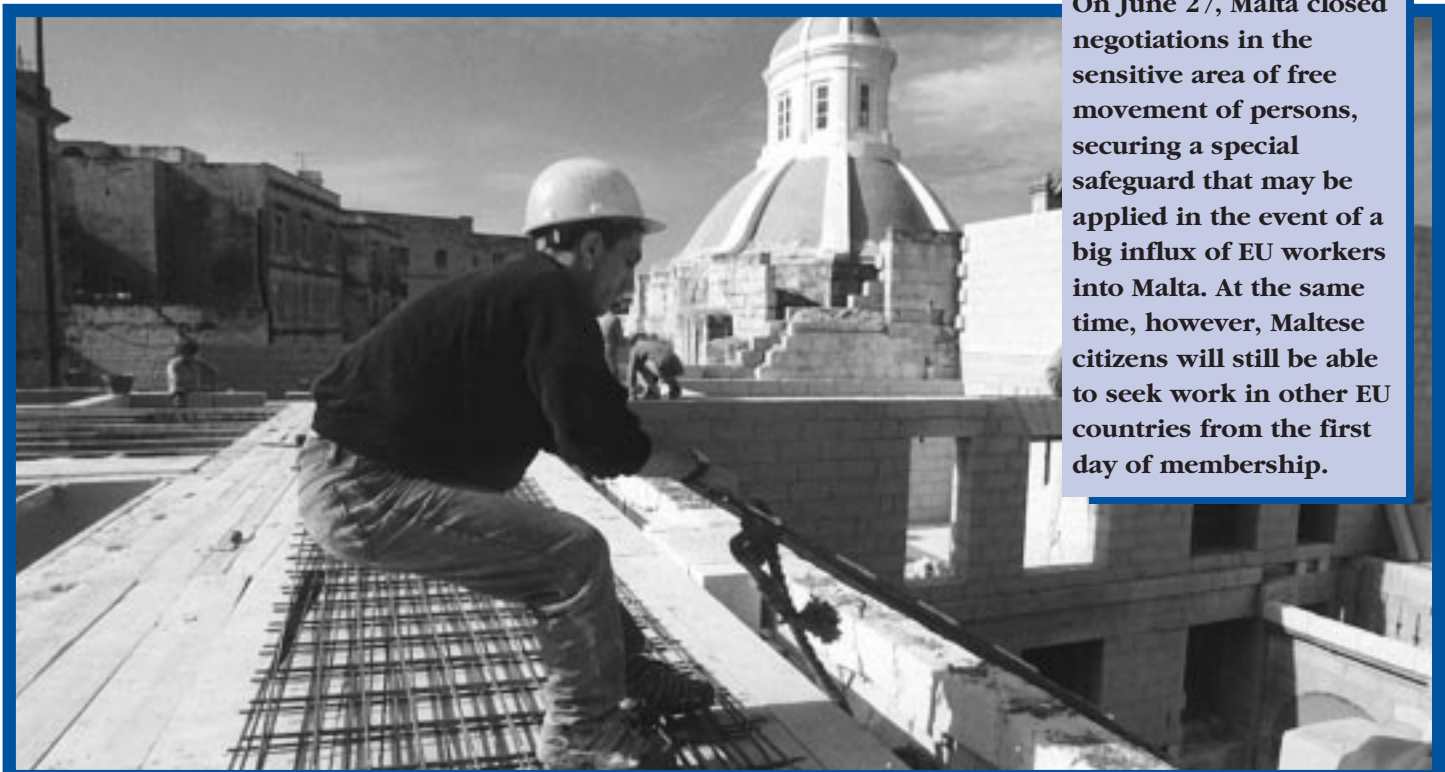


## Negotiations closed on Free Movement of Persons

By Romina Rieck Zahra, MIC research analyst



On June 27, Malta closed 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 will still be able to seek work in other EU countries from the first day of membership.

### Free movement for who?

Free movement of persons throughout the EU is one of the basic and tangible consequences of joining the EU. It means that Maltese citizens will be able to move freely throughout all EU countries not just as tourists, but also for the purposes of work, study, training as well as for the purposes of simple residence or even retirement. The same applies for EU citizens in Malta.

### European citizenship

Upon membership, Maltese citizens will obtain EU citizenship. This is acquired over and above our national Maltese citizenship and does not replace it. Maltese citizens will remain citizens of Malta holding a Maltese passport but will, in addition, also hold an EU citizenship with the rights and obligations that come with it.

### Right of residence

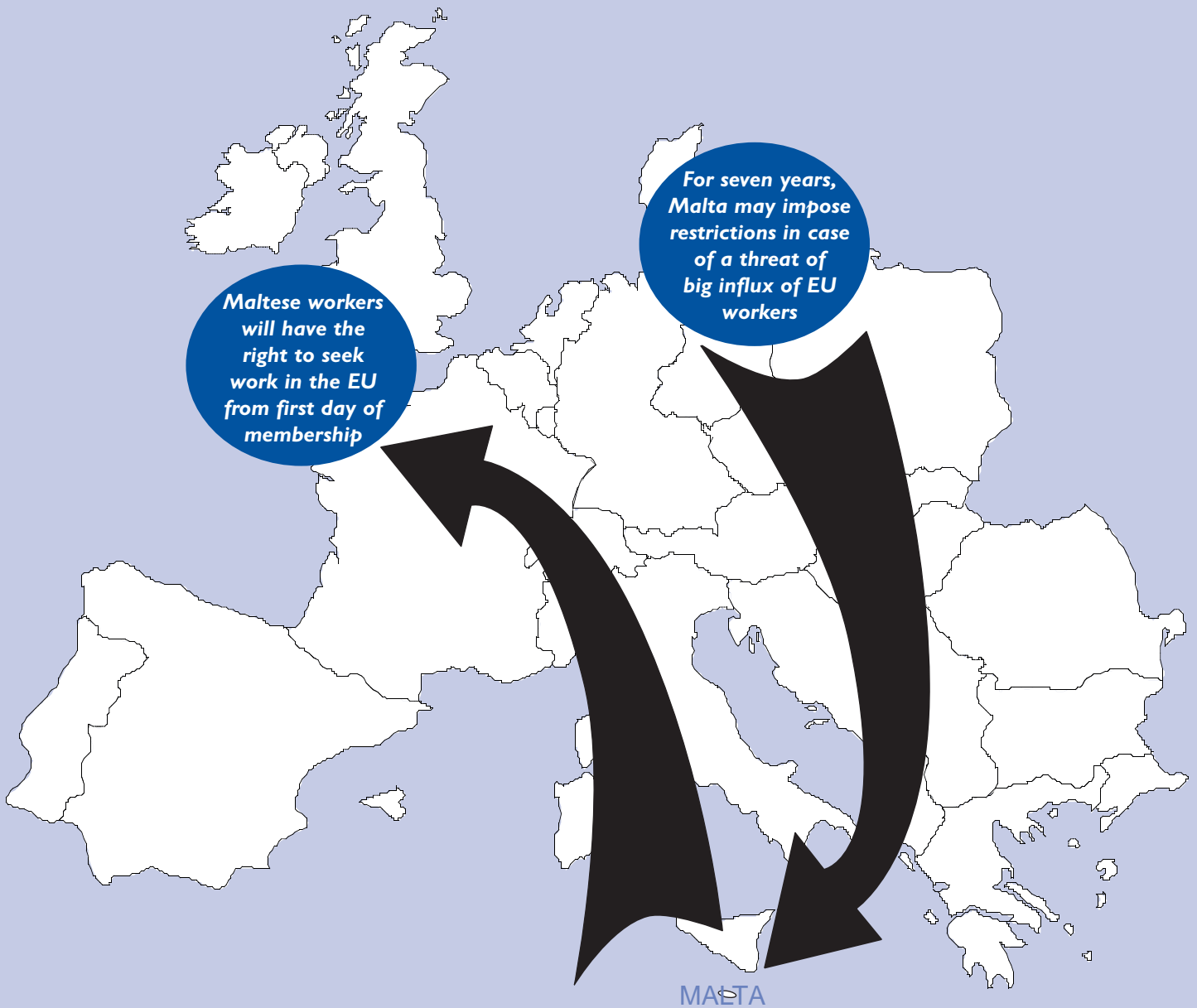
Maltese citizens and members of their family will have the automatic right of residence in other EU countries. This right is subject to the condition that they do not, upon arrival, become a financial burden on the country to which they travel, unless they establish themselves there and start con-

tributing to the social security and tax system there. They must also be covered by a health insurance. These rights are subject to limitations that may be applied on the grounds of public policy, security and health.

### Negotiations on Freedom of Movement of Persons

Screening of laws	October 1999
Negotiations opened	June 2001
Negotiations closed	June 2001

Special arrangements	Requested	Obtained
Safeguard I	Seven-year period during which Malta may apply safeguards on the right of EU workers to seek work in Malta. Restrictions may be imposed unilaterally by Malta in urgent and exceptional cases where the inflow of EU workers puts a strain on the local labour market or parts of it.	YES
Safeguard II	After the seven-year period, in the event of a disproportionate influx of EU workers, Malta may still seek a remedy through the EU institutions.	YES



The same rights will apply to EU citizens seeking to reside in Malta. However, these will be subject to the limitations agreed in negotiations and explained below.

In Malta, amendments to our Immigration Act will be adopted next year and will come into force upon membership to enable Malta to offer the same access to other EU nationals. The Police Department and the Department for Citizenship and Expatriate Affairs within the Ministry for Home Affairs will implement and enforce laws in this area.

### Voting rights

Maltese citizens living in another EU country will have the right to vote and stand in elections for local councils and the European Parliament in that country. This right does not extend to voting in national elections in that country.

In Malta, the Local Councils Act regulates local council elections and will be amended to extend the right to vote to EU citizens residing in Malta. New rules will be adopted by next year on the right to vote and stand as a candidate in election to the European Parliament. These will enter into force upon membership.

### Freedom of movement of workers

EU citizenship brings with it the economic, social and cultural integration of EU workers who migrate to another EU country and want to work and settle there. The right to seek work applies to all categories of workers, whether

unskilled, skilled or professional. It applies across all economic sectors and including both the private and public sectors. However, posts in the public service may be restricted to nationals if they involve certain executive powers and duties meant to safeguard the general public interest.

In Malta, the Immigration Act regulates the requirements of residence in Malta as well as the issuing of work permits to foreigners. This law will be amended by next year entering into force on accession, and will grant EU citizens the right to seek employment, work and reside in Malta.

### Maltese seeking work in the EU

The terms negotiated by Malta mean that *from the first day of membership, Maltese citizens will have the right to seek work in the EU*. Current restrictions and work permits will no longer be necessary for any type of job.

On this issue, Malta is being treated differently than other candidate countries. This is because the EU is imposing a transitional period of seven years during which this right may be restricted with respect to workers from the ten Central and East European candidate countries. However, this does not apply to Malta or to Cyprus. This means that Maltese and Cypriot nationals can seek work in the EU from the first day of membership.



### In which countries can I seek work?

Upon membership, Maltese citizens may also seek work in all the 15 EU countries, in all new member states that join the EU as well as in Iceland, Liechtenstein and Norway which are part of the European Economic Area (EEA). In addition, once the EU's bilateral agreements with Switzerland enter into force, and subject to an optional referendum, Maltese citizens would also be able to seek work in Switzerland. In all, 30 countries apart from our own.

### EU citizens seeking work in Malta

On this point, Malta has obtained a deal which is again different from other candidate countries. *For a period of seven years after membership*, Malta will be able to apply safeguards on the right of EU nationals to work here even if EU law clearly states that this should not be allowed. If Malta joins in 2004, the seven-year safeguard will apply until 2011.

*The safeguard will work as follows:* After accession, Malta will retain the work permit system and will grant permits to EU workers. However, Malta will be able to withhold work permits in the case of a threat of a disruption to its labour market which is of an urgent and exceptional nature. Restrictions may be imposed if there is a threat that the inflow of EU workers may put a strain on the local labour market either in whole or even in certain sectors. In such cases, Malta may refuse to grant work permits to EU workers.

It is up to Malta to determine when such cases arise and when restrictions may be imposed. Restrictions may be imposed in the event of a *threat* of a sudden influx and not merely after it happens. In imposing restrictions Malta will also act *unilaterally*, that is on its own. It does not require prior authorisation from the EU before imposing restrictions. This point must be made clear because it has been misunderstood by some.

After imposing restrictions, Malta would then inform the EU about its action giving the reasons why it has done so. This safeguard mechanism will enable Malta to take remedial action in time in the event of sudden or high influxes of additional labour into Malta or in case of a threat thereof.

After this period of seven years, in the event of a disproportionate influx of EU workers, Malta may still seek a remedy, this time acting through the EU institutions, rather than unilaterally. This arrangement *after the first seven years* will apply indefinitely and will cover Malta's position at any time in future in the event of possible difficulties relating to the free of movement of workers into Malta. This agreement will be confirmed in a Joint Declaration between Malta and the EU which will be annexed to Malta's Treaty of Accession.

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's membership in 1995. Interestingly, six years down the line, Austria has never felt the need to resort to this safeguard because in practice, the inward flow of EU workers into Austria was never sufficiently high as to create any problems for this country.

Malta's requests on free movement of workers both with respect to the first seven years as well as after that, were accepted by the EU. That is why negotiations on this chapter have now been closed. Malta is the only candidate country that has sought and obtained an arrangement of this nature.

It must also be noted that restrictions on non-EU nationals who seek work in Malta would continue to apply even after Malta joins the EU. These are not affected by Malta's membership of the EU.

### Equal treatment and non-discrimination

If you are working in another EU country, you are entitled to full equal treatment as a national of that country. You should not suffer discrimination merely on the grounds of nationality. In cases of discrimination you have a right to remedy at law. This applies in all cases, whether social security rights, trade union rights, conditions of work and even pay. The same would apply to EU nationals working in Malta.

### EURES

EURES is a co-operation network which brings together the European Commission and the public employment services of the EU countries. It assists potential mobile workers by providing access to information on job opportunities and living and working conditions in the EU. Moreover, it also assists employers to recruit workers from other countries.

In Malta, the Employment and Training Corporation (ETC) is the public agency that provides public employment and training services. ETC will be in a position to fully integrate into the EURES network by membership.

### Co-ordination of Social Security Systems

EU rules coordinate rather than harmonise social security systems. The main aim is to ensure that EU citizens are affiliated to a social protection system and that no rights are lost



if and when they choose to move to another EU country. This means that your social security rights earned in one country will not be lost just because you move on to another.

### Health services and assistance

If you are in another EU country, you are entitled to the same health service as nationals of that country. If you are there merely as a tourist, your right would be limited to urgent medical treatment (except for pensioners who are entitled to full treatment). On the other hand, you cannot seek treatment abroad by simply choosing the country where you want to be treated, unless you are authorised to do so by the Maltese authorities.

These rights also apply to EU nationals who come to Malta and our health system would have to offer them similar treatment as Maltese nationals.

A unit will be set up within the Ministry of Health by the end of this year to handle requests for health care and to process reimbursement procedures. In the case of health care, Malta is exploring the possibility of signing waiver agreements on a bilateral basis with other Member States to address the financial and administrative implications which may be incurred by requests for medical treatment.

### Mutual Recognition of Qualifications

The EU makes a clear distinction between academic and professional recognition. Academic recognition means the recognition of exams and other evidence of academic qualifications. The EU does not get into this. It is up to each academic institution to recognise academic qualifications obtained in other EU countries. The exception are ERASMUS students whose period of study abroad must be recognised by the home university under the European credit transfer system (ECTS). There is also NARIC, which is a network of national academic recognition information centres in all EU countries which collaborate and exchange information and advice on academic recognition. In Malta, the University Equivalence Board deals with academic recognition.

### Professional Recognition

Professional recognition applies to the qualifications that entitle you to work in a profession or job whenever some kind of licence, warrant or other similar qualification is required. The EU regulates this kind of recognition because without it, the free movement of workers would be rendered meaningless.

The basic principle is that a person who is qualified to practise a profession in his or her country is also qualified to practise this profession in other Member States and therefore the qualification must be recognised. In order to ensure recognition, there are two main types of EU laws that apply: one set of laws apply to a limited list of professions (sectoral directives), whereas another set applies to all others (gener-

al system). However, both guarantee recognition under given conditions.

### Sectoral directives

The "sectoral directives" apply to architects, lawyers, midwives, pharmacists, doctors, nurses, dentists and veterinary surgeons. In these cases there is mutual recognition among the countries concerned provided that certain criteria (including co-ordinated training) are met.

In Malta, regulatory bodies within the Ministry of Health will continue to regulate the medical, pharmacy, nursing, midwifery and professions supplementary to medicine. They will also assess equivalence of professional qualifications and register professions. Moreover, structures will be set up to accredit specialist training needs for doctors, the registration of specialists in the medical field and structured post-graduate training. This will be done by the end of 2002. A

new regulatory body for veterinary surgeons will also be set up by next year under the Veterinary Services Act.

In the case of architects, the Periti warranting board within the Ministry for the Environment will still be the responsible entity.

### All other professions

All the other professions fall under a general system of recognition of professions, where a difference is made between regulated and non-regulated professions. It is up to each individual country to decide whether a particular job or profession should be regulated. If a profession is regulated, then specific EU rules on recognition apply and these distinguish between qualifications that require three or more years of

study or training and those that require less.

On the other hand, if a particular job is not regulated in any given country, then the need for recognition in that country does not arise and the person concerned may start work immediately.

In Malta, by the end of next year, a unit will be set up within the Ministry of Education to provide information on the general system of recognition. Moreover, the National Professional Vocational Educational Council was set up last year in order to assess and maintain standards for non-regulated professions.

### What are the obligations?

If you are travelling to or working in another EU country, you are expected to respect the laws of that country, including laws dealing with taxation and social security that may apply. You are also expected to go through the established procedures that will enable you to claim your rights, as in for instance, the recognition of qualifications.

**Malta's official negotiating position paper on this area is also available free-of-charge from MIC or from its web site: [www.mic.org.mt](http://www.mic.org.mt)**



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