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# RESTREINT UE



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THE EUROPEAN UNION**

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**EVALUATION REPORT ON THE**  
**THIRD ROUND OF MUTUAL EVALUATIONS**  
**"EXCHANGE OF INFORMATION AND INTELLIGENCE BETWEEN EUROPOL AND**  
**THE MEMBER STATES AND BETWEEN THE MEMBER STATES RESPECTIVELY"**  
**REPORT ON MALTA**

**RESTREINT UE**  
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## 1. INTRODUCTION

1.1. Following the adoption of the Joint Action of 5 December 1997, a mechanism for evaluating the application and implementation at national level of international undertakings in the fight against organised crime was established.

1.2. Following a proposal originating from the Swedish delegation and taken up by the Presidency to evaluate the supply of information and intelligence to EUROPOL and the exchange of information and intelligence between Member States, the MDG adopted the proposal at its meeting on 3 and 4 June 2002.

1.3. At its meeting on 3 December 2002 the MDG approved the questionnaire on the third round of mutual evaluations on the topic "exchange of information and intelligence between EUROPOL and the Member States and among the Member States respectively".

1.4. Following discussion at the MDG meeting on 9 January 2003, a list showing the order of Member States to be visited was agreed. Malta is the seventeenth Member State to be evaluated during the third round of evaluations.

1.5. The questionnaires and the objectives of this evaluation are contained in document 11679/3/02 REV 3 CRIMORG 71.

1.6. The experts in charge of this evaluation were: Mr Esko HIRVONEN (Finland), Mr Colin WOODCOCK (United Kingdom) and Mr Panayiotis NICOLAIDES (Cyprus). Two observers, Mr. Ruud DE HEER (EUROPOL) and Mr. Yves JOANNESSE (COMMISSION), were also present together with the General Secretariat of the Council.

1.7. The evaluation team has prepared the following report with the assistance of the Council Secretariat, on the basis of the observations and conclusions of the experts in the team together with the Maltese authorities' answers to the questionnaire.

1.8. The report first deals with the general information and structures (2), followed by the internal organisation of the exchange of information (3) and of the external exchange of information (4) and then deals more specifically with EUROPOL (5). In the last chapter, the experts make a global and technical evaluation and then propose some recommendations to enhance cooperation and effectiveness in the exchange of information within Malta and with other Member States and EUROPOL.

## 2. GENERAL INFORMATION AND STRUCTURES <sup>1</sup>

### 2.1. LEGAL BASIS

At the police level, exchange of information with other EU Member States is governed by the provisions of the 1959 European Convention on Mutual Assistance in Criminal Matters, and also via bilateral agreements signed with several countries such as Slovenia, United Kingdom, Greece, Cyprus and France. These agreements usually focus on the fight against organized crime, trafficking in illicit drugs, psychotropic substances and precursors, terrorism, and other serious crimes. Since Malta became a full member of EUROPOL, information is also exchanged with other EU Member States via the EUROPOL channel.

No specific legislation or regulations govern the exchange of information and intelligence between the Malta Security Service, the local intelligence agency, and other EU Member States' intelligence services.

It should also be noted that intelligence may also be exchanged between Malta's Financial Intelligence Unit and the Financial Intelligence Units of the other Member States in respect of matters falling under their responsibility.

The EUROPOL Convention is the main legal instrument via which information is exchanged between Malta and EUROPOL. On the other hand, data exchange in general is subject to the provisions of the Data Protection Act, Chapter 440 of the Laws of Malta, as well as Legal Notice 142 of 2004, regarding the Processing of Personal Data in the Police Sector, which came into effect on 3 September 2004, via Legal Notice 399 of 2004.

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<sup>1</sup> This part of the report is based largely on the answers to the questionnaire.

## 2.2. STRUCTURES

Malta and EUROPOL exchange information via a secure email and phone communications system. All information is passed between the Liaison Officer posted at The Hague and the National Unit situated at the Police General Headquarters before further dissemination to other departments.

There are several channels for exchange of information. For crimes which fall under the parameters laid down by the EUROPOL Convention, the EUROPOL channel is also used for exchanging information with other EU Member States and third countries with agreements with EUROPOL. The Malta Police Force liaises with the Working Group on Terrorism using facsimile numbers. The Malta Security Service uses the Liaison Network (BDL) to exchange information with the delegations of the Working Party on Terrorism. Encrypted systems (direct links) are used for correspondence with other intelligence or security services.

The Interpol NCB operates on the I-24/7 network. Informal relations between different contact points in other police agencies are also utilised to send and receive information which is used mostly on a police-to-police basis.

As explained earlier, Malta uses several channels of information. From the Police side, an International Relations Office, which falls under the responsibility of the Police Special Branch, operates the EUROPOL National Unit, Interpol NCB, the Police Anti-Terrorism Unit and the SIRENE Bureau, which is in the process of being set up.

These different units are all centralised, and therefore information is sent and received through only one point of contact. Relations with other Maltese enforcement agencies such as Customs and the Malta Security Service are on a very cordial basis. This accounts for an efficient information sharing system.

The Malta Police Force and the Malta Customs are the regular law enforcement bodies in Malta. Both agencies are civil.

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The Armed Forces of Malta is a military organisation that is tasked primarily with defence and security duties. During the performance of security duties, the Armed Forces of Malta have competence in the following EUROPOL mandated areas: drug trafficking at sea; immigration networks; trafficking of radioactive and nuclear substances at sea; and terrorism. Members of the Armed Forces have selected law enforcement powers and responsibilities during the conduct of these tasks.

Finally, it should be noted that although there is no formally established generic central point or coordinating body for the collection and dissemination of information between these agencies, structures for information sharing have been established in relation to terrorism. However, the organisations in question share information between them in respect of all issues, as necessary.

### **3. INTERNAL ORGANISATION OF THE EXCHANGE OF INFORMATION**

#### **3.1. STRUCTURES**

#### **3.2. CHOICE OF COMMUNICATION CHANNEL**

The EUROPOL channel takes precedence over the other channels. Should duplicate queries on the same matter be received on two channels including the EUROPOL one, an answer is dispatched via the EUROPOL Liaison Officer (ELO). Other channels are informed of this procedure.

The role of Malta's ELO is such that all incoming and outgoing traffic of data passes through his office. Hence, the ELO would be in a position to possess the most recent information available from our EUROPOL National Unit (ENU).

It should be noted that Malta posted its liaison officer to EUROPOL in January 2005.

The channels do not have to be technically compatible, as they are not used in conjunction. The EUROPOL network has its own firewall and thus it benefits from protection against intruders.

## 4. EXTERNAL EXCHANGE OF INFORMATION

### 4.1. DATA EXCHANGE PROCESS

In the area of drug trafficking Malta received regular information concerning modus operandi and methods of concealment used by drug traffickers from several Member States. Apart from these routine communications Malta also occasionally receives information concerning particular cases which may be of interest to our services.

The Malta Security Service works with a number of EU partners, each of which is considered to have particular importance to the local service.

However, it has to be said that the Malta Security Services has established official links with similar organisations in some Member States.

Data Protection as envisaged in the EU Directive is applied in Malta across the board, and within Law enforcement Agencies through ad hoc legislation (LN 142/2004). Relative impediments to transfer of requested data are twofold:

1. Lack of information legally substantiating the request (i.e. necessary for the prevention of a serious and imminent danger or is necessary for the suppression of a serious criminal offence).
2. Legal impediments, these being:
  - (a) National security
  - (b) Defence
  - (c) Public security
  - (d) The protection of the data subject of the rights and freedoms of others.

The problems envisaged at 1 above are usually dealt with administratively, through direct correspondence with the requesting body.

Data Protection law does not allow any overriding of the limitations under 2) (as envisaged in the pertinent EU Directive).

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All other problems which may arise outside the perimeters of refusal, as allowed at law, are usually dealt with through correspondence with the requesting authority.

There are no joint units with other EU Member States.

### **4.1.1. INFORMATION OWNERSHIP**

The Police do not routinely encounter problems when dealing with other Maltese law enforcement agencies. However, there have been instances when information requests from some European police agencies had moved at a very slow pace due to their bureaucratic procedures which could not be avoided. In these cases, there is not much to do to solve such problems, but proceed as requested by the requested party and according to law.

## **5. EXCHANGE OF INFORMATION BETWEEN MEMBER STATES AND EUROPOL**

### **5.1. DEFINITION OF INFORMATION AND INTELLIGENCE**

Malta does not have a legal definition of "intelligence" or "information". Malta considers that such a legal definition is not necessary as far as exchanges with EUROPOL are concerned.

### **5.2. NATIONAL EUROPOL UNIT**

The EUROPOL National Unit in Malta forms part of the International Relations Office. This office falls under the responsibility of the Police Special Branch. A Police Inspector assisted by two personnel has been posted at the International Relations Office to cater for the needs of the ENU. However, a number of other personnel within the International Relations Unit are available to deal with emergency cases should the need arise. Communications with our Liaison Officer and EUROPOL in general are made via a secure email and voice system.

Since there is a high degree of interoperability between each law enforcement body in Malta, each department is familiar with the workings of the others. No EUROPOL promotion exercises have been undertaken as yet.

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As already stated, the Interpol NCB, Anti-Terrorism Unit, SIRENE and EUROPOL form part of the International Relations Unit. Enquiries are made by ENU staff, but when information is owned by other government departments or organisations, it is dependent on those departments to access that information. However, it must be stated that up to now, there have never been any impediments to obtaining the requested information.

At the moment, EUROPOL is being supplied with information where investigations reveal that foreigners are involved and that other ENU's could benefit from such information.

The ENU is made up of police officers, who enjoy excellent relations with their counterparts in other agencies.

Apart from information sharing on an informal basis, a circular has been drawn up to this effect, and is being circulated to all relevant departments. As regards the police, courses for new recruits and refresher courses will carry a module on EUROPOL, which will raise awareness of this unit.

### 5.3. USE OF INFORMATION AND EUROPOL ANALYSIS CAPABILITY

There are different classification levels. However there are no fixed guidelines as to which classified data can be passed to EUROPOL or not. This would depend on the circumstances of the case, national interests of the country, discussions with our Liaison Officer, investigations in progress, and authorisation from the owner of the information. The supply of information may be restricted in cases where:

- there is a risk of "harming essential national interests",
- there is a risk of "jeopardising the success of a current investigation or the safety of individuals",
- there is a risk of "involving information pertaining to organisations or specific intelligence activities in the field of State Security".

As at the time of writing, the Malta ENU is still a new department. To date, there have not been any cases which would require the above clauses to be invoked. In practice, the ENU could be made privy to such information.

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This moment would vary with the type of investigation. To date, there have been very few cases of this type. There are no strict conditions to be satisfied for information to be passed excepting those listed in the EUROPOL Convention.

### 5.4. PERCEPTION OF EUROPOL VALUE

EUROPOL's success hinges on the quality of the contributions it receives from Member States. Hence national administrations need to be ready to share useful information from live investigations, so that the specialised sections in EUROPOL can see the wider European picture as it evolves.

One should note that Malta's Liaison Bureau at EUROPOL has only been functioning since January 2005.

Information flows are still evolving. However, at the time of writing they are considered useful in terms of possible investigative actions.

## 6. EVALUATION BY THE EXPERT TEAM

### 6.1. Introduction

The evaluation visit to Malta took place on 14 September 2005. Before giving details on this evaluation it is important to set the context. Apart from the Republic of Cyprus, Malta is the southernmost country of the 25 Member States of continental Europe. Situated south of Sicily, this State covers an area of 316 Km<sup>2</sup> and is made up of three islands: Malta, Gozo, and Comino, in decreasing order of size. With 197 Km of coastline and 398 534 inhabitants (July 2005 estimate), this territory within the European Union has approximately one third of the number of inhabitants of Brussels, the capital of Belgium. This unusual geographical situation, its human dimension blended with its past as a former British colony <sup>1</sup> mean that this Member State has unique features.

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<sup>1</sup> Malta was a British colony from 1814 to 1964 and became a Republic in 1974. It has two official languages: Maltese and English.

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Throughout the evaluation the experts kept Malta's specific characteristics in mind, including the fact that the police and judicial system is similar to the British system, since Malta's geographical and human dimension and its relative isolation from the centre of continental Europe offer Malta both clear advantages and constraints.

Its main advantage is that the actors on the ground know each other well and have close dealings with one another on a daily basis. Its constraints are its limited area and lack of any natural resources. Moreover, as the island is just a few hundred kilometres from Tunisia and Libya, Malta is now at the external border of the EU, with migratory pressure from Africa; this subject was discussed in detail in the course of various interviews.

As a general point, the experts would like to emphasise how well the Maltese services are organised, and would stress, first and foremost, that the Maltese services are constantly endeavouring to improve existing arrangements to make sure that they are a European partner capable of meeting the requirements of the various Law Enforcement Authorities of the other Member States at all times. The experts also noted that this clear goodwill on their part is sometimes thwarted by internal budgetary constraints which on occasions prevent Maltese officers from attending meetings or seminars and/or prevent officials from being seconded to European bodies, owing to the distance concerned and the limited budgets for these costs. This report will constantly take account of all these factors and a number of recommendations will be made for future scenarios bearing in mind the fact that the financial and human resources available in Malta simply cannot be compared to the budgets available in other Member States. It should be noted that although some improvements need to be made to the present police and customs cooperation system, any issues are resolved by direct personal contacts. This situation often quoted as "everybody knows everybody" alleviates most shortcomings which are described below in this report. Finally, the experts would also like to underscore the openness with which they were met and the interest expressed towards this mission. The Deputy Prime Minister and Minister for Justice and Home Affairs, at an informal meeting with the experts on the first day of their visit, underlined the importance he attached to this kind of evaluation, which he expected would improve mutual knowledge and trust between European partners.

## 6.2. INTERNAL ORGANISATION OF EXCHANGE OF INFORMATION

6.2.1. The Maltese police has one single force that is 1 800 strong, including a hundred or so civilians. The territory is divided into 11 police districts and has 73 police stations. It should be noted that for certain specific duties, such as ensuring the security of the territory and controlling maritime borders in the fight against illegal immigration, for instance, the police force receives limited duties assistance from the armed forces of Malta, which has a complement of about 1 500 military staff.<sup>1</sup> The experts noted that the issue of staffing levels cropped up repeatedly both in police and customs matters and also in the way in which the judicial services are organised, in particular concerning cross-border requests for cooperation. In fact, owing not only to the way in which the services are organised but also the means available, it is not always possible to second specialised staff according to whether cases are local or international.

6.2.2. Before describing the way in which the Maltese system functions it is worth setting out the present institutional system first. Certain aspects of Malta's police and judicial system are somewhat similar to the British system. The services that head criminal investigation functions autonomously are not answerable to the Attorney General, (the independent Constitutional officer who also fulfils the function of Chief State Prosecutor). In the second part of this report the experts will come back to how this functions and the allocation of duties between the police services and the Attorney General under "External Exchange of Information".

From the policing point of view Malta is divided into two regions (A and B), headed by two Assistant Commissioners. Malta also has another six Assistant Commissioners in charge of the various specialised active forces and two technical directors in charge of Forensics, Finances and the Administration. The Commissioner in charge of Malta's police is assisted by a Deputy Commissioner to help the Commissioner perform all of his duties.

6.2.3. From the police point of view, since 1997, all information gathered from any of the police stations is stored in an integrated system. This information is stored in the PIRS system (Incidents Reporting System). The Malta Police Force uses the PIRS as the central database in which all incidents, such as traffic accidents and reported crimes are stored. Linked to the system is a person database, which contains all persons with an ID card on Malta.

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<sup>1</sup> However, these military staff cannot themselves instigate proceedings or conduct investigations, as these duties are exclusively within the competence of the police.

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In additions links are made with other general databases, such as the vehicle and immigration database. Based upon data from the PIRS system the CAU (Crime Analysis Unit) makes analysis reports mainly focusing on high volume although more specific analysis relating to the area and the time when certain crimes are committed have also been undertaken. This fact could be an explanation why Malta did not contribute to the Organised Crime Report in 2005. This unit is made up of four officers and one head of unit. This unit has been undergoing restructuring since 2002, the main purpose of which is to put all of the existing hard copy files on computer. These records are on persons who have been apprehended and/or have committed offences. This database contains approximately 30 000 records that Malta's police intends to verify, update and enter into the new computerised system. This necessary preparatory work will inevitably take some time given the amount of work involved in checking the existing intelligence so that it can then be updated and put on computer, and given the small number of people available to do this in the unit. The CAU within the police force does not store intelligence electronically, consequently, the evaluation team recommends the radical enhancement of this unit to perform that function.

6.2.4. In addition to collating all the records of incidents sent in by the various police units, the CAU is also responsible for producing statistics and keeping records of the most important or significant incidents. The CAU therefore produces summaries that are sent to the Commissioner, the Deputy Commissioner and the Assistant Commissioners. It should be noted that there is no particular protocol for sending information in to the CAU, and no standard technical solution. Rather, information seems to be exchanged on a daily basis between one person and another on the basis of personal contacts, bearing in mind the fact that all police units are housed in the same headquarters building. In this area, the experts can only recommend that internal reflection be given to exchanging information in the long term on the basis of a standard systematic protocol, which would not rely solely on personal relations between the heads of services.

6.2.5. The Analysis Unit does not have basic Intelligence Analysis software applications, such as iBase and the Analyst Notebooks. Some data is stored in an MS Access database. In order to carry out basic analysis activities, data is imported into MS Excel. In addition they have to work with card files, containing data on 25,000 persons. However, this analytical work is not presently accessible on the same computer as the one which will hold the criminal records and this is preventing the various police services from being able to cross-check or compare information electronically.

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Furthermore, the analysis product with the support of this software is not currently available in the other crime units. In this area, while the experts find the work conducted by this unit highly commendable, once this product has been developed by the analysis unit should nevertheless give consideration to making it available first to the main police units in the various directorates general, and subsequently to all the districts.

6.2.6. At national level, there are regular meetings between the Commissioner and all the Assistant Commissioners from all the police directorates to exchange information gathered and take stock of ongoing investigations.

6.2.7. Alongside this traditional police service there is also a service called the Malta Security Service (MSS) <sup>1</sup>. The function of the Service is to protect national security and, in particular, against threats from organised crime, espionage, terrorism and sabotage, the activities of agents of foreign powers and against actions intended to overthrow or undermine parliamentary democracy by political, industrial or violent means. It is also the function of the Service to act in the interest of the economic wellbeing of Malta and/or public safety, in particular, the prevention or detection of serious crime. Prior to 1 January 2000 most of the functions of the Malta security service were carried out by the security branch of the Malta Police. As from this date the service became independent from the police service and is now made up of officers from the police, customs, military as well as civilian staff. The Security Service operates within a specific Act of Parliament entitled the Security Service Act. It should also be noted that this service is in charge of examining and proposing all cases involving phone tapping. The point of this service is not to conduct investigations but only to gather intelligence. This intelligence is then disseminated, as required, among the services concerned to support the various Law Enforcement Authorities, for example. In principle, the MSS deals only with criminal cases that carry a prison sentence of at least 3 years. The experts were informed that the MSS does not have direct access to the databases held by the other Law Enforcement Agencies apart from the national Police Incident Reporting System (PIRS) database, which is a database of ongoing investigations across the country. The MSS has a database which is not shared and cannot be accessed by the other Law Enforcement Agencies.

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<sup>1</sup> Chapter 391 Security Service Act enacted by Act XVII of 1996 as amended by Act XVI of 1997.

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However, the Maltese representatives stated that all the information was accessible to these Agencies on request. Since the major role played by the MSS in terms of fighting serious crimes the experts felt that it would be of added value if the law enforcements agencies could have a better exchange of information and intelligence with the MSS.

6.2.8. As is often the case in Malta, personal contacts are central and even decisive and, in the case of the MSS for example, each Assistant Commissioner seems to have his own personal contacts for obtaining the desired and/or required information that might be held by the MSS whenever necessary. The MSS has officers originating from different professional backgrounds (including customs and the police) who, when performing their duties, do not act as Liaison Officers with their corps of origin. The MSS also employs an officer who acts as liaison officer to Malta's Financial Intelligence Unit (FIU). Coordination is ensured by a Strategy Committee that meets the ministers concerned every two months to give a progress report on the situation within Maltese territory. The MSS has 50 people working in it, including 28 police officers, 9 customs officials and 7 military personnel, and it would certainly be worthwhile arranging more systematic formal working relations between them and the other Law Enforcement Agencies in order to standardise existing exchanges of information further. Existing arrangements, under which, for example, information is obtained only upon request and/or because a given head of unit has his own network of personal contacts, are not completely satisfactory and may also result in duplication of work. Police and MSS both have their own informants but there is no management system or coordination for them, which might cause practical problems in criminal intelligence. For these reasons, the experts recommend that the actual functioning of this service could be better exploited in order to reinforce cooperation with police services in charge of serious criminal investigations.

6.2.9. The experts were informed that Malta's FIU service is a governmental Agency pursuant to a Law of 2001. This Agency is under the supervision of the Ministry of Finances. A Board determines the service's strategy according to national and international priorities. This Agency works primarily on the basis of intelligence and information supplied by private companies, the banking sector and sectors that report any suspicious transactions that they might be aware of. This Agency has four members who are designated respectively one by the Attorney General, another by the Central Bank of Malta another by the Malta Financial Services Authority and the fourth by the Commissioner of Police. The four of them are appointed by the Ministry of Finance while the chairman is appointed by the Prime Minister.

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There is no customs representative on the Board but the Attorney General informed the team of experts that a customs representative could certainly be appointed in the future if it would further improve the exchange of information and better feed the national FIU.

6.2.10. Given Malta's primarily maritime situation, it attaches great importance to trade through ports; as an underlying principle it constantly strives to improve the quality of the services that this administration offers and provides to operators. With USD 2 625 billion in exports and USD 3 407 billion in imports in the course of 2004, of which nearly 30% was with the EU, and with nearly 1 140 vessels flying the Maltese flag, maritime and port activities continue to be of strategic importance to the Republic of Malta. As a consequence, the customs authorities must constantly improve the flow of traffic while ensuring an acceptable level of security. In order to achieve this, the customs authorities have launched a far-reaching modernisation programme in the framework of EU accession. In general terms, this is expected to be brought about by the services becoming more specialised. The Maltese customs authorities have therefore set up an intelligence unit; it gathers a great deal of intelligence, much of which comes from operators themselves. This unit regularly works with the police investigation services and with MSS officials. They have developed the concept of risk management. Malta's customs authorities draw up their annual report and determine criminal risk levels on the basis of the intelligence gathered and the statistics produced. These studies enable them to define risk profiles and work more effectively without disturbing the flow of goods in transit. Furthermore, the customs authorities have a system for prior checking of customs documents thus enabling the Intelligence Unit to carry out scanning operations and controls accordingly after the import and export documents have been studied.

6.2.11. On the subject of internal exchanges of information with other partners, the Director of Customs explained that his services are frequently in direct contact with the MSS and the various directorates of the national police. In specific cases, if the information initially received is incomplete or inaccurate the customs authorities may request MSS assistance to complete their information. This systematic collaboration clearly reflects the genuine will to cooperate but it is also curbed by the legislation governing the customs service. In reality, the customs authorities do not have police or investigative powers. This service may apprehend persons in the port area and carry out preliminary investigations. The Police subsequently investigate either on their own or jointly with Customs.

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The experts also learned that the customs authorities publish a bulletin aimed primarily at alerting services that do not have access to the Intelligence Unit's database. The customs authorities' priority continues to be the exchange of information with the police services, and joint customs/police operations are not uncommon. The experts therefore noted that there is a clear will on the part of individuals to cooperate and work jointly with the police services.

However, this clear good-will is not anchored in any protocol or Memorandum Of Understanding; such an MOU would enable the means of cooperation or methods for exchanging information between these two services to be better defined. The lack of any such protocol may, in some cases, render cooperation ineffective even though the human dimension and relations between services continue to play a prominent role. With this in mind the team of experts would advocate an MOU between the customs and the police to further facilitate and enhance the already close cooperation between these two administrative bodies. In order to illustrate how an MOU could provide added value to existing cooperation the experts suggest that thought could be given to allowing partial and/or indirect access to certain joint police databases such as the PIRS, for instance. Likewise, the restructuring of the Crime Analysis Unit could entertain the prospect of a standardised exchange of information with the customs authorities so as to determine what kind of intelligence the customs authorities could have partial access to. The customs authorities could also reflect on this, for example, by setting up a mailing list for the customs alert bulletins.

6.2.12. One other service also caught the experts' attention – the Internal Audit and Investigations Board (IAIB). This audit service fulfils all the usual tasks that this kind of body carries out, but it also acts as the central Governmental Agency in combating irregularities in the use of public funds, including Community funds. It is also interesting to note that the Maltese authorities have designated this service as the sole contact point for the Commission's Anti-Fraud Office, OLAF. The IAIB has considerable powers, as it has access to all the accounting documents of public establishments and it can conduct investigations on its own initiative or on behalf of OLAF in the case of verification and/or investigations requested by the Commission's Anti-Fraud Office. The experts were interested to note that the IAIB also coordinates investigations in this area for the police and customs services and, obviously, for the Attorney General, where appropriate. It is for this reason that in its activities report for 2004 the IAIB investigated the use of transport available to the judicial and police services.

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This investigation resulted in recommendations for better practices, in particular so as to better manage public funds and also so as to avoid abuse of these means of transport. In this respect the experts were impressed by the independence of this body, which is accountable to the cabinet of Ministers, and whose intelligence and investigations provide considerable added value in the sphere of criminal analysis, even though this is not the Board's core activity.

6.2.13. Lastly, the experts would like to report on the important role of the armed forces in combating serious crime. Malta's institutional system, which is heavily influenced by the British system, deliberately continues to separate the powers of the military from those of civilian forces. In this area the armed forces would not in any way like to interfere with the role and the competences of the police services. However, the armed forces have been given, amongst other tasks limited police duties.

Firstly, a Law from 1980 stipulates that "... In the performance of patrol, guard or security duties or in duties in connection with criminal offences, assigned to him by a Commander of the Armed Forces of Malta, whether such duties are performed on land, sea or air, a member of the Armed Forces of Malta shall be empowered to exercise all such functions, powers and duties as are by law vested in an officer of the Customs or in a member of the Malta Police Force...".

6.2.14. Consequently, although the role of the Maltese armed forces continues to be to safeguard the integrity of Malta's territory, the Armed Forces work jointly with the Police Force in relation to the fulfilment of certain policing tasks. In this regard, it should be noted that the Armed Forces have limited police duties. These back-up forces also have duties such as escorting cash in transit, which the Third Regiment has been doing since 1978. However, even though the armed forces have such duties, under no circumstances can they conduct police investigations or instigate proceedings. The main duty of the armed forces is to ensure the security of the maritime area. For all areas of its work, the army has an internal database that is not shared with the other Law Enforcement Agencies. In contrast, the military intelligence bureau produces information bulletins that are distributed to the other services concerned (police, customs or the MSS) as necessary. It should be pointed out that this bureau also produces the threat situation at national level. The experts are of the opinion that the Armed Forces should receive the strategic information and Europol products.

6.2.15. This system has nevertheless improved since 9 August 2005 as the armed forces have appointed 2 contact officers to the Commissioner to provide a link with EUROPOL activities. The experts also discovered that Malta's armed forces intelligence service regularly works with the MSS, the customs authorities, the police and other agencies. In this regard the Armed Forces provides intelligence on military and maritime affairs. With a view to enhancing efficiency, and no doubt also for the sake of economies of scale, the experts query the duplication of duties carried out by army officers in the MSS and by intelligence officers in the armed forces. At least as far as threat assessment and serious crime are concerned, the experts suggest that information be shared more systematically and that the police services be given at least indirect access to the intelligence that Malta's armed forces has in these areas.

### 6.3. EXTERNAL EXCHANGE OF INFORMATION

6.3.1. The experts met the Judicial and Interior authorities, the Deputy Prime Minister and Minister of Justice and Home Affairs, who confirmed the steady increase in cross-border cases. The Attorney General's service, which is the central authority for international judicial cooperation confirmed this trend, and the situation seems to have grown more pronounced over the last ten years. Given the current police system, under which prosecution is mostly headed by the police services, information is generally exchanged between one police service and another. The legality of these exchanges is most often checked by the legal office of the Prosecutor at the police headquarters. However, as the Attorney General himself admits, the police services are in frequent, if not daily, contact with the Attorney's office. According to the Attorney General, the fact that contact is so frequent also enables the judicial authority to follow the daily activities of the police and examine any amendments to regulations or legislation needed that could be proposed when texts appear to be out of step with the practices or requirements of the services concerned. In this respect, once again, the fact that services are close to one another and the size of the territory tend to promote personal exchanges in day-to-day affairs.

6.3.2. In reality, the police services turn to the Attorney General's services when foreign requests for information become judicial cooperation requests that might involve coercive measures. As for use of intelligence by the services of another State, the police services approach the Attorney General to inquire about any possible limits on a given piece of information's being used as evidence before a tribunal or in criminal proceedings before a tribunal or before a Court outside Malta's territory, or on its being used by a judge heading an inquiry in another Member State.

6.3.3. It is more out of tradition than for any regulatory reason that requests for information and assistance from other States go through the Attorney General's services, no doubt because Malta's external partners are unacquainted with its judicial system. In reality, the Attorney considers that practically all requests for information could perfectly well be sent directly to the police services. In this respect, the Maltese authorities would be well advised to concentrate on informing their European partners, in particular, so as to further facilitate exchanges of information between European police services.

For example, partners might be urged to send all requests for information or assistance directly to the international relations bureau or to the Legal Office Prosecution Department which is located in the national police headquarters.

6.3.4. The Maltese authorities have set up an international relations unit within the national police, and this unit currently groups the Interpol Office and the EUROPOL National Unit together. Currently the Europol, Interpol, SIRENE and anti terrorism sections which form part of the International Relations Unit (IRU) are housed together in temporary premises. In its current form, the service has 12 members of staff. The people responsible in Malta reassured the experts that they want to house the above-mentioned services in the same permanent premises. This is scheduled for 2006, when all cooperation activities would be grouped together. Moreover, it emerged from the visit and interviews with the staff that the service is only really operational during office hours, and that the rest of the time only stand by telephone system is available to deal with any emergencies that might arise. Apart from the fact that this may pose problems for requests arriving through the Interpol network if there is a time difference, for example, this situation means that the obligation to provide immediate assistance to another EU Member State can no longer be met. Lastly, under the system that has been set up useful data received from EUROPOL or Interpol is not put into the national database. This system inevitably results in the loss of a significant amount of information in electronic format that is received and which could potentially be used by the police services at their work stations, and it also encumbers the international unit with quantities of hard copy files; this is untenable in the long term given the foreseeable increase in work on cross-border cases.

## RESTREINT UE

The experts would therefore like a clear timetable for the Maltese authorities to house everyone working on international cooperation in the same building, and would like a computer system to be set up that can feed the national police database as quickly as possible with the relevant cross-border intelligence arriving from the main cooperation agencies. The number of staff allocated to international duties could no doubt be reviewed with a view to introducing effective round-the-clock police assistance.

6.3.5. The information available with the Attorney General is information which emanates from letters of request received from foreign judicial authorities. The request and the relevant information communicated to the Attorney General are treated as being confidential unless authority is obtained from the transmitting foreign judicial authority that the information can be shared with other Maltese authorities such as the law enforcement authorities. Once authority is obtained from the foreign judicial authorities, however, the information which lies with the Attorney General is made accessible to the police spontaneously or upon request as may be the case. The experts also learned that all applications lodged with the judicial authority, the Attorney General, are recorded in a file that is administered by the Information Technology Unit. If a system were to be set up in the future for either the judicial authority or the police authority to consult this information to find out whether a request for information had been lodged, including a request from an agency in another State, this would obviously be a great advantage to the investigating services.

6.3.6. The experts were also informed that the magistrates in charge of cross-border cases did not have any contact with Eurojust. This may seem surprising as these magistrates deal with aspects of international judicial assistance. In reality, any information in this area comes primarily from the Attorney General Office. However, the magistrates that the experts met wanted to improve and develop relations with Eurojust. The magistrates in charge of cross-border cases are not specialised, but also have to deal with national and local cases; this situation can cause problems in managing daily affairs.

Despite these difficulties, the experts would once again emphasise the quality of relations between the Court and those in charge of police affairs, bearing in mind the fact that the majority of investigations in the course of prosecutions are carried out by police services.

Nevertheless, the assessment tended to suggest that when processing cases bottlenecks could arise at Court of Magistrates, due primarily to the small number of staff available to deal with the ever growing number of requests for cross-border mutual assistance in the coming years. The experts therefore recommended that the Maltese authorities study the situation for the future and, in particular, consider providing computer gateways between the Attorney General services and the investigating services so that at least intelligence sources for requests for cross-border mutual assistance could be more easily shared.

6.3.7. It emerged from the evaluation visit in general that Malta is increasingly aware of the importance of preparing properly for cross-border cooperation, and that successful cooperation can have immediate repercussions at internal level. In this respect, ratification of the 2000 Convention on Mutual Assistance<sup>1</sup> and its protocol would be an important decision, as would the implementation of the Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing and confiscation of instrumentalities and proceeds of crime. The introduction of these European instruments would underpin the existing arrangements for cooperation within the Member States of the EU.

#### 6.4. EUROPOL

6.4.1. This section of the evaluation of the new Member States concerning Malta's relations with EUROPOL cannot be as detailed as the evaluation of the other Member States which have now been EUROPOL partners for several years. In other words, any possible shortcomings observed are basically due to the fact that this cooperation is relatively new and the infrastructure still to be further developed. In this respect, the evaluation period is of great benefit to Malta, as it now has expertise in this area. This expertise and the observations made should therefore enable Malta to avoid certain pitfalls.

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<sup>1</sup> Malta is currently ratifying the Convention on Mutual Assistance from the year 2000.

6.4.2. Malta signed a cooperation agreement with Europol in 2004 and became a full member in 2005. A liaison officer was nominated as representative of Malta at EUROPOL in January 2005. The Maltese authorities have clearly given priority to information exchanges with EUROPOL. In practice, this means that as a matter of course all cross-border requests are transferred to the liaison officer at EUROPOL. If the information concerns an Interpol message a copy of the exchange is sent through the EUROPOL channel. As noted during the visit, all requests for information or data sets gathered by the MSS, the customs authorities or the armed forces pass via the ENU before being forwarded to the liaison officer at EUROPOL, if appropriate. Incoming information received from EUROPOL flows the opposite way and, for instance, the ENU can send information to the MSS representative at the police headquarters. The experts noted that considerable information is transmitted by hand or by e-mail. An enormous increase of transactions with EUROPOL can be noted from 9 to 326 exchange of information between January and August 2005.

Malta is currently participating in 8 AWFs. A quick assessment amongst those AWFs indicates that Malta did not provide very much information. However in those cases where information was requested EUROPOL noted a timely and sufficient answer was given.

6.4.3. The customs authorities do not have any police powers and this service does not have any direct contact with the EUROPOL National Unit. Without wanting to interfere in police matters, the customs authorities would nevertheless like to be more closely involved in some police activities. The discussions held even touched on the possibility of examining the extent to which sharing joint structures might not be a good strategy for better sharing, in real time, intelligence that a service might have on trafficking or fraud, for instance. The situation concerning the MSS is slightly more paradoxical. In fact, while one cannot really talk of a police service as such, many cross-border exchanges pass directly from one intelligence service to another. Apart from the fact that this system can deprive Malta's national service of useful information, it inevitably deprives EUROPOL of this information too. The opposite is also possible. However, as the MSS is not a police service, even though it is in charge of terrorism, which is a delicate dossier, it cannot have representatives in EUROPOL <sup>1</sup>.

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<sup>1</sup> The experts will refrain from making any recommendations in this area as the matter is discussed separately in the evaluation specifically on cooperation on terrorism.

## RESTREINT UE

6.4.4 The exchange of information with Malta's FIU (which is presided by the Attorney General) remains restricted until the service is certain that prosecution is possible under criminal proceedings. However, the FIU can cooperate with any Maltese agency and hence with the ENU structure. It nevertheless became apparent from the evaluation that more often than not, in-depth inquiries and/or cross-border collecting of evidence continue to give preference to the Attorney General as an information channel, where all requests for international assistance are recorded. In contrast, when requests for investigations are received from abroad it is the Court of Magistrates who are responsible for gathering together the documents that might serve as evidence. As Malta's legal system allows information to be exchanged directly between police services, it is essential that a connection should be made between the Attorney General's services and those of the police Commissioner so that the various services handling investigations can access and consult a dossier in order to know, in real time, of any requests for cross-border assistance and/or for intelligence so as to avoid any possible overlapping. Likewise, the experts recommend that it be possible for information received from EUROPOL to be re-routed electronically to the services concerned.

6.4.5. Furthermore, the Armed Forces services, which have nominated two points of contact with the Commissioner to liaise with EUROPOL, do not receive directly the bulletins or notes produced by EUROPOL. The notes in question, when they are received, are always produced initially by EUROPOL and then reproduced in more general notes addressed to the Armed Forces.

6.4.6. On a general level, all departments of the Malta Police Force have undergone a programme to raise awareness of EUROPOL's functioning and role within the EU, in particular by means of initial and continuing training. Attention has also been drawn to the Force's willingness to take part in as many workshops and seminars organised by EUROPOL as possible, despite the financial cost of sending police officers to such events. The officials in charge are unanimous that, in future, EUROPOL must work in partnership with the Malta Police Force.

6.4.7. The experts consider that, in parallel with the consolidation of all forms of international cooperation in a single location, the authorities should, as a matter of urgency, look into a method for establishing a more rational structure for ensuring the exchange of information between services responsible for combating international crime. The splitting up of and access to files in this area seems to be hindering cooperation between services, despite the large degree of mutual assistance and knowledge displayed by all the parties concerned.

6.4.8. In addition to these discussions an operational business plan and guidelines should be drawn up for the Maltese authorities to demonstrate how they intend to input to the EUROPOL Information System, so as to ensure that the European police body can be supplied with operational data automatically. More particularly Maltese Authorities should have to pay attention to the integration of EIS inside their national IT system.

### **7. GENERAL CONCLUSIONS AND RECOMMENDATIONS OF THE TEAM OF EXPERTS**

The assessment which has been carried out has shown the team of experts that Malta possesses both the skills and the structures necessary in order to act as an operational partner in the fight against serious organised and international crime. A number of recommendations are set out in the following page; their sole aim is to provide guidance - in some cases by indicating the steps which should be taken – in order to ensure that Malta can function in perfect harmony with all its European partners. The police and judicial systems inherited from the UK tradition are extremely rigorous, and their methods have been well and truly tested over the years.

However, the growth in trafficking – in particular, the smuggling of goods and the development of African routes in relation to trafficking in human beings and/or illegal immigration – is making Malta a popular point of entry into the EU-25. All these reasons, along with many others referred to in this report, serve to remind partners that the cooperation of the Maltese services in combating serious crime is of the utmost importance, and will play a decisive role in the short to medium term.

## RESTREINT UE

Yet Malta continues to face difficulties because its systems of management and IT have not progressed enough compared to current practices. Whilst the staffing levels within the Maltese police force are good, representation in international fora is restricted by the number of available staff and finances. On that basis and also for all the reasons referred to in this report, the experts would stress once again the importance of sharing information on a technical and operational level and introducing modern management tools and methods.

We are suggesting a step-change which will allow Malta to improve both in efficiency and effectiveness and so play a meaningful role commensurate with its crucial geographic location.

### 7.1. For Malta

7.1.1 Adopt the intelligence led policing model. To achieve that goal it will be necessary to;

- build on the existing capacity of the CAU to establish an efficient and effective intelligence unit,
- ensure that the IT systems, management training and staff awareness is sufficiently robust.(See 6.2.3, 6.2.4 and 6.2.8)

7.1.2. Consider the signing of an MOU between all relevant Law Enforcement Agencies dealing with Serious and Organised crime mainly with a view to improve cooperation in criminal investigations and the exchange and sharing of intelligence. (See 6.2.11)

7.1.3 Consider wide-ranging and in-depth discussions between the various Law Enforcement Agencies to enable them to have reciprocal electronic access – even indirectly – to sources of information which may be useful for combating serious crime. (See 6.2.15, 6.3.6 and 6.4.7)

7.1.4. Consider the implementation of a flagging system to prevent duplication and improve coordination. (See 6.2.5, 6.2.8 and 6.2.15)

7.1.5 Improve the criminal analysis software currently being used by the CAU in order to make its products available to all requesting departments and Services. (See 6.2.5 )

7.1.6. Consider the attachment of staff from partner agencies to the CAU to perform a coordination role and assist in intelligence gathering and analyses. (See 6.2.3)

## RESTREINT UE

7.1.7. Ensure that the future platform for international coordination will be a service on a 24-hour basis and realised by the end of 2006. (See 6.3.4)

7.1.8. Create a computer gateway between the international police cooperation unit and the Attorney General's Information Technology Unit in order to enable the respective databases to be consulted either directly or indirectly in response to all requests for information and/or assistance submitted by police and/or judicial agencies in other Member States. (See 6.3.5)

7.1.9. As soon as possible, hold internal discussions on streamlining the distribution of EUROPOL messages, documents and reports, with a view to devising a distribution plan which no longer relies solely on interpersonal relations. (See 6.4.4.)

### 7.2. For EUROPOL

7.2.1 Examine the most favourable technical conditions for feeding data into the future EUROPOL Information System. (See 6.4.8 )

7.2.2 Make itself available, if requested, to assist in the construction of an intelligence unit. (See 6.4.7)

7.2.3 Provide training and support to the Maltese Law Enforcement Agencies to ensure that the products issued by EUROPOL will be effectively received and disseminated. (See 6.4.4)

**PROGRAMME OF VISITS****14 September 2005**

|             |                                                                                                                                                                                                                   |
|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0900 - 1000 | Hon Minister Dr Tonio Borg LL.D. Minister for Justice & Home Affairs<br>Auberge D'Aragon, Valletta – Ministry for Justice & Home Affairs                                                                          |
| 1015 – 1300 | Mr John Rizzo – Commissioner of Police, Malta Police Force – The<br>Commissioner will head the delegation from the Police Force who will participate<br>in the evaluation. Police General Headquarters, Floriana. |
| 1300 - 1430 | Lunch                                                                                                                                                                                                             |
| 1430 – 1600 | Police Data Section. On site visit re PIRS System                                                                                                                                                                 |
| 1600 - 1800 | Cultural Tour – Malta Experience & Valletta Tour                                                                                                                                                                  |

**15 September 2005**

|             |                                                                                                                                                                                                      |
|-------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0900 – 1100 | Dr Silvio Camilleri LL.D Attorney General<br>Dr Stephen Tonna Lowell LL.D. Advocate at the Attorney General's Office–<br>AWF's – Eurojust – Rogatory Letters. FIAU Offices, Castille Place, Valletta |
| 1100 – 1230 | Dr Silvio Camilleri LL.D Attorney General<br>Dr Anton Bartolo LL.D - FIAU – Money Laundering. FIAU Offices, Castille<br>Place, Valletta                                                              |
| 1230 - 1300 | Mr Pierre Pace - IAID Internal Audit and Investigation Directorate. Olaf<br>Interlocutor. IAID Offices, South Str., Valletta                                                                         |
| 1300 - 1345 | EUROPOL Offices – Crime Analysis Unit – Specialised Services Section. On Site<br>Visit                                                                                                               |
| 1400 - 1500 | Lunch                                                                                                                                                                                                |
| 1500 – 1600 | Mr Godfrey Scicluna –Head of Malta Security Services MSS Offices, Floriana                                                                                                                           |
| 1600 – 1700 | Conptroller of Customs Police – Customs Information Exchange Customs House,<br>Valletta                                                                                                              |
| 1700 - 1930 | Cultural Tour – Mdina Visit                                                                                                                                                                          |

**16 September 2005**

|             |                                                                                                                                                                                                  |
|-------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 0900 - 1100 | H.H. Chief Justice DeGaetano LL.D<br>Magistrate Dr. Padovani Grima LL.D<br>Magistrate Dr. M. Mallia LL.D Judicial Assistance. Conference Room – Ministry<br>of Justice & Home Affairs, Valletta. |
| 1100 - 1300 | Brigardier Carmel Vassallo – Commander Armed Forces of Malta Armed Forces<br>of Malta Headquarters, Luqa.                                                                                        |
| 1330 - 1500 | Lunch at Police Headquarters                                                                                                                                                                     |

### LIST OF PERSONS MET

Dr Tonio Borg LL.D, Deputy Prime Minister and Minister for Justice and Home Affairs

Mr John Rizzo, Commissioner of Police

Mr Joseph Cachia, Deputy Commissioner

Mr Michael Cassar, Assistant Commissioner Economic Crimes

Mr Lawrence Cauchi, Assistant Commissioner Strategy & Planning

Mr Andrew Seychell, Assistant Commissioner Security & Immigration

Mr Emanuel Cassar, Assistant Commissioner General Crimes

Superintendent Peter Paul Zammit, Prosecution Unit & Data Protection

Superintendent Neil Harrison, Drugs Squad

Inspector Angelo Caruana, EUROPOL & Anti Terrorist Unit

Inspector George Cremona, Interpol & Anti Terrorist Unit

Inspector Denise Mula, Sirene Office

Inspector Paul Caruana, Cyber Crime Unit & Police IT Section

Miss Sharon Vella, Crime Intelligence & Analysis Unit

Dr Silvio Camilleri LL.D, Attorney General

Dr Stephen Tonna Lowell LL.D, Advocate at the Attorney General's Office

Dr Silvio Camilleri LL.D, Director of the FIAU

Dr Anton Bartolo LL.D - Member of the Board of the FIAU & Registrar of Companies

Mr Pierre Pace - Director of the Internal Audit & Investigations Directorate (IAID) & OLAF Interlocutor

Mr Godfrey Scicluna, Director of the Malta Security Services - (Police)

Mr Iro Galea, Deputy Director MSS - (Customs)

Mr Mark Galea, Assistant Director MSS – (Armed Forces of Malta)

Mr John Mifsud, Comptroller of Customs

H.H Chief Justice Vincent DeGaetano LL.D,

Magistrate Dr J. Padovani Grima LL.D,

Magistrate Dr Michael Mallia, LL.D.

Brigadier Carmel Vassallo – Commander - Armed Forces of Malta

**LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

| <b>ACRONYM, ABBREVIATION<br/>TERM</b> | <b>ENGLISH TRANSLATION OR<br/>EXPLANATION</b> |
|---------------------------------------|-----------------------------------------------|
| BDL                                   | Liaison Network                               |
| CAU                                   | Crime Analysis Unit                           |
| ELO                                   | Europol Liaison Officer                       |
| ENU                                   | EUROPOL National Unit                         |
| FIU                                   | Financial Intelligence Unit                   |
| IAIB                                  | Internal Audit and Investigations Board       |
| IRU                                   | International Relation Unit                   |
| MOU                                   | Memorandum Of Understanding                   |
| MSS                                   | Malta Security Service                        |
| PIRS                                  | Police Incident Reporting System              |