (Acquisition by Non-Residents) Act.

Judicial practice

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 refusals to issue resident permits in respect of EU nationals or their dependent family members.

C. DEPARTURE

Texts in force

Departure from 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.

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 the 30 April 2004 and extended the applicability of the Immigration Act to nationals of other EU Member States.

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.

As a rule, there shall be no border checks on Maltese citizens and EU citizens entering 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(2) of LN 191/2007 expressly provides that, subject to limitations justified on grounds of public policy, public security or public health, a Union citizen and his family members accompanying or joining him, may leave Malta simply with a valid identification document in the case of Union citizens and a valid passport in the case of third country family members. Where appropriate, family members who are not nationals of a Member State shall be required to have a visa, which shall be issued free of charge as soon as possible and on the basis of an accelerated procedure, unless they are already in possession of a valid residence card, and no entry or exit stamp shall be placed in the passport of such family members in possession of a valid residence card. The Principal Immigration Officer shall give every reasonable opportunity to a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents available, to obtain the necessary documents or have them brought to him or to corroborate or prove by other means that he is

covered by the provisions of Part II of LN 191/2007, entitled 'Entry and residence of citizens of the Union, family members and other family members'.

The Principal Immigration Officer shall not refuse or deport such persons, except where 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 the residence documents 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.

By virtue of section 13 of LN 191/2007, a person who ceases to have the right to reside or who becomes an unreasonable burden on the social assistance system, may be removed from Malta, provided that a removal order shall not be the automatic consequence of the person's recourse to the social assistance system of Malta. Furthermore, a removal order shall not be issued in the case of a worker, or self-employed person, or job-seeker who can provide evidence that he is continuing to seek employment and that he has a genuine chance of being engaged. Where a decision for removal on grounds of public policy or public security is being taken, the Principal Immigration Officer shall take into account a number of considerations which may include the period of residence in Malta of the person to be removed; the age of such person; the person's state of health; his family and economic situation; his social and cultural integration in Malta; the extent of his links with his country of origin.

A decision for removal shall not be taken in the case of a Union citizen and his family members, irrespective of nationality, who have the right of permanent residence, except on serious grounds of public policy and public security. A removal decision shall not be taken against a Union citizen, except if the decision is based on imperative grounds of public security, if such citizen:

(a) has resided in Malta for a continuous period of at least 10 years prior to such decision; or
(b) is under the age of 18 years unless such decision is necessary in his best interests.

Diseases occurring after a three-month period from the date of arrival, shall not constitute grounds for removal of the Union citizen, his family members and other family members from Malta on grounds of public health. Furthermore, the expiry of the identification document used by a citizen of the Union and his family members and other family members to enter Malta and the failure of such persons to obtain a residence permit or a residence document, as the case may be, shall not, by itself, justify removal from Malta.

In these circumstances, the Director shall inform the person whose free movement has been restricted, or who is to be removed, in writing, precisely and in full, of the reasons for such restriction or of the grounds for such removal, on which the decision taken in his regard is based, in a way that is comprehensible to such person, unless this is contrary to the interests of the security of Malta. The said person shall also be informed in writing of such person's right to lodge an appeal to the Immigration Appeals Board and of the time limit for the appeal.

The Principal Immigration Officer shall, in relation to any person who is removed on grounds of public policy or public security and who makes the declaration in writing, reach a

decision on the declaration within six months of its submission and such person shall have no right of entry into Malta pending the consideration of his declaration. A ban on re-entry may not be imposed following a removal, provided that such removal did not take place on grounds of public policy, public security or public health.

The departure of the Union citizen from Malta shall not affect the rights of residence of his family members who are nationals of a Member State.

Chapter II
Access to Employment

1. EQUAL TREATMENT IN ACCESS TO EMPLOYMENT

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. However, the definition provided is not exhaustive.

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.

2. LANGUAGE REQUIREMENTS & THE PRIVATE SECTOR

There are no particular language requirements with regard to employment in the private sector. Although Maltese legislation does not stipulate that employees must have a good command of the Maltese and English languages, in practice, for certain jobs, it is necessary to have a good command of both languages, while for most jobs, having a good command of either language would be sufficient.

3. RECOGNITION OF DIPLOMAS

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. Malta is also a party to various UNESCO Conventions on the recognition of qualifications. The Mediterranean Convention (1976) was ratified on the 22 January 1986, the European Region Convention (1979) was ratified on the 24 March 1983, and the Lisbon Convention (1997) was ratified on the 16 November 2005 and came into force on the 1 January 2006.

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 coordinator required under the general system Directives

The Recognition of Professional Qualifications Regulations (LN 422/2007) were published on 18th December 2007 under the Mutual Recognition of Qualifications Act (Cap.451). These Regulations will come into force on 1st January 2008.

Regulated Professions

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 (recognition of professional qualifications requiring at least 1 year but less than 3 year course of higher or vocational education). 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 issued thereunder. The subsidiary legislation issued under the Mutual Recognition of Qualifications Act is the following: the Mutual Recognition of Professional Education and Training Regulations (Legal Notices 271 and 272/2002), the amending Regulations thereof (Legal Notices 160 and 161/2004), and the Malta Qualifications Recognition Information Centre and the Mutual Recognition of Qualifications Appeals Board Regulations (Legal Notice 196/2004)

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 identified. 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 decision, 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

Non-regulated professions are dealt with by the Malta Qualifications Council Regulations (Legal Notice 347/2005), published on the 28 October 2005 and issued under the Employment and Training Services Act (Chapter 343 of the Laws of Malta). These Regulations repealed the Malta Professional and Vocational Qualifications Regulations and provide for the setting up of the Malta Qualifications Council.

In classifying qualifications and national standards of knowledge skills, competences and attitudes, the Council shall be guided by eight levels of qualifications and competence as indicated in the Schedule to the Regulations, describing the levels of qualifications and competences needed to access further study and training and to perform work at a specific level effectively.

The overall objective of the Malta Qualifications Council is to steer the development of the National Qualifications Framework and to oversee the training and certification leading to qualifications within the Framework and which is not already provided for at compulsory education institutions or degree awarding bodies. It also established and maintained a qualifications framework for the development, accreditation and award of professional and vocational qualifications, other than degrees, based on standards of knowledge, skills, competences and attitudes to be acquired by learners. In addition, it shall promote and facilitate lifelong learning access, transfer and progression; as well as foster the recognition abroad of professional and vocational certificates awarded in Malta.

The provisions of the Malta Qualifications Council 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. The Council shall not have the power to grant warrants, licences or registrations of professions and occupations provided for under 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.

Chapter III
Equality of Treatment on the Basis of Nationality

1. WORKING CONDITIONS. SOCIAL & TAX ADVANTAGES

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 license 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.

Training Grants

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.

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[1]. The Migrant Workers (Child Education) Regulations, through section 3(1)

[1] 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.

ensure equal access to free tuition[2] 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.

2. OTHER RIGHTS RELATING TO FREE MOVEMENT

In this section, specific reference will be made to voting rights and to the purchase of immovable property

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.[3]

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;

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

3 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.

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.

The 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[4] 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-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.

3. SPECIFIC ISSUES

3.1 Frontier Workers

With regard to frontier workers, the author has nothing to report, since the issue of frontier workers does not apply to Malta.

3.2 Sportsmen/Sportswomen

With regard to **football**, article 9 of the Competition Rules of the Malta Football Association (MFA) has 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:

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[4] 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
(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…."

"ART. 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 teams 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 another 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,[5] the MFA

[5] MFA Press Release dated 13 July 2004

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[6] 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.

3.3 The Nationality Condition for Captains of Ships

The next point concerns the nationality condition for captains of ships. It is the Merchant Shipping Act (Chapter 234 of the Laws of Malta) which 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*).

3.4 Researchers

The author is advised that a Legal Notice transposing the provisions of Council Directive 2005/71/EC of the 12 October 2005, on a Specific procedure for admitting third-country nationals for the purposes of scientific research, is being drafted and should be published in 2008.

4. THE RELATIONSHIP BETWEEN REGULATION 1408/71 & 1612/68

Texts in Force

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

[6] A daily newspaper in Malta published in the English language.

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 16th 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 Equal Treatment in Occupational Social Security Schemes Regulations[7] were published on 13 September 2005 and have been in force since that date. These Regulations give effect to the relevant provisions of Directive 86/378 EEC as amended by Directive 96/97 EC on the implementation of the principle of equal treatment for men and women in occupational social security schemes.

Enhancing Administrative Capacity – The Twinning Light Project

The Department of Social Security informs that the Regulations are fully operational in Malta. In Malta, the Department of Social Security has established an International Relations Unit to act as the liaison body between the competent branches within the Department and its counterparts in all the other Member States and member partner countries. Since its establishment, the IRU has become a fully-fledged unit dealing with all benefits under all international agreements and covenants which the DSS has entered into, and Council Regulations (EC) 1408/71 and 574/72 concerning the application of social security schemes to employed persons, self-employed persons and members of their families moving within the European Community. In 2005, the IRU has handled 195 applications for social security benefits related to the application of Regulation 1408/71.

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.

The IRU was restructured as of 1 January 2006, on the basis of recommendations put forward by the experts at the end of a Twinning Light project. The Project involved various activities, such as a review of organisational structures, training of staff, the development of manuals, the development of a public information strategy (where 55,000 information leaflets were printed and distributed via Local Council offices and Social Security district offices amongst others), the organisation of management, technical and legal seminars, as well as study visits.

The Benefits

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 benefits,

[7] Legal Notice 317/2005.

old age and survivors' 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: persons covered by L.N. 201/04 are entitled to free treatment under the Maltese National Health Scheme. 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. All others need to pay for their healthcare.

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. Table 1 below shows a breakdown of applications received between the 1 January and the 31 December 2007.

Table 1

TYPE OF APPLICATION	NUMBER
Retirement Pension	41
Widows Pension	2
Invalidity Pension	5

Around half of the applications received for Retirement Pensions came from UK nationals. Following the publication and entry into force of the Free Movement of European Union Nationals and their Family Members Order 2007 (Legal Notice 191/2007), no significant increases in the number of applications received was experienced.

With regard to supplementary pension schemes, whilst no supplementary pension regimes currently exist in Malta, the Bill that introduced the various measures of the most recent Pension Reform also provides the legal vires for the Minister responsible for social security, in concurrence with the Minister responsible for finance to make regulations that would see the introduction of the mandatory 2nd pension scheme.

Chapter IV
Employment in the Public Sector

ACCESS TO 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.
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 role of the Public Service Commission is act as a guardian of the principle of meritocracy. It gives 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, entry takes place by public competition following the publication of a call for applications, in which the salary, eligibility requirements and duties are defined. Entry can take place either to a substantive grade or to a definite contractual position. In the case of substantive grades, eligibility parameters are determined by classification agreements between the Maltese Government and the relevant unions. In the case of positions, eligibility parameters are established in accordance with benchmarks which are adopted service-wide.

Eligibility requirements would include

a) academic, or comparable, qualifications; or
b) relevant work experience; or
c) a combination of both.

Provided that it is relevant to the duties that are being advertised in the call for applications, proven professional/work experience is recognized irrespective of whether it has been acquired in the Private or Public Sector and in Malta or abroad.

1.1 Nationality Condition for Access to Positions in the Public Sector

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. So far, the posts which, on this basis, have been restricted to Maltese nationals include the following:

a) the Armed Forces
b) the Police Force
c) the Judiciary
d) Tax Authorities
e) the Diplomatic Corps
f) Staff at sensitive offices such as the Cabinet Office, the Office of the Principal Permanent Secretary, the Management and Personnel Office, offices of Permanent Secretaries and Ministerial Secretariats.

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:

- be able to communicate in the Maltese and English languages;
- be in possession of a warrant, qualifications, practice or experience, or a combination of more than one, as the case may be;
- 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.

1.2 Language Proficiency Requirements

When recruiting, public sector employers in Malta should bear in mind two main issues. Firstly that although administrative business is largely handled in English, Maltese is the national language and the language of first preference for most citizens. It is a matter of long-standing Government policy that members of the public are entitled to communicate with public officials in Maltese.[8] Moreover, article 3 of the National Language Act 2004[9] obliges the State to promote the use of the Maltese language.

Secondly, officials whose duties do not involve serving the public on a daily basis may still need to reply to correspondence, deal with requests received through the Government websites, or see to members of the public who are referred with detailed queries on their areas of competence. It is hardly ever possible to restrict all contact with the public to a single office or unit.

It should be noted that where a formal qualification obtainable only locally is required as evidence of linguistic ability, appropriate comparable qualifications obtainable from abroad are also accepted.

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8 OPM circulars no 52/87 dated 4 June 1987 and 32/96 dated 17 December 1996.
9 Chapter 470 of the Laws of Malta.

1.3 Recruitment Procedures

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/position, assessed on the following criteria, are taken into account in relation to 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.

1.4 Recognition of Diplomas

With regard to the recognition of diplomas or other qualifications 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, appropriate comparable qualifications are accepted. Selection boards regularly seek the advice of the competent authorities where this is necessary to assess the comparability of qualifications obtained from abroad.

1.5 Recognition of Professional Experience for Access to the Public Sector

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 comparable 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/Senior House Officer for employment in the Public Service;
- 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 to Medical Posts, provided that they meet the necessary requirements.

2. EQUALITY OF TREATMENT

2.1 Recognition of Professional Experience for the Purpose of Determining Professional Advantages

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* judgment.

Over the years, the ECJ, in its jurisprudence, has also considered the recognition of experience for the purpose of salary determination and career progression, again in respect of posts which are *not* covered by article 39(4) EC. The general principle set out by the ECJ is that where an individual's position in a salary scale, or his/her advancement to a higher level, depends on length of service, comparable employment in another member state should be taken into account for the purpose of determining length of service.

The cases *Commission of the European Communities v. Hellenic Republic*[10] and *Österreichischer Gewerkschaftsbund, Gewerkschaft öffentlicher Dienst v. Republik Österreich*[11] involved jurisdictions where it is normal practice to recognise service with other employers for the purpose of placement in a grade or salary scale (for instance, a teacher who moves from one regional authority to another in the same country). In such a case it is logical to recognise equivalent service in another Member State. These cases do not therefore call into question the practice, common in the Maltese Public Service, as well as in some other Government entities, of making progression to a higher salary scale or grade conditional on the attainment of a certain length of service in a particular grade.

On the other hand, the *Schoning-Kougebetopoulou* case[12] and *Kobler*[13] are less clear-cut and therefore require more detailed consideration, although a careful reading of the Court's judgments here also appears to support current practice in the Maltese Public Service.

3. RECRUITMENT TO PUBLIC ENTITIES OUTSIDE THE PUBLIC SERVICE

In Malta many statutory authorities outside the Public Service perform a regulatory role on behalf of the State, and they exercise legal powers assigned to them specifically for the fulfilment of their role. It is clear that posts which play a role in the exercise of such powers fall within the ECJ's definition of public service for the purpose of article 39(4) of the Treaty. Since such bodies act on behalf of the State, senior management posts and policy advisory posts belonging to such bodies can be said to have the role of "safeguarding the general interests of the state" regardless of whether they exercise legal powers, and thereby also fall within the scope of article 39(4).

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.

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10 Case C-187/96
11 Case C-195/98
12 Case C-15/96
13 Case C-224/01

Chapter V
Members of the Family

1. RESIDENCE RIGHTS

Texts in force

Entry and residence into Malta of family members 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.

Section 3(2) of LN 191/2007 expressly provides that, subject to limitations justified on grounds of public policy, public security or public health, a Union citizen and his family members accompanying or joining him, may enter and leave Malta simply with a valid identification document in the case of Union citizens and a valid passport in the case of third country family members. Where appropriate, family members who are not nationals of a Member State shall be required to have an entry visa, which shall be issued free of charge as soon as possible and on the basis of an accelerated procedure, unless they are already in possession of a valid residence card, and no entry or exit stamp shall be placed in the passport of such family members in possession of a valid residence card. The Principal Immigration Officer shall give every reasonable opportunity to a Union citizen or a family member who is not a national of a Member State and who does not have the necessary travel documents available, to obtain the necessary documents or have them brought to him or to corroborate or prove by other means that he is covered by the provisions of Part II of LN 191/2007, entitled 'Entry and residence of citizens of the Union, family members and other family members'.

With regard to other family members, section 3 (5) provides that the Director for Citizenship and Expatriate Affairs shall give due and proper consideration in relation to the admission and residence of an other family member, by undertaking an extensive examination of the personal circumstances. Any denial of entry or residence to such other family member shall subsequently be justified to the said family member

Upon the expiry of three months from the date of arrival in Malta, family members who are not citizens of the Union shall apply for a residence card to the Director, who may issue a registration certificate or a residence card to another family member as applicable. The Director shall issue a residence card to be known as 'Residence card of a family member of a Union citizen' or as applicable, no later than six months from the date of application, provided that a certificate of application for a residence card shall be issued immediately. The validity of such residence card shall be of five years from the date of issue or for the envisaged period of residence of the Union citizen, if such period is less than five years, provided that the validity of the residence card shall not be affected by the absences referred to in article 6(3).

The Director shall issue a family member, who is a third country national, and who is entitled to reside in Malta permanently, with a permanent residence card no later than six months after the date on which an application for such a card and proof that the family member is so entitled has been submitted to the Director. A permanent residence card shall be valid for ten years from the date of issue and shall be renewed automatically by the Director upon application made before the expiry of the said residence card, provided that the validity of the said residence card shall cease upon interruption of residence in Malta for a period ex-

ceeding two years**.** Registration certificates, residence cards, permanent registration certificates and permanent residence cards shall be issued free of charge.

Family members of the EU worker or self-employed person and who are residing with him in Malta, shall have the right of permanent residence if such person has acquired such right. Provided that, if such worker or self-employed person dies while still working before having acquired the right to remain permanently in Malta, family members shall be entitled to the right of permanent residence in Malta if such person had, on the date of his death, resided continuously in Malta for two years; or if his death resulted from an accident at work or an occupational disease; or if the surviving spouse is a former citizen of Malta and has lost Maltese citizenship by reason of marriage to such person.

The death of the Union citizen, his departure from Malta, his divorce recognised under the Marriage Act, or annulment of his marriage shall not affect the rights of residence of his family members who are nationals of a Member State. The death of the citizen of the Union shall not affect the right of residence of his family members who are third country nationals and who have been residing in Malta as family members for at least one year before the Union citizen's death. The divorce or the annulment of the marriage of the Union citizen shall not affect the rights of residence of his family members who are third country nationals where:

(a) the marriage had lasted for at least three years immediately before the initiation of proceedings for its termination and the parties to the marriage had resided in Malta for at least one year during the duration of the marriage; or
(b) by agreement between the spouses or following a court order, the former spouse has custody of the Union citizen's children; or
(c) the continued right of residence in Malta is warranted by particularly difficult circumstances, including having been victims of domestic violence while the marriage was subsisting; or
(d) by agreement between the spouses or following a court order, the former spouse who is not a national of a Member State has the right of access to a minor child provided that the court has ruled that such access must be in Malta, for as long as is required.

The death of the Union citizen or his departure from Malta, shall not affect the right of residence of his children or of the parent who has actual custody of the children irrespective of nationality, if the children reside in Malta and are enrolled at an educational establishment for the purposes of studying, until the completion of their studies.

Family members who are not nationals of a Member State, and who have legally resided with the Union citizen in Malta for a continuous period of five years, may reside permanently in Malta.

2. ACCESS TO WORK

Where a Union citizen is pursuing an activity as a self-employed person in Malta, his family members may, even if they are third country nationals, install themselves with such person, and for such purposes, they shall be issued with a registration certificate or a residence card, as the case may be, subject to the same rights and conditions applicable to the Union citizen, including the right to take up an activity as an employed or self-employed person in 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.

3. ACCESS TO EDUCATION

A third country national who has been granted long-term resident status in Malta shall enjoy equal treatment as Maltese nationals with regard to education and vocational training, including study grants.[14] A long-term resident also enjoys equal treatment with regard to the recognition of professional diplomas, certificates and other qualifications[15].

4. OTHER ISSUES CONCERNING EQUAL TREATMENT

A third country national who has been granted long-term resident status in Malta shall enjoy equal treatment as Maltese nationals with regard to social security, social assistance and social protection in accordance with Maltese law.[16] A long-term resident also enjoys equal treatment with regard to tax benefits.[17]

[14] Section 11(1)c of Status of Long-term Residents (Third Country Nationals), 2006
[15] Section 11(1)d of Status of Long-Term Residents (Third Country Nationals), 2006
[16] Section 11(1)e of Status of Long-Term Residents (Third Country Nationals), 2006
[17] Section 11(1)f of Status of Long-Term Residents (Third Country Nationals), 2006

Chapter VI
Relevance/Influence/Follow-up of Recent Court of Justice Judgments

With regard to the cases mentioned, no particular action or follow-up has so far been taken by the Maltese authorities.

Chapter VII
Policies, Texts and/or Practices of a General Nature with Repercussions on Free Movement of Workers

1. 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.

2. THE STATUS OF LONG-TERM RESIDENTS

The provisions of Council Directive 2003/109 concerning the status of third-country nationals who are long-term residents were implemented via the Status of Long-Term Residents (Third

country Nationals) Regulations[18] which entered into force on the 1 November 2006. These Regulations provide for:

a) the terms for conferring and withdrawing long-term resident status granted in relation to third country nationals legally residing in Malta and the rights relating thereto; and
b) the terms of residence in Malta of a third country national who was conferred the status of long-term resident in another Member State.

Third Country Nationals Residing Legally In Malta

The Regulations apply to third country nationals who are residing legally in Malta. However they do not apply to those third country nationals who are residing in Malta (a) to pursue studies or vocational training; (b) on the basis of temporary protection[19] or who have applied for authorization to reside on that basis and are awaiting a decision on their status; (c) on the basis of a subsidiary form of protection in accordance with international obligations or who have applied for authorization to reside on that basis and are awaiting a decision; (d) as refugees or who have applied for recognition as refugees and whose application has not yet given rise to a final decision; (e) solely on temporary grounds such as au pair or seasonal workers, or as posted workers; and (f) who are enjoying legal status governed by international conventions on diplomatic and consular relations.

A third country national wishing to obtain long-term resident status shall submit an application in writing to the Director for Citizenship and Expatriate Affairs and the latter shall grant long-term resident status to those who have resided legally and continuously in Malta for five years immediately prior to the submission of the application. In calculating the period of five years a temporary absence from Malta shall not interrupt such period and shall be taken into account in the compilation of the said period when the periods of absence are shorter than six consecutive months and do not exceed the total of ten months within the five year period.

By virtue of article 5(2) of the Regulations, when applying for long-term resident status, the third country national must prove that he has:

a) stable and regular resources which are sufficient to maintain himself and the members of his family and which would be equivalent to, at least, the amount of the national minimum wage in Malta with an addition of another twenty percent income or resources for each member of the family;
b) normal accommodation;
c) a valid travel document;
d) sickness insurance in respect of all risks normally covered for Maltese nationals for himself and the members of his family.

The Director for Citizenship and Expatriate Affairs shall provide the applicant with written notification of the decision within six months from the date of the application. In default, the application shall automatically be passed on for appeal to the Immigration Appeals Board.

The long-term resident's EC residence permit shall be valid for five years and shall be automatically renewable upon application. Article 9 of the Regulations refers to the withdrawal of loss of status of long-term resident and mentions the following cases:

a) if it is proved that the resident had acquired his long-term resident status through fraudulent means;
b) if the Principal Immigration Officer has issued an order for his removal;

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18 Legal Notice 278/2006, published in the *Government Gazette* on 17 November 2006

19 In line with the Temporary Protection for Displaced Persons (Minimum Standards) Regulations, 2005

c) if the long-term resident has been absent from EU territory for a period of twelve consecutive months;
d) if the long-term resident has acquired a long-term resident status in another Member State;
e) if the long-term resident is absent for six years from Malta and is residing in another Member State;
f) if he constitutes a threat to public policy, taking into consideration the seriousness of the offence he committed.

The expiry of the long-term resident's EC residence permit shall not entail the withdrawal or loss of the long-term resident status.

A third country national granted long-term residence status in Malta shall enjoy equal treatment as Maltese nationals as regards:

a) access to employment and self-employed activity, as long as such activities do not entail even occasional involvement in the exercise of public authority or are reserved to Maltese nationals;
b) conditions of employment and working conditions including conditions regarding dismissal and remuneration;
c) education and vocational training, including study grants;
d) recognition of professional diplomas, certificates and other qualifications;
e) social security, social assistance and social protection in accordance with Maltese law;
f) tax benefits;
g) access to goods and services and the supply of goods and services made available to the public and to procedures for obtaining housing;
h) freedom of association and affiliation and membership, including the benefits conferred by such organizations;
i) free access to the entire territory of Malta within the limits provided for by the national legislation for reasons of security.

Residence in Malta of Third-Country Nationals Granted Long-Term Resident Status in Another Member State

A third country national who has been granted long-term resident status by another Member State may reside in Malta, for a period exceeding three months, for the purposes of the exercise of an economic activity in an employed or self-employed capacity; the pursuit of studies or vocational training; or for other purposes. In this case, he shall apply to the Director for Citizenship and Expatriate Affairs for a residence permit as soon as possible and, in any case, no later than three months after entering Malta. Besides having to provide evidence that he has stable and regular resources which are sufficient to maintain himself and the members of his family without recourse to the social assistance system in Malta and which would be equivalent to the average gross wage, in this case the third country national may also be required to attend and successfully complete a Maltese language course.

Moreover, the long-term resident shall also provide the following:

a) if he has entered Malta for the purpose of carrying out an economic activity, he shall be required to furnish the employment licence which has been issued for the purpose;
b) if he has entered Malta for the purpose of study or vocational training, he shall be required to furnish documentary evidence of enrolment in an accredited establishment in order to pursue studies or vocational training; and

c) if he has entered Malta for any other purpose, he shall be required to provide documentary evidence, which shall be determined by the Director for Citizenship and Expatriate Affairs, related to the purpose of his residence.

The residence permit shall be valid for a period of one year and shall, upon application, be renewable.

3. THE SCHENGEN AGREEMENT

The 21st of December 2007 marked another historical milestone for Malta and Gozo since, on this date, the smallest EU Member State joined the Schengen area along with another eight EU Member States, namely the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. On this day, these countries lifted their land and sea borders, which means that persons travelling between these countries, as well as between these countries and the other Schengen states, are no longer subject to border controls.

However, the advantages brought about by Schengen membership did not come about automatically. Like the other EU Member States seeking to join the Schengen area, Malta had to undergo a rigorous evaluation process, as Schengen is not just about the lifting of the internal borders, but also about maintaining a high level of security and cooperation between the State authorities concerned.

Malta was in fact evaluated with regard to its capability to implement the Schengen acquis relating to data protection; external border management; Police cooperation; the implementation and management of the Schengen Information System (SIS); the setting up and management of the office that will be used as a focal point of contact for sharing of information (SIRENE – Supplementary Information Request at National Entry); and the issuing of visas at Consulates in third countries.

The benefits of Schengen membership will become even more evident when the air borders are lifted in March 2008, thereby facilitating travel to up to 23 destinations. Malta's geographical position as an island state on the periphery of the EU mandated more stringent preparations as Malta's borders would have eventually become part of the EU's external borders

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. Visas for entry into Malta are now also a valid permit for entry into the EU (normally, for up to three months).

4. THE MALTA-LIBYA ARRANGEMENT

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. The systems described below have been in force since 1 May 2004 and will remain applicable until such time as Malta joins the Schengen system.

Malta and Libya entered into an Agreement on the facilitation of entry, exit and movement of nationals of both countries. This Agreement was concluded on 13 April 2004 and

provides for various arrangements agreed to on a reciprocal basis, with regard to different categories of nationals of both countries.

Maltese businessmen and members of recognised professional bodies will be issued with a Business Multiple Visa valid for six months, provided that the application is supported by a letter of accreditation from the Maltese-Libyan Chamber of Commerce or the Maltese-Arab Chamber of Commerce, or any other Chamber of Commerce or entity agreed upon between the two countries, indicating the corporate, recognised professional body or individual membership of such entity. The same applies with regard to Libyan businessmen and members of recognised professional bodies who need to travel to Malta frequently.

Furthermore, Malta and Libya agreed that Maltese and Libyan nationals, who are frequent visitors to their respective countries and who are applying for a visa to travel to Libya and Malta, will be granted 3-month multiple entry visas. Libyan nationals holding a valid Schengen visa shall be exempt from the requirement of application for the issue of a Maltese national visa, provided that the Schengen visa is valid for the return to the country of origin, unless the holder is continuing the journey to Libya.

Libyan nationals who are holders of a Maltese work or residence permit will not be required to be in possession of a Maltese national visa for entry to and exit from Malta for the period of validity of the permit, except for the first entry. In case of the first entry, an entry visa would still be required in order to proceed to Malta. For subsequent entries, no visa will be required once the passport is duly endorsed by the Maltese Immigration authorities to signify the purpose.

Chapter VIII
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 twelve 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 take

up employment before he is in possession of an employment licence. This *prima facie* appears to contradict the automaticity of the issuance of a work permit implied earlier.

The Commission has in fact commenced infringement proceedings against Malta. However, in the Government's view, any time lag between the application and the issue of the work permit is only due to the time it takes both to ascertain that the applicant is an EU national and to input the application into the database of Malta's Employment and Training Corporation (ETC). Since the Treaty of Accession gives Malta the right to retain the same system it had prior to accession, this necessarily implies that the Treaty also allows that time lag which is a necessary consequence of the work permit system. Post-accession, the system has in fact been streamlined to reduce the time lag between application and permit; this was necessary to ensure that the time lag is kept to a minimum. This does not mean that Malta is under an obligation to totally eliminate any time lag between the submission of an application and the issue of a work permit. No mention of any timeframe is mentioned in the Treaty of Accession and, therefore, the alleged requirement of immediately issuing the permit goes beyond what has been negotiated, agreed to and expressed in the Treaty of Accession of Malta to the European Union.

Member States that joined the EU in 2004 had to face the same questions in 2007 with regard to Bulgaria and Romania, as the EU15 did back in 2004 concerning EU10 workers. Malta restricts access of Bulgarian and Romanian workers due to the small size of its labour market and the structure of its workforce.

Chapter IX
Statistics

Table 2 below provides a resume of statistics published by the Employment and Training Corporation (ETC) with regard to the non-Maltese nationals in possession of a work permit at the end of 2007. These statistics are as at 30 December 2007.

Table 2

	EU	Non-EU	Total
Number of non-Maltese nationals (Aliens Only) having an active engagement form	3,137	3,000	3,400

Table 3 shows a breakdown of the EU nationals who are working in the Maltese economy on the basis of age bracket.

Table 3

Age Bracket	EU
Under 25	516
25-39	1510
40-55	874
55+	236

Tables 4 and 5 provide an overview of the total number of Work Permits issued in Malta to EU and third country nationals, on the basis of nationality, as in December 2007.

Table 4

DECEMBER 2007 - EU Nationals	
Citizenship	**Number of Work Permits Held**
AUSTRIA	56
BELGIUM	35
BULGARIA	437
CZECH REPUBLIC	60
DENMARK	66
ESTONIA	2
FINLAND	25
FRANCE	118
GERMANY	258
GREECE	30
HUNGARY	52
IRELAND	48
ITALY	237
LATVIA	16
LITHUANIA	10
POLAND	104
PORTUGAL	17
ROMANIA	185
SLOVAK REP.	64
SLOVENIA	19
SPAIN	46
SWEDEN	193
UNITED KINGDOM	933
TOTAL	**3011**

Table 5

DECEMBER 2007 – Third Country Nationals	
Candidate Countries	
Croatia	48
Turkey	98
EEA/EFTA States	
Iceland	3
Liechtenstein	0
Norway	39
Switzerland	15
Other States	
Albania	22
Bosnia-Herzegovina	127
China	332
Egypt	88
India	275
Libya	195
Nigeria	40
Pakistan	63
Philippines	231
Russia	158
Serbia and Montenegro	561
Thailand	51
Tunisia	28
Ukraine	123
United States of America	38
Yugoslavia	20
TOTAL	**2555**
Other States	445

Chapter X
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 provision relates to national elections and does not apply to Local Council Elections or to Elections for Members of the European Parliament. Moreover, the procedure is not automatic and the procedure laid down in the electoral laws (recourse to the Courts of Law) has to be followed prior to deleting a person from the electoral register.

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.

Websites

Laws of Malta Online: http://www2.justice.gov.mt/lom/home.asp?lng=ENG
Sentenzi Online: http://www2.justice.gov.mt/sentenzi/default.asp?lng=ENG