

Freedom, Security and Justice

In March 2002, Malta closed negotiations in the area of justice and home affairs.

By Elaine Cordina, MIC Information Officer

Criminality knows no borders. This is why, in October 1999, EU countries agreed on a common action plan to create a European area that guarantees freedom, justice and security to its citizens. The idea of European citizenship means that a European citizen's rights are not lost once he or she crosses a border into a different legal system. As individuals increasingly move from one country to another, their rights must also be backed up with a fair and efficient legal system.

AN AREA OF FREEDOM

Racism

Freedom cannot be guaranteed in the presence of racist tendencies. In June 2000, EU governments adopted the first EU directive on racism designed to outlaw discrimination on the basis of different racial origin. The EU is also currently proposing common charges for racist and xenophobic offences. During negotiations, Malta expressed its interest to participate in the activities of the European Monitoring Centre on Racism and Xenophobia. For the first time, racism will also become a criminal offence in Malta.

Fundamental rights

In December 2000, EU countries adopted for the first time an EU Charter of Fundamental Rights which puts together all the personal, civil and political rights, as well as the economic and social rights that are guaranteed to a European citizen. Although the European Convention on Human Rights has already been in existence for over fifty years, the EU's fundamental rights Charter goes beyond and includes rights designed to meet the challenges arising from current developments in human rights.

The Charter is still not legally binding and many feel that this Charter should form the basis of a future Constitution for the EU. Malta is a signatory of the European Convention on Human Rights and has a good track record in human rights.

The Schengen Agreement

This agreement was first signed in 1985 between just Germany, France and the Benelux countries in the small Luxembourg border town of Schengen. Since 1999, it has been integrated into EU law and therefore applies to all EU countries (although the UK and Ireland opted to stay out). The scope of the Schengen Agreement is to remove all controls on persons at internal borders between Member States and to harmonise controls at the EU's external borders.

EU citizens only need a valid identity card to travel within the EU whereas people from third countries may need a visa. Member states have recently agreed on a common list of countries which need a visa. Malta's visa policy will conform with this list by accession. This will mean that visas will be introduced on certain countries, such as Libya, whose citizens currently only need an identity card to enter Malta.



Negotiations on Justice and Home Affairs: A Snapshot

Screening of laws	November 1999
Negotiations opened	June 2001
Negotiations closed	March 2002

Negotiations

Judgements in matrimonial matters and parental responsibility

Requested

In the area of jurisdiction, recognition and enforcements of judgements in matrimonial matters and in matters of parental responsibility for children Malta requested that the relevant EU Convention need not apply to Malta in cases of particular concordats with the Holy See. This possibility is outlined in the Convention itself and it has in the past already been taken up by Italy, Spain and Portugal.

Obtained

YES

COUNTRIES THAT WILL NO LONGER NEED A VISA FOR MALTA

Bolivia, Brazil, Bulgaria, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Rumania and Venezuela.

COUNTRIES THAT WILL NOW NEED A VISA FOR MALTA

Antigua and Barbuda, Bahamas, Barbados, Belize, Botswana, Dominica, Egypt, Fiji, Zambia, Grenada, Guyana, Indonesia, Jamaica, Kenya, Kiribati, Kuwait, Lesoto, Libya, Malawi, Maldives, Mauritius, Morocco, Nauru, North Marianas (Islands), Papua New Guinea, Samoa (West), Saudia Arabia, Seychelles, Sierra Leone, Solomon Islands, South Africa, St Christopher and Nevis, St Lucia, St Vincent and Grenadine, Swaziland, Tanzania, Tonga, Trinidad and Tobago, Tunisia, Turkey, Tuvalu, Uganda, Vanuatu, Zambia and Zimbabwe.

The imposition of a visa requirement on Libyan citizens raises some concern among the business community with interests in Libya. These concerns will be taken into account in setting up the necessary arrangements to issue visas, by for instance issuing long term visas which would be geographically limited to Malta. This is allowed under Schengen.

With respect to other countries already requiring a visa to enter Malta, such as Russia and Serbia, this visa requirement would remain if Malta joins the EU because it is also required by other EU countries.

Visas for entry into Malta will also be a valid permit for entry into the EU (normally, for up to three months). Once a person enters Malta, he or she would have freedom of movement within the EU countries that are part of Schengen. This is why it is important for all the necessary security features to be in place along with the necessary measures to police our borders.

Since April 2000, Malta upgraded its computerised passport issuance system and introduced additional security features on passports.

External borders to the EU are very strictly regulated since, once inside the Schengen area, all persons are free to move around. For this reason, the Schengen Information System (SIS) was created. This is a complex database that enables law enforcement and legal authorities to exchange data for investigations on persons wanted for arrest or extradition purposes, or on stolen vehicles or stolen works of art. At the same time, other independent supervisory authorities ensure that information entered into the SIS does not violate data protection rules. This is supported by a network known as SIRENE (Supplementary Information Request at the National Entry) made up of representatives from the national and local police, customs and the judiciary.

Bearing all this in mind, the Ministry for Home Affairs in Malta set up a project team in November 2000 to ensure Malta's compliance with the Schengen rules. The team was responsible for setting out the state of play at Malta's borders, the objectives and the actions needed, and a timetable for the necessary implementations. All the necessary infrastructure is expected to be in place between 2003-2005. For this reason, Malta – like other candidate countries – is not expected to be part of the Schengen system immediately upon membership but some time after, once these measures are in place.

A Data Protection Act providing for the protection of individuals against the violation of their privacy and personal integrity was also adopted.

Asylum

In 1999, EU countries agreed to gradually establish a Common Asylum Policy, that is, a basic set of commonly agreed principles that would hold anywhere in the European

Union in the granting of asylum. Refugees are not illegal immigrants since they were forced to flee their country due to persecution and therefore deserve protection.

In cases of mass influx, such persons should be given immediate and temporary protection for a maximum period of two years. They will then be able to be employed, to have access to accommodation or housing, to receive social welfare or means of subsistence and have access to medical treatment, the right to education for their children and the right to a family life. The European Refugee Fund was also set up to help EU countries with the reception of asylum seekers, the integration of refugees and in voluntary return programmes. Other EU initiatives also include the Dublin convention which determines which EU Member State is responsible for dealing with any particular claim for asylum, and the Eurodac database, which will contain the fingerprints of all registered asylum-seekers in the EU.

Malta is a party to the Geneva Convention on the Status of Refugees (1951) and its Protocol (1967) and will lift all the geographical reservations it had previously made to this Convention. The Refugees Act has now also come into force, which caters for a Refugee Commissioner, a Refugees Appeals Board and a reception centre for asylum seekers. Malta has also started to participate in meetings within the Centre for Information, Discussion and Exchange on Asylum (CIREA).

AN AREA OF SECURITY**Illegal Immigration**

Illegal immigration is a very different issue from asylum. To counter illegal immigration into the EU, the Schengen Agreement had provided for the introduction of visa requirements as well as police and customs cooperation. At the end of 2001, EU countries also approved an action plan to tackle illegal immigration. This plan outlines the following areas of priority:

- **VISAS:** The creation of an EU Visa Database in which all visas issued will be recorded
- **REPATRIATION AND READMISSION AGREEMENTS:** Identification of those third countries from which illegal immigration originates
- **EXCHANGE OF INFORMATION:** Modernising the exchange of statistical information, in order help States take rapid decisions.
- **ASSISTANCE TO STATES OF ORIGIN AND TRANSIT STATES:** Assisting countries of origin and transit states under the form of technical and financial help
- **BORDER CONTROL:** The creation of a European Border Police.
- **THE FIGHT AGAINST TRAFFICKING AND TRADE IN HUMAN BEINGS:** Greater support from Europol in investigations carried out by the authorities of Member States.

The Maltese Government allocated funds to the Ministry for Home Affairs for the setting up of the necessary structures relating to asylum, for the enhancement of structures and equipment relating to immigration and border control and for the strengthening of the Malta Police Force in the fight against drugs and organised crime. By the end of 2002, the Immigration Act will be amended to implement the strengthened requirements on external borders and immigration. Malta has also signed a readmission agreement with Italy last year and other agreements are at the moment being negotiated with Algeria, Egypt, Libya, Morocco and Tunisia. Furthermore, Malta is also participating in activities of the Centre for Information, Discussion and Exchange on the Crossing of Frontiers and Immigration (CIREFI).

Police and Customs cooperation

In June 1997, the EU adopted a detailed action plan on the fight against organised crime. The plan contained thirty concrete recommendations that seek to align criminal law in a number of sectors. Many of these have since been implemented. Other proposals in the pipeline include one on establishing a common framework on combating trafficking in human beings, one on combating the sexual exploitation of children, child pornography and cyber crime.

Maltese law provides the necessary instruments to enable Malta to participate in the fight against organised crime. Malta has also signed the Council of Europe Convention on Cyber crime in 2001.

Europol

Europol is a police coordination centre for the collection, analysis and dissemination of information. Its responsibilities have increased over the years and it now deals with a wide range of issues where two or more EU Member States are affected. These include illegal trafficking in drugs, in stolen vehicles and in human beings, as well as illegal immigration networks, sexual exploitation of women and children, pornography, forgery, smuggling of radioactive and nuclear materials, terrorism, money laundering and counterfeiting of the euro. One of the immediate rights that has been extended to European police has been the right of pursuit into another member state where previously all attempts would have ended at the border. Malta will be able to participate fully in Europol upon membership.

CEPOL

A European Police College has also been set up (CEPOL) with the function of training the next generation of senior police officers, to enable them to get to know their counterparts in other European countries and to work in a European context. The college is currently functioning as a network of national police colleges, but will later operate in a more centralised manner. It is also open to police officers from candidate countries.

Customs

In the field of customs, the EU insists on the use of information technology (the CIS convention) and the on mutual assistance and cooperation between customs administrations (Naples II Convention) to improve controls and to reinforce the fight against counterfeiting, piracy and false origin marking.

Malta co-operates closely with member states on customs matters. The IT infrastructure necessary will be implemented by the end of 2002. Malta will also align itself with EU measures relating to the use of IT for customs purposes and to the mutual assistance and co-operation between Customs' administrations on accession. The Customs Department will also organise and strengthen its anti-fraud operations and organise training courses in this respect.

Drugs

The EU has drawn up a coordinated strategy on drugs which places more emphasis on prevention and on reducing drugs demand by encouraging the participation of non-governmental organisations and by collecting, analysing and disseminating information on the drugs phenomenon in the EU. This was the reason behind the creation of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA). A further step in combating the illegal drug trade is an early-warning system which the EU countries have agreed to set up. Maltese law on drugs is already in line. Malta will also participate in the European Information Network on Drugs

and Drug Addiction (Reitox) of the European Monitoring Centre for Drugs and Drug Addiction (EMCDDA) on accession. The Maltese agency known as *Sedqa* already carries out the functions of a national drugs monitoring centre.



AN AREA OF JUSTICE

Judicial cooperation in Civil and Commercial Matters

Among EU countries there are many different national legal systems and this may give rise to problems when legal proceedings involve more than one country. This is why the EU introduced measures of cooperation between the legal systems of its member countries. These include exchange schemes to increase contacts between lawyers and judges in Member States as well as common standards on jurisdiction and the enforcement of judgements in civil and commercial matters. In May 2000, the EU passed a law to enable judgements on divorce, separation and annulment of marriage to be accepted and enforced more easily in other EU countries. A new regulation was also adopted to reduce the amount of time it takes to send documents between courts in different EU countries.

The Ministry of Justice in Malta has organised introductory courses for the legal staff within the Attorney General's Office and for the Judiciary on the nature of EU legislation and legal structures. It is also currently implementing various measures aimed at reducing the backlog of civil cases in the Law Courts. With regards to recognition of judgements, Malta requested the reservations possible in the Convention on the jurisdiction and the recognition and enforcement of judgements in matrimonial matters, with regards to certain concordats between Malta and the Holy See. These reservations were accepted, having already been extended to Portugal, Italy and Spain.

Judicial cooperation in criminal matters

Much of what has been said above on civil and commercial matters also applies to judicial cooperation in criminal matters. However, efficiency and cooperation here is even more crucial. As a result, EU governments agreed to speed up extradition procedures between Member States wherever possible and that court judgements handed down in any one EU country are recognised in all over the EU. In May 2000 the European Union adopted a convention to streamline mutual assistance and direct contacts between national courts, police forces and public prosecutors when carrying out cross-border criminal investigations.

Eurojust

This is a newly set up special team of legal and judicial experts with the objective of smoothening the way and coordinating the investigation and prosecution of serious cross-border crime. This service will work alongside the European Judicial Network (EJN) which acts as a central coordinating group between EU lawyers and judges working on criminal cases and helps them exchange information rapidly. Eurojust will be made up of a team of senior lawyers, prosecutors and/or magistrates from Member States. Team members will be expected to know the legal systems of their country, have rapid access to them and will be entitled to engage in direct dialogue with the national authorities.

Terrorism

After the September 11 attacks, judicial cooperation on terrorism has become even more important. In just a few months, the EU countries managed to agree on a common definition of terrorism and on the creation of a common European arrest warrant which will speed up the surrender of criminals. This means that extradition from one EU country to another, that used to take months and even years, will now be feasible in a number of days or weeks.

Malta has associated itself fully with these conclusions, as well as on another directive on the prevention of the use of the financial system for the purpose of money laundering and terrorism financing.

Protecting the EU's financial interests

The European Commission may carry out on-the-spot checks to protect the European Communities' financial interests against fraud and other irregularities. The fight against fraud has been greatly strengthened through the creation of the European Anti-fraud Office. Future developments may include the protection of the financial interests of the Community under criminal law and the creation of a European Public Prosecutor to act in this area. EU countries also agreed on new rules on the protection of the euro against counterfeiting.

In Malta, fraud is already considered as a criminal offence. Amendments to the Criminal Code will also extend existing pro-



visions on corruption to include bribery of officials of foreign Governments and international organisations. The Security Service in Malta is responsible for the collection of intelligence relating to drug trafficking, money laundering and organised crime as well as the dissemination of this information to other organisations involved in the fight against organised crime. The Permanent Commission Against Corruption is, on the other hand, entrusted with the investigation of alleged or suspected corrupt practices of any public officer including Ministers and Parliamentary Secretaries.

Programmes

The EU has several funding programmes in the field of Justice and Home Affairs with the aim of training and exchanging information and expertise. These are mostly geared at the judiciary, law enforcement authorities, police, customs, and border officials.

Malta will be eligible to participate fully in these programmes upon membership. Before accession, candidate countries may participate on a case-by-case basis.

EU Programme	Subject	Who may participate
OISIN	Law Enforcement	Customs and police
ODYSSEUS	Asylum and immigration	Public or private institutions, non-governmental organisations, Research institutes and Universities and training bodies
FALCONE	Organised Crime	Judges, prosecutors, police, customs and other law enforcement departments of Member States, civil servants, public tax authorities, authorities responsible for the supervision of financial establishments, academics and researchers
GROTIUS	Exchanges for legal practitioners	Judges, prosecutors, lawyers, solicitors, academics, ministry officials, criminal investigation officers, court officers, bailiffs, court interpreters
EUROPEAN REFUGEE FUND	Refugees and displaced persons	Public authorities, education or research institutions, training establishments, the social partners, government agencies, international organisations or NGOs
DAPHNE	Violence against children and women	All public and private organisations involved
STOP	Trade in human beings and the sexual exploitation of children	Judges, public prosecutors, law enforcement authorities, immigration and social service authorities, researchers and representatives of charitable organisations.
HIPPOCRATES	Prevention of crime	Public or private organisations involved in the prevention of crime.



Malta's official negotiating position paper on this area is also available from MIC or from:

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