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Delegations will find attached the partially declassified version of the above-mentioned document.



ANNEX

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Brussels, 19 July 2005

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NOTE

from : General Secretariat

to : Working Party on Terrorism

Subject : Evaluation of National Anti-Terrorist Arrangements
Report about Malta, 25-27 April 2005

Evaluation of Malta, 25-27 April 2005

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1. Terrorist situation

1.1 Domestic terrorism

There is neither apparent domestic terrorist threat nor internal threats to national security.

1.2 International terrorism

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In this domain, Malta considers that the adherence to the international legal instruments is one of the cornerstones of international action to combat terrorism, including the fight against the financing of terrorism.

2. Structures of authorities

2.1 The Constitution

The current Constitution states that the Republic of Malta is a parliamentary democracy and constitutional republic.

2.2 The executive branch

The executive authority of Malta is vested in the President of the Republic. The executive branch also includes a Cabinet which consists of the Prime Minister and other Ministers. The Cabinet has the general direction and control of the Government and is collectively responsible therefore to Parliament.

2.3 The legislative branch

The President of the Republic together with the House of Representatives adopts laws as well as other decisions and ratifies treaties.

2.4 Justice

2.4.1 The judicial bodies are as follows

- The Constitution Court, the Court of Appeal (appeals from the judgements of the Civil Court and appeals from the Court of Magistrates in its civil jurisdiction).
- The Court of Criminal Appeal hears appeals from persons convicted by the Criminal Court. The Court also hears appeals by the accused and by the Attorney General from decisions on preliminary pleas and from decisions of pleas regarding the admissibility of evidence. This Court, when formed of one judge, hears appeals from judgements delivered by the Court of Magistrates in its criminal jurisdiction.
- The Criminal Court the judge sits with a jury of nine persons to try, on indictment, offences exceeding the competence of the Court of Magistrates as a Court of Criminal Judicature.
- The Magistrates' Court, which is composed of one Magistrate, exercises both a civil and a criminal jurisdiction.

In criminal matters, the Court has a two-fold jurisdiction, namely, as a court of criminal judicature for the trial of offences which fall within its original jurisdiction (in principle, criminal offences carrying a punishment of less than 6 months imprisonment), and as a court of inquiry in respect of offences which fall within the jurisdiction of the Criminal Court. In the second case, it conducts the preliminary inquiry in respect of indictable offences and transmits the relative record to the Attorney General.

2.4.2 Prosecution

The Attorney General who is appointed by the President acting on the advice of the Prime Minister, is the principal law officer and the legal adviser of the Republic.

The Attorney General is also the Public Prosecutor before the Criminal Court and the Court of Criminal Appeal. He is free to decide how to handle cases and is not subject to directives or policy guidelines laid down by the Minister of Justice or any other authority.

Certain prosecutions initiated by the Police require the previous consent of the Attorney General, such as criminal proceedings initiated under the Official Secrets Act. He also exercises functions in connection with pre-trial investigations and gives advice to the Police concerning investigations.

2.4.3 Criminalisation of terrorist offences

For the time being, there is no definition of terrorist act as such and acts in the terrorism sphere are investigated and prosecuted as criminal offences.

2.4.4 Prosecution of terrorist acts

There is no specific criminal procedure to prosecute terrorist cases.

3. Structures of authorities and the fight against terrorism

3.1 The Prime Minister

As head of the government, the Prime Minister has an overall responsibility. Ministers involved in the fight against terrorism in their respective fields of competence are answerable to him. The Prime Minister is also the Minister responsible for defence matters.

3.2 The Minister/Ministry for Justice and Home Affairs

The Minister/Ministry for Justice and Home Affairs is the leading and/or co-ordinating Minister/Ministry. He is responsible for the Police and Security Service activities as well as the civil protection department. In particular, the Minister for Justice and Home Affairs chairs the Strategic Coordinating Terrorism Committee that has been set up in January 2005 on his initiative. This committee is part of the Ministry of Justice and Home Affairs. He is also the authority responsible for the Aviation Security Committee.

3.3 Armed Forces

The Armed Forces of Malta (AFM) performs two defence roles and in particular a secondary role involving the provision of military support in specified areas to the Police Force on a regular basis and to other government departments, when required.

Thus AFM contribution in the fight against terrorism ranges from government key point security to specialist provision capacity. Furthermore, the AFM is the sole agency tasked and equipped for sea border control duties..

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The AFM is empowered to carry out duties which are vested by law to the Customs Department and the Malta Police Force when performing patrol, guard or security duties on land, sea and air by Legal Notice 66 of 1980 Assignment of Powers to Armed Forces of Malta Order.

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3.4 Other Ministers/Ministries

- Terrorism issues within the Ministry of Foreign Affairs are handled by the Security, Disarmament and Legal Section of the Multilateral Affairs Directorate. The Ministry includes a Sanctions Monitoring Board that consists of the Attorney General and officials from the Ministry of Finance, the Trade Services Directorate, the Central Bank of Malta, the EU Directorate, Customs and The Malta Financial Services Authority.
- The Commerce Division within the Ministry for Competitiveness and Communications contributes to the fight against terrorism in the area of policy and legislation relating to Dual Use Goods.
- The Customs also are part of the fight against terrorism in terms of non proliferation of sensitive material (Non Proliferation Unit within Customs)

4. The law enforcement and security machinery

4.1 The Police

4.1.1 General background

The police - and there is only one police force in Malta with nation wide competence - fall under the purview of the Ministry of Justice and Home Affairs.

Under the authority of the Commissioner, the police perform its tasks on the basis of organisational units set up at national, regional and local level. With regard to criminal offences and terrorism, the role of the police is to prevent, disclose and investigate criminal offences, to identify and arrest perpetrators of criminal offences, to collect evidence. Police officers have a prosecution role.

Criminal proceedings are always instituted by the Police including cases that can be indicted before the Criminal Court. Before instituting any criminal proceedings, the Police may seek the Attorney General's advice. This advice is not binding (in practice, it is followed).

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4.1.2 Counter Terrorism activity

In addition to specialised units such as the Criminal Investigations Department or the Economic Crimes Unit, an Anti-Terrorism Unit was recently set up to deal with terrorist cases and develop experience including a focus on international and European cooperation. In this field, the Anti-Terrorism Unit in addition to the Interpol bureau and the Europol national Unit are part of the International Relations Unit (which was created in 2004). This investigative unit also liaises with other police units whose contribution is relevant with respect to terrorism as well as with non police bodies in the counter terrorism area (for instance the Security Service and the Armed Forces when needed). The role of the Anti-Terrorism nit is to coordinate the police response to terrorism. It also provides inputs to the Security Service in terms of national threat assessment on a factual basis.

4.1.3 Special investigation techniques

Bugging, telephone tapping, interceptions of communications, electronic surveillance are legally admitted investigative techniques in the area of serious crimes on the basis of a warrant issued by the Minister for Justice and Home Affairs on request from the Head of the Security Service under the Security Service Act.

The Malta Police Force is one of the entities that may avail themselves of special investigative techniques operated by the Malta Security Service. Undercover operations may be conducted and is catered for in the Criminal Code. **NOT DECLASSIFIED**

4.1.4 Assistance to the Police

In particular in terms of sea surveillance as well as in terms of assistance at land, the Police may request the Armed Forces (key player at sea) to provide with specific means.

4.2 The Security Service

There is only one agency, the Malta Security Service whose role is to protect and preserve the national security of Malta "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.

Its functions include the collection of intelligence relating to terrorism, drug trafficking, money laundering and organised crime as well as the dissemination of this information and analysis to other relevant bodies **NOT DECLASSIFIED**.

The Head of the Security Service is appointed by the Prime Minister. Together with the Security Committee, a Commissioner is appointed in terms of the Security Service Act to inter alia keep under review the exercise by the Minister of his powers under this Act.

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5. Armed Forces

In addition to traditional tasks, the Armed Forces provide assistance to Government bodies and policies. This applies to Police activities where/when needed or requested and civil protection/CBRN programme.

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In the area of activities that contribute to prevent and fight against terrorism, the Armed forces are responsible for the security of the international airport **NOT DECLASSIFIED**.

6. Co-ordinating bodies/entities

6.1 National Co-ordinator for counter terrorist activity

There is **NOT DECLASSIFIED** National Co-ordinator **NOT DECLASSIFIED** to ensure coordination of counter terrorism activities as well as exchange of information. **NOT DECLASSIFIED**

6.2 The Strategic Coordinating Terrorism Committee

The Strategic Coordinating Terrorism Committee has been set up in 2005 by the Minister of Justice and Home Affairs.

6.3 The Airport Security Committee and the Office of the Manager of the Airport Security/OMAS

- The **Aviation Security Committee**, which is an ad hoc permanent body, is responsible for the implementation and the co-ordination of policy and measures related to airport security.
- The Aviation Security Committee is composed of persons that are appointed by the Prime Minister (public officials and experts if needed). The role of this committee is to consider and advise the Government and the competent authorities on all matters relating to the security of airports and aircraft, and in particular to advise the Minister responsible. This applies to the development, maintenance and promotion of an efficient system of security at airports and on board aircraft, to the development and determination of the necessary strategies and policies to reach security objectives.

Under the chairmanship of the Minister for Justice and Home Affairs, members are the Permanent Secretary of the ministry for Justice and Home Affairs, the Police Commissioner, the head of the Security Service, the Commander of the Armed Forces, the Director of Civil Aviation, the Director General for Customs, the Head Internal Control Air Malta, the Division Manager Security MIA and the Manager Airport Security (which holds the secretariat).

The committee meets as often as necessary, but in no case less than 4 times a year.

- There is a National Civil Aviation Security Program that deals with instructions and guidelines, standards of security measures, implementation of regulations, contingency plans, threat assessments, evaluation and dissemination of threat, national civil aviation security quality control program, training programme (certification of screening staff and promotion of security awareness) and airport staff reliability.

- **The Office of the Manager of the Airport Security/OMAS**

The Office of the Manager Airport Security is responsible for the management and control of airport security and the co-ordination of all security resources provided at the Malta International Airport (development and maintenance of the National Civil Aviation Security Program (NCASP).

From that perspective he implements policy decisions taken by the Aviation Security Committee and in particular he is responsible for followings tasks:

- to set up organizational structure to address the strategic objectives of the Aviation Security Committee and the Ministry for Justice and Home Affairs

- To formulate and update emergency plans to deal with special, risky or dangerous situations within the airport perimeter, including related corrective measures and actions
- To present a plan for putting the required legislation in place in order to provide the authorities concerned with the necessary legal powers to deal with both normal and abnormal security situations, as well as unsafe or threatening situations within the airports
- To update security procedures, to assess security equipment and to ensure that personnel are trained properly (in this area he advises and co-ordinates the promotion of security awareness and vigilance programmes).

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7. The fight against the financing of terrorism

Malta ratified the UN Convention for the Suppression of the Financing of Terrorism and fighting the financing of terrorism involve the Financial Intelligence Analysis Unit (FIAU) in addition to the Police money laundering squad.

7.1 Legal framework

Legal framework consists of the Prevention Money Laundering Act of 1994 as amended in 2001 (criminalisation of the offence of money laundering and creation of the FIAU), the Prevention of Money Laundering Regulations of 2003 (to take fully account of the FATF 40 recommendations) and the Guidance Notes of May 2003 (updating of Guidance Notes to the Credit and Financial Institutions in connection with the new reporting structure involving the FIAU).

7.2 The FIAU

The FIAU, which is a government body with a distinct legal personality, was established by Act XXXI of 2001 (amendment of the Prevention Money Laundering Act of 1994).

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In addition, another core activity is exchange of information at both national and international level and the FIAU is also the authority responsible to ensure that persons and entities comply with the anti money laundering obligations as set in the Prevention of Money Laundering Regulations.

The FIAU is divided into 4 sections as follows: Compliance Section (monitoring of persons subject to report STRs as well as assistance to these persons, compliance procedures, training and awareness programmes, STRs patterns, liaising with Money Laundering Reporting Officers and supervisory authorities...), Financial Analysis Section (processing of STRs and liaising with investigating agencies), Legal Affairs and International Section and Administration and Support Section.

The FIAU is composed of the Director (the Attorney General), that the permanent staff (analysts, etc) supports, and the Board of Governors. The current members (nominees) are respectively appointed by the Attorney General's Office, the Central Bank of Malta, the Malta Financial Services Authority and the Malta Police.

In addition, a police officer ("nominee") assists the FIAU in terms of evaluation of STRs and provides the FIAU with police information available. More precisely, the police liaison officer assists "the Unit in the analysis and processing of suspicious transaction reports and of information and intelligence data collected by the (FIAU) in the exercise of its functions and (advises) the (FIAU) on investigative techniques and on all law enforcement issues" (cf. Prevention of Money Laundering Act).

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8. Civil protection/consequence management

Under the chairmanship of the Minister for Justice and Home Affairs, the civil protection machinery consists of a Civil Protection Council, a Civil Protection Department and a Scientific Committee for Civil Protection.

Members of the Civil Protection Council are the Minister for Justice and Home Affairs, the Permanent Secretary of the Ministry for Justice and Home Affairs; the Director of Civil Protection Department, the Police Commissioner, the Commander of Armed Forces, the Director General Health, the Enemalta Representative, the Official Ministry for Gozo, NGO's Representative and Local Councils Representative.

Emergency planning includes a National Master Plan and Contingency Plans (Flash Floods, Fire Works Incidents, Earthquakes, other major incidents, etc).

In terms of response mechanism, a communication framework is activated when needed and the Civil Protection Department Control Room holds the lead: the Police Control Room, the Armed Forces Operation Centre and the Emergency and Accident Department Health are connected. This specific network includes other government departments and bodies, NGOs and Volunteers as well as Media.

To deal with a possible CBRN incident, the Civil Protection Department adopted standard operating procedures to facilitate activities that are carried out by the Civil Protection Department in such a case and related to terrorist activities, unintentional human errors, mechanical failures, incidents deriving from natural disasters, effect of any CBRN incident happening outside Maltese Territorial waters.

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It has to be noticed that criminal investigation will start as soon as possible (in practice when the Director of the Civil Protection Department declares the area safe).

The overall response is based on a clear division of tasks and involve at various levels the Duty Operator (Control Room) , the Director of the Civil Protection Department (in close liaison with higher authorities within the National structure, the Deputy Director that assumes the responsibility of the crises command and control centre, Operations manager that act as Liaison Officer between all agencies concerned, the On-Scene-Commander, the Safety Officer, the Decontamination Officer, the On-site Log Keeper/Cameraman and the Media Relations Officer.

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9. Good practices and recommendations

9.1 Good practices (in the Maltese context)

- The political willingness to actively participate in fighting terrorism.

- **NOT DECLASSIFIED**

- Only one Minister is responsible for Justice and Home Affairs and both the police (only one police body) and the Security Service (only one security service) act under his authority (as well as the Airport Security Committee).

- The Civil Protection Council acts under the authority of the Minister of Justice and Home Affairs. The Civil Protection Department defined a specific procedure for dealing with CBRN cases in addition to classical consequence management tasks.
- There is a clear distinction and division of tasks. This in particular applies to the police (there is a counter terrorism unit involved in the area of international cooperation as well as a unit dedicated to investigations of money laundering/financing of terrorism cases), the Security Service and the Financial Intelligence Analysis Unit.
- A Police Representative (independent from the Police Commissioner) sits on the board of the Financial Intelligence Analysis Unit and a police liaison officer acts as an interface between the FIAU and the police money laundering unit.
- **NOT DECLASSIFIED**
- The Armed Forces are involved in the fight against terrorism and assist the police in addition to its exclusive role regarding the airport internal security.

- Cooperation at ministerial level relies on the recently created High Level Committee on Terrorism (Strategic Coordination Terrorism Committee) whose core task is to coordinate all relevant agencies (Police Commissioner, Director of the Security Service, Director of the Civil Protection, Head of the Airport Security Committee, Commander of Armed Forces, Ministry of Health and Elderly Care, Director of the EU Directorate within the Ministry of Justice and Home Affairs). The **NOT DECLASSIFIED** Minister of Justice and Home Affairs chairs this committee that also includes a technical subcommittee dedicated to the coordination and coordination of the Police and the Security Service. The Strategic Coordination Terrorism Committee as such is part of the Ministry of Justice and Home Affairs.

- In the area of aviation security (and the concept of national security programme for aviation as such is good practice), key players are the Office of the Manager Airport Security (OMAS), which is part of the Ministry of Justice and Home Affairs, and the Airport Security Committee. **NOT DECLASSIFIED** OMAS is for instance responsible for awareness programmes. OMAS also approves security regulations (e.g. Air Cargo Agents regulation). The Airport Security Committee is the single inter agency body responsible for civil aviation security.

- In the domain of legal provisions, Malta signed and ratified the UN Convention on the Suppression of the Financing of Terrorism and a Bill currently at its second reading in the Maltese Parliament will soon implement fully the FD on Terrorism of 13 June 2002.

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