

MISSJONI PERMANENTI
TAR-REPUBBLIKA TA' MALTA
GHALL-ORGANIZZAZZJONI GHAS-SIGURTÀ
U L-KOOPERAZZJONI FL-EWROPA



PERMANENT MISSION
OF THE REPUBLIC OF MALTA
TO THE ORGANIZATION FOR SECURITY AND
COOPERATION IN EUROPE

Note No. 37 /2019

NOTE VERBALE

The Permanent Mission of the Republic of Malta to the Organization for Security and Co-operation in Europe (OSCE) presents its compliments to the Director of the Conflict Prevention Centre and to the Delegations of all participating States and, with reference to FSC Decision No. 10/02 and FSC Decision 2/09, has the honour to convey the response of Malta on the Code of Conduct questionnaire on Politico-Military Aspects of Security for 2018.

The Permanent Mission of the Republic of Malta to the Organization for Security and Co-operation in Europe avails itself of this opportunity to renew to the Director of the Conflict Prevention Centre and to the Delegations of Participating States the assurances of its highest consideration.



Vienna, 15th April 2019

To
Director – Conflict Prevention Centre
Delegations of all participating States



MALTA

**Information Exchange on the OSCE Code of Conduct on
Politico-Military Aspects of Security**

31 December 2018

Section I - Inter State Elements

1. Account of Measures to prevent and combat terrorism

1.1. To which agreements and arrangements (universal, regional, sub-regional and bilateral) related to preventing and combating terrorism is your State a party?

Malta is a party to thirteen international treaties of the United Nations and to three Council of Europe Conventions relating to various aspects of the problem of international terrorism. Before the tragic events of 11 September 2001, Malta was party to six of these Conventions and afterwards Malta immediately took the necessary action to join other States and ratified/acceded to six other Conventions related to terrorism all at the same time. Malta became party to all the Conventions relating to various aspects of the problem of international terrorism in 2003, by acceding to the Convention on the Physical Protection of Nuclear Material. In addition to the above, Malta ratified the International Convention for the Suppression of Acts of Nuclear Terrorism on 26 September 2012.

Malta also prepared a report to the United Nations Security Council Committee on Counter Terrorism (CTC) established pursuant to paragraph 6 of Security Council Resolution 1373 (2001) on the implementation of this resolution. The Government of Malta submitted its first report to the CTC on the 21 December 2001; other such reports were submitted in 2002 and 2005, the latest report on this matter was also submitted to the CTC. Furthermore, Malta also compiled a report pursuant to paragraphs 6 and 12 of resolution 1455 (2003).

Existing international treaties relating to various aspects of the problem of international terrorism:

	Conventions	Place & date of Adoption or Signature	Signature	Ratification Acceptance (A) Approval (AA) Accession (a)
1.	Convention on Offences and Certain Other Acts Committed on Board Aircraft.	Tokyo 14.09.63		28.06.91 (a) Effective date 26.09.91
2.	Convention for the Suppression of Unlawful Seizure of Aircraft.	The Hague 16.12.70		14.06.91 (a)
3.	Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.	Montreal 23.09.71		14.06.91
4.	Convention on the Prevention and Punishment of Crimes against International Protected Persons, including Diplomatic Agents.	New York 14.12.73		11.11.01 (a)
5.	International Convention against the Taking of Hostages.	New York 17.12.79		11.11.01 (a)
6.	European Convention on the Suppression of Terrorism[CETS No. 090]	Strasbourg 27.01.77	05.11.86	19.03.96 Entry into force 20.06.96
7.	Protocol on the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation.	Montreal 24.02.88		14.06.91 Effective date 14.07.91

8.	Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation.	Rome 10.03.88		20.11.01 (a) Entry into force 18.02.02
9.	Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf.	Rome 10.03.88		20.11.01 (a) Entry into force 18.02.02
10.	Convention on the Marketing of Plastic Explosives for the Purpose of Detection.	Montreal 01.03.91		15.11.94 (a) Effective date 21.06.98
11.	International Convention for the Suppression of Terrorist Bombings.	New York 15.12.97		11.11.01 (a)
12.	International Convention for the Suppression of the Financing of Terrorism.	New York 09.12.99	10.01.00	11.11.01
13.	Convention on the Physical Protection of Nuclear Material	Vienna 03.03.80		16.10.03 (a)
14.	International Convention for the Suppression of Acts of Nuclear Terrorism	New York 13.04.05	15.09.05	26.09.2012
15.	Convention on the Prevention of Terrorism[CETS No. 196]	Warsaw 16.05.05	16.05.05	Not yet entered into force
16.	Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism[CETS No. 198]	Warsaw 16.05.05	16.05.05	01.05.2008

Accession to and participation in other multilateral and bilateral agreements or measures undertaken to prevent and combat terrorist activities:

Multilateral Agreements

Malta is also party to:

- The European Convention on Extradition [CETS NO. 024]
- The Additional Protocol to the European Convention on Extradition [CETS NO. 086]
- The Second Additional Protocol to the European Convention on Extradition [CETS NO. 098]
- The Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [CETS NO. 141]
- The European Convention on Mutual Assistance in Criminal Matters [CETS NO. 141]
- Protocol amending the European Convention on the Suppression of Terrorism [CETS NO. 190]
- The Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [CETS NO. 099]
- The Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters [CETS NO. 182]

Bilateral Agreements

Malta also concluded a number of bilateral agreements with other States relating to co-operation in the fight against drugs and organised crime. In fact, Malta has concluded bilateral agreements on the matter with Albania, Bulgaria, China, Cyprus, Egypt, France, Greece, Hungary, Israel, Italy, Libya, Romania, Russia, Slovakia, Slovenia, Spain, Sweden, Tunisia, Turkey, the United Kingdom and the United States of America. Malta also signed a Police Cooperation agreement with South Africa which also covers organised crime, illicit trafficking of drugs, firearms, explosives and poisonous substances.

Furthermore, Malta has succeeded to the Extradition Treaties signed by Great Britain and extended to Malta prior to 1964 (the year when Malta became independent). Among these (apart from those with European countries which have been superseded since Malta's ratification of the European Convention on Extradition) there are treaties with the U.S.A, Panama, Ecuador, Guatemala, Liberia, Nicaragua, Paraguay, Peru, San Marino, Thailand, Uruguay, Tunisia, Chile, Argentina, Liberia, Mexico, and Cuba. Any changes effected in these treaties after 1964 do not bind Malta. Similarly, Malta is not bound by any extradition treaties signed by Britain after 1964.

On 19 March 1996, Malta signed and ratified the European Convention on Extradition (1957) - a multilateral Convention, which governs extradition between the Contracting Parties thereto. This Convention entered into force for Malta on 17 June 1996. According to Article 28 of the Convention (Relations between this Convention and bilateral agreements), the provisions of the European Convention on Extradition supersede and take precedence over the provisions of any bilateral extradition Treaties, Conventions or Agreements which were previously concluded between any two Contracting Parties to this Convention.

1.2. What national legislation has been adopted in your State to implement the above-mentioned agreements and arrangements?

In order to implement the sanctions adopted by the United Nations Security Council on the freezing of funds or EU restrictive measures, Legal Notices are drafted under the powers of the National Interest (Enabling Powers) Act of 1993. Once drafted and duly signed, the Legal Notice is published in the Government Gazette. Upon such publication the measures referred to in the UN resolutions enjoy the force of law. These resolutions contain a list of persons or entities in respect of whom financial sanctions or other restrictive measures have been imposed. These lists are continuously updated and passed to the Malta Financial Services Authority (MFSA), the single unified regulator for financial services in Malta. In turn the MFSA places the updated lists on its website for ease of reference. With regard to EU restrictive measures, there is no need of direct implementation since these measures are directly applicable, however, a Legal Notice is issued in order to cater for the infringement of such measures with the appropriate penalties

The MFSA has directed its licence holders by means of a circular to verify their records for the names of individuals and organisations indicated in the Government Notices and for any information, transaction or connection whatsoever relating to the individuals and organisations in question.

Customs also play an important role in preventing and suppressing the financing of terrorist acts as it controls out-going and incoming cash carried by departing and arriving passengers.

Furthermore, new provisions and amendments for the freezing of funds have been added to the Maltese Criminal Code (Chapter 9 of the Laws of Malta) by virtue of Act III of 2002, and also under the Prevention of Money Laundering Act (Chapter 373 of the Laws of Malta) as recently amended by Act XXVIII of 2017. The provisions of the latter Act have been modelled on the requisites of the relevant Financial Action Task Force (FATF) 40- Recommendations. An Asset Recovery Bureau was approved by Cabinet way back in 2015 in virtue of L N 357 of 2015. Recently, a new board was appointed chaired by an experienced retired Judge together with representatives of the Commissioner of Police, Commissioner for Revenue, Director General Courts and the Director of the Financial Intelligence Analysis Unit.

In addition to the above, a Contact Point for Terrorism Intelligence within the Malta Security Service was set-up.

In November 2006 the then Ministry for Justice and Home Affairs (now Ministry for Home Affairs and National Security) appointed a National Counter Terrorism Coordinator (NCTC). The appointed person ensures cooperation amongst key players in the fight against terrorism both operational and in the adoption of policies. For the prevention of the phenomenon of *Home-grown Terrorism*, in 2007 the NCTC embarked on a long-term project to promote dialogue with influential Muslim leaders on the Island. The NCTC chairs also the National Intelligence Cell (NIC). The permanent members of the NIC are the Malta Security Service, the Police CTU, the Malta Aviation Security, Armed Forces of Malta and the Customs department. Other members may be invited to attend, depending on the topics under review. Operational intelligence is shared on daily basis between the CTU and MSS and with other agencies depending on the need to know basis in full respect of the third party rule.

Since 2006 the Malta Security Service has also appointed a liaison officer to deal with the Financial Intelligence and Analysis Unit (FIAU)

1.3. What are the roles and missions of military, paramilitary and security forces and the Police in preventing and combating terrorism in your State?

The Maltese law enforcement agencies are fully committed to prevent the commission of terrorist acts as such, and to share intelligence with other foreign services on bilateral or multilateral basis is continuous.

Malta has agreed to disseminate any relevant information which in some way may be related to terrorist acts. In fact, during the Regional Liaison Intelligence Officers (RILO) meeting held in Oslo, Norway, in November 2001, it was agreed that all information which is available to Customs and which, in the opinion of the holding officer, may in any way be relative to terrorist acts, is transmitted to the RILO office in the region through the Customs Enforcement Network (CEN) of the World Customs Organisation.

Customs stations have also been alerted of the possibility of illicit movement of weapons and hazardous materials, and equipment for the detection of such illicit activity is at the dispose not only of certain Customs stations but also of roving enforcement units. Recent additions to this equipment consist of cargo scanning machines (two of them mobile) for detecting weapons, explosives etc., and further additions to such equipment is envisaged for the future. In fact the Department is assessing the possibility of purchasing an 'in-tunnel' mobile scanning machine and replacing older scanning machines.

Furthermore, measures are also taken to ensure border controls, considering that Malta is an island situated in a small, yet extremely busy sea. The Armed Forces of Malta units carry out continuous surface patrolling and frequent aerial surveillance both inshore and offshore.

The Immigration Service is also involved in preventing movement of terrorists. A computerised system of port entries contains the details of known terrorists who are brought to the notice of the Public Service in Malta. Each and every arriving passenger is checked against this system to secure the detection and arrest of fugitive terrorists, when these are discovered. All new Maltese passports issued have the highest security features. Malta introduced the Basic Access Control (BAC) biometric passports on 28 September 2008 and added the Extended Access Control (EAC) passports with additional security features on 28 June 2010. On the 30 March 2015, the Supplemental Access Control (SAC) passports were introduced. These passports are extremely difficult to forge.

The Malta Police is responsible for Immigration and State Security functions at the Airport, and the maintenance of public law and order. Immigration and Security Police are responsible for the checking

of passengers for identification of possible terrorist suspects and their arrests. The Rapid Intervention Unit (RIU) also provides an armed force of anti-terrorist trained men to participate in any action requiring their intervention. Moreover, the Counter-Terrorism Unit is the police (unit) responsible for the collection, collation, analysis and dissemination of intelligence with a view of combating terrorism, extremism, radicalization, and ancillary matters. The unit is also responsible for investigating related cases. The head of the unit is also the National Correspondent on Terrorism Matters for Eurojust and the Liaison Officer for the Joint Liaison Team ECTC at Europol (not permanently based in The Hague)

The Malta International Airport plc (MIA) has the responsibility of providing personnel for the screening of passengers, hand luggage and hold baggage at the airport. As MIA plc is also a security organisation, it has the responsibility of protecting its property, and in the events of findings that indicate a possible threat to aviation security, they are responsible to notify the Manager Airport Security, Armed Forces of Malta or the Police.

Malta has signed a co-operation agreement with Europol, which will enhance exchange of operational information to customs information networks, which of course include the Maltese Customs Administration, which have been placed at the disposal of Counter-Terrorist Units worldwide.

1.4. Provide any additional relevant information on national efforts to prevent and combat terrorism

At a national level several legal measures have been taken. In 2003 the Criminal Code was amended to give the Attorney General power to authorise the Police and Customs authorities, where appropriate, to allow controlled deliveries of dangerous substances and to carry out joint investigations between Maltese and non-Maltese authorities (article 433E of the Criminal Code) in criminal matters.

Act. VI of 6 June 2005 added the following title to the Criminal Code: “Of Acts of Terrorism, Funding of Terrorism and Ancillary Offences”, and was subsequently amended by Act III & Act VIII 2015 respectively. According to article 338A, an “act of terrorism” means any act listed in sub article (2), committed wilfully, which may seriously damage a country or an international organization where committed with the aim of: (a) seriously intimidating a population, or; (b) unduly compelling a Government or; international organization to perform or abstain from performing any act, or; (c) seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of a country or an international organization”. Said Act was subsequently amended by virtue of Act III & VIII of 2015 respectively.

Moreover, under Article 83 of the Criminal Code, it is a crime for any person to establish, maintain or belong to any association of persons who are organised and trained or organised and equipped for the purpose of enabling them to be employed for the use or display of physical force in promoting any political object.

In addition to the above, under Article 83A of the Criminal Code, it is also a crime for any person to promote, constitute, organise or finance an organisation of two or more persons with a view to commit criminal offences liable to the punishment of imprisonment for a term of four years or more and the mere fact of belonging to such an organisation is a crime in itself with an aggravation of the punishment where the number of persons in the organisation is ten or more. Where the person found guilty is the director, manager, secretary or other principal officer of a body corporate or is a person having a power of representation of such a body or having an authority to exercise control within that body and the offence was committed for the benefit, in whole or in part, of that body corporate, the person so found guilty shall be deemed to be vested with the legal representation of the same body corporate which itself shall be criminally liable to pecuniary penalties ranging from 25,000 Euro to 1,250,000 Euro depending on the nature of the offence committed. Under article 83A (5) of the Criminal Code, moreover, the relevant criminal action may be prosecuted in Malta notwithstanding that the organisation of persons is based or pursues its criminal activities outside Malta.

United Nations Security Council Resolutions are also implemented, and thus become enforceable on a domestic level, through Legal Notices issued under Section 3(1) of the National Interest (Enabling Powers) Act (Cap 365, Laws of Malta). Resolutions 1267 (1999), 1333 (2000) and Resolution 1390 (2002) were implemented through Legal Notice 214 of 1999, as amended by Legal Notices 22 of 2001, and 72 and 212 of 2002.

Section 4(1) of LN 214 of 1999 prohibits Maltese citizens and persons present in Malta from withdrawing or attempting to withdraw or using or attempting to use any funds or other financial resources owned or controlled, directly or indirectly, by the Taliban, or by any undertaking owned or controlled by the Taliban, saving the exceptions provided in the said Security Council Resolutions. The same section also prohibits the direct or indirect payment or attempt thereof, to or for the benefit of the Taliban or any undertaking owned or controlled, directly or indirectly by the Taliban, except as may be authorised by the Committee established in terms of paragraph 6 of Security Council Resolution 1267 (1999) on a case by case basis on the grounds of humanitarian need.

Similarly, section 4(5) of the said Legal Notice makes provision for the prohibition of transfer of funds or financial resources. Indeed, this section reads as follows:

“Notwithstanding any other law, no citizen of Malta and no person in Malta shall, whether directly or indirectly, transfer any funds or other financial resources ... [for] the benefit of Osama bin Laden, his associates or any entities owned or controlled, directly or indirectly, by Osama bin Laden or individuals and entities associated with him, including the Al-Qaida organisation.”

The said Legal Notice also goes beyond funds and financial resources. Section 4(6) imposes an arms embargo and prohibits the sale, supply or transfer of technical advice, assistance or training related to military activities, to individuals, groups, undertakings or entities as designated by the Committee established in terms of paragraph 6 of Resolution 1267 (1999).

The Arms Act (Chapter 480 of the Laws of Malta) and Explosives Ordinance (Chapter 33 of the Laws of Malta) cover offences that are also related to the offences of terrorism.

Malta has also set up a regime for the control of exports of dual use items and military equipment, as well as for the control of related technology. The Dual Use Items (Export Control) Regulations of 2004 and the Military Equipment (Export Control) Regulations 2002 are additional legal tools to fight terrorism.

1. Together with these, one may also add the Money Laundering Act (Chapter 373 of the Laws of Malta) and the regulations made there-under, the Immigration Act (Chapter 217 of the Laws of Malta), the Extradition Act (Chapter 276 of the Laws of Malta), the Customs Ordinance (Chapter 37 of the Laws of Malta) and the Refugees Act (Chapter 420 of the Laws of Malta)¹. Recently, a National Coordinating Committee on Combating Money Laundering and Funding of Terrorism was set up in virtue of Legal Notice 117 of 2018, Subsequently, LN 430 of 2018 was promulgated in order to further strengthen the prevention of money laundering and funding of terrorism.

The National Coordinating Committee on Combating Money Laundering and Funding of Terrorism was established to draw up, *inter alia*, a national strategy and policies to combat the funding of terrorism and co-ordinate any action to be taken to develop, implement and review the national strategy and policies, including the co-ordination of national risk assessments and the actions to be taken to address any threats, vulnerabilities and risks identified.

Moreover, ACT NO XLII of 2018 transposed EU Directive 2017/541/EU in our domestic legislation.

Malta is currently working on its National Counter Terrorism Strategy, a framework which shall encapsulate the country's vision in countering terrorism in all its forms and set out the Government's policies in this area. This national instrument shall be based on four distinct, but inter-related Pillars i.e. Prevent, Pursue, Protect and Response.

¹ All National legislation is accessible on the following website: <http://www.justice.gov.mt>

It is to be highlighted that the disruption of terrorist activities and pursuing terrorists shall be a priority under this strategy (through Pursue) and furthermore supported through strategic objectives which promote inter-agency cooperation and coordination as well as assurance that the right effective investigative tools and legal basis are available for investigation and prosecution.

It is pertinent to highlight that this strategy shall be context specific and intelligence-led meaning that the overall approach and initiatives pushed forward will be guided by the national terrorist threat level and the dynamics of the current threat.

In no way does the lack of a formal counterterrorism strategy mean that Malta has been inactive in this area. Investigations of terrorist financing form an integral part of our efforts to identify terrorists, terrorist organizations and support networks and a sound cooperation and co-ordination mechanism exists between the relevant authorities.

Besides bilateral exchanges between entities, Malta has an inter-agency platform i.e. the National Intelligence Cell (NIC), which apart from setting out the national terrorist threat level, it assesses terrorist trends and patterns, highlights any gaps in the system and goes further to recommend policy and administrative options, if and when necessary.

Malta has a EUROPOL and EUROJUST Mandate and directly participates in the fight against organised crime following obligations emanating from the respective agreements.

Malta Customs is the border control agency on goods being imported, exported, in transit and in transshipment. As a border control agency, Malta Customs enforces all relevant laws and regulations related to fiscal, safety and security of goods crossing the borders. This is also extended to cash control by incoming and outbound passengers.

In terms of Container and Supply Chain Security the Customs Department is implementing the provisions of the Union Customs Code which came into force in May 2016. This implies that a pre-arrival notification of goods coming into, exported from and transiting within the EU is uploaded on a system where the consignments are risk analyzed for security and safety purposes.

As for the Security of Radioactive Sources the radiation portal monitors are installed at key points within the airport and ports. In addition, several hand-held and portable radiation monitors are used by operational personnel.

2. Stationing of Armed Forces on Foreign Territory

2.1. Provide information on the stationing of your State's Armed Forces on the territory of other participating states in accordance with freely negotiated agreements as well as in accordance with international law.

Malta is not a Party to any Agreement with other participating States regarding the stationing of its Armed Forces on their territory. This does not exclude the taking part by military personnel in bilateral exercises on the territory of another State for short periods.

3. Implementation of other international commitments related to the Code of Conduct

3.1. Provide information on how your State ensures that commitments in the field of arms control, disarmament and confidence and security building as an element of indivisible security are implemented in good faith

Malta is a member of the Wassenaar Arrangement, the Nuclear Suppliers Group, the Australia Group export control regimes as well as the Chemical Weapons Convention. The lists of 'controlled' dual use commodities are incorporated locally under the Dual Use (Export Control) Regulations and the Military Equipment (Export Control) Regulations. The Military Equipment (Export Control) Regulations (Legal Notice 269 of 2001 and amended by Legal Notice 376 of 2003) incorporates a list of controlled items based on the common list of military equipment covered by the European Union Code of Conduct on Arms Export.

3.2. Provide information on how your State pursues arms control, disarmament and confidence and security building measures with a view to enhancing security and stability in the OSCE area

Malta's security policies are based on her total support for international law and her adherence to the UN charter and OSCE principles and commitments. She is supportive to the UN's efforts to restrict the proliferation of weapons and to encourage arms control and disarmament with special emphasis to weapons of mass destruction. AFM Officers assist in the inspection of military facilities and equipment located on the territory of those states that are signatories to the OSCE Vienna Document 2011.

Section II: Intra-State Elements

1. National Planning and Decision Making Process

1.1. What is the national planning and decision-making process in determining/approving military posture and defence expenditures in your State?

The Military Posture

The Minister of Home Affairs and National Security retains Defence Matters within his portfolio. His ministry acts as the Ministry of Defence and policy matters are coordinated by the Directorate General for Policy Development as well as the Directorate for Defence Matters within the same ministry. Parliament exercises control over the Armed Forces of Malta through the annual Financial Estimates for the AFM, always drawn up in consultation with the Ministry of Finance.

Defence Expenditures

Parliament exercises control over the Armed Forces of Malta through the annual Financial Estimates for the AFM, always drawn up in consultation with the Ministry of Finance.

1.2. How does your State ensure that its military capabilities take into account the legitimate security concerns of other States as well as the need to contribute to international security and stability?

The AFM abides by all the international conventions signed by Malta in relation to military capabilities.

2. Existing Structures and Processes

2.1. What are the constitutionally established procedures ensuring effective democratic control of the military, paramilitary, and internal security forces as well as intelligence services, and the police?

As in other democratic states, the AFM are controlled and answerable to the elected government of the day. This political control is exercised by the Minister of Home Affairs and National Security who, at present, is also the Minister responsible for the Armed Forces of Malta. Defence and security policy matters are determined by the Cabinet. All military accounts are subject to examination by the Auditor General, an independent authority responsible directly to Parliament. The Parliamentary Public Accounts Committee, chaired by a member of the Opposition Party, is empowered to scrutinise all public (including all military) spending.

2.2. How is the fulfilment of these procedures ensured, and which constitutionally established authorities/institutions are responsible for exercising these procedures?

Armed Forces

The Malta Armed Forces Act, 1970 (Act No. 27 of 1970) is the legal instrument empowering the raising, maintenance and regulation of the Maltese Armed Forces

Paramilitary Forces

Malta does not have paramilitary forces.

Internal Security Forces

Malta does not have internal security forces.

Intelligence Service

The Security Service Act, 1996 - Chapter 391 of the Laws of Malta (Security Service Act), Enacted by Act. XVII of 1996 as amended by Act. XVI of 1997 is the legal instrument empowering the raising, maintenance and regulation of the Malta Security Services.

The function of the Malta Security Service, which started operating in January 2000, has been, by law, designated to be the protection of national security, 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 well being of Malta, public safety and the prevention or detection of serious crime.

The head of the Security Service is appointed by the Prime Minister and is responsible for the efficiency of the Service and for securing that no information is obtained by the service except so far as necessary for the proper discharge of its functions and that no information is disclosed by it except so far as necessary for that purpose or for the purpose of any criminal proceedings. He/she is also bound by law to ensure that the Service does not take any action to further the interests of any political party.

Members of the Security Service are appointed by the Head of Service and may, inter alia, include public officers, members employed in the armed forces of Malta, government contractors or members or employees of prescribed body or class in terms of the Official Secrets Act.

Entry, interference with property, interception or interference with communications by the Service is only lawful if authorised by a warrant issued by the Minister who is designated by the Prime Minister as being responsible for the Security Services.

A Commissioner appointed by the Prime Minister keeps the issue of warrants authorised by the Minister under review and also investigates any complaints about the Security Service. A Security Committee examines the expenditure, administration and policy of the Service.

Police

Legal Framework/Organisation

The objectives of the Malta Police Force mainly stem from the Criminal Code (Article 346 to 366 of Chapter 9 and Article 4 of Chapter 164 of the Laws of Malta). These include, inter alia, the maintenance of public order and peace, the detection and apprehension of offenders and the charging and prosecution of offenders. The Police in Malta have also the duty to serve citations and summon persons to appear before the Magistrates courts.

The Malta Police Act (chapter 164 of the Laws of Malta) further empowers the Police with the enforcement of observance of all laws of the Republic. Herein it is also stated that for the performance of any of the duties carried out, the police are entitled to carry arms. The Police are also bound to work within the precepts of Human Rights guaranteed under the Constitution of Malta and the European Convention on Human Rights. A code of ethics for Maltese police officers has been in force since 2005.

There is only one national Police Force in Malta and it is a component of the Ministry for Home Affairs and National Security (MHAS). Maltese Police officers hold civil status and are not part of the military. This distinction emanates from the Constitution of Malta (Section 124(2)) which in its definition of 'public service' includes the service in the office of a member of the Malta Police Force, whilst service in the Armed Forces is not included.

The Police Force is headed by a Commissioner assisted by a Chief Executive Officer, four Deputy Commissioners and two Assistant Commissioners. Malta is divided administratively into two regions comprising eleven police districts and most districts are again sub-divided into divisions. Each Region is headed by an Assistant Commissioner whilst each District is headed by a Superintendent. The Division is under the administrative charge of an Inspector who keeps the Superintendent in charge of the District informed of anything which comes to his/her notice in the course of his/her duties.

Aside from the Administrative arm of the Police Force, there are special police units which include the Special Branch, the International Relations Unit, Counter-Terrorism Unit, Criminal Investigation Department, the Criminal Intelligence Analysis Unit, Homicide Squad, Stolen Arts Unit, the Drugs Squad, the Economic Crimes Unit, Money Laundering Unit, the Forensic Laboratory, the Vice Squad, the Mounted and Dog Section, the Traffic Section, and the Legal Office.

There is also the Rapid Intervention Unit, which consists of a number of police officers who are specially trained to deal with crisis situations such as public disturbances and terrorism. They also perform VIP escorts.

Recent policing policy has seen the set up of the Warden System which has been empowered with the execution of administrative and contravention offences, such as traffic and Local Council by-law enforcement.

Investigative Functions

In the exercise of their duties, the Police can affect the arrest of a person who is caught *in flagrante* or if the arrest is necessary to prevent the commission of offences. Every Police officer is also empowered to arrest a person who, after due warning, knowingly obstructs or disturbs the execution of police duties or disobeys lawful orders. In most other instances a Magisterial Warrant is required to affect the arrest of a person or a search in premises.

Police officers have a right to search a person and/or property without a warrant:

- when there is an imminent danger that the suspect may escape or that the means proving the offence will be suppressed;
- when the suspect is detected *in flagrante*;
- when the intervention of the police is necessary in order to prevent the commission of further offences;
- when the entry is necessary for the execution of any warrant or order issued by a competent authority.
- where the person using the premises is already under arrest.

The police powers of search are otherwise limited by the notion of what is reasonably justifiable in a democratic society and the specific Magisterial Warrant requirements at law.

Police officers are bound to inform suspects of their right to silence. Any confession, to be admissible as evidence, must be proved to have been taken voluntarily and not under duress, coercion or with promise of favours. The burden of proving whether or not a confession is voluntary rests on the prosecution. As the law currently stands, during the investigative stage and until arraignment, the suspect does not have the right to be assisted by counsel, however he has the right (albeit conditional) of having a member of his family informed of his arrest. In the investigation of a crime, arrest is not mandatory if it is deemed sufficient to issue a summons to guarantee the suspect's appearance in court.

Supervision

Internal supervision of the police officers is configured more or less on the traditional 'military' style hierarchy, which was exhibited until very recently by police forces in England and Wales and most western police forces. It is a hierarchy based upon effective supervision and guidance in carrying out of assigned tasks of subordinates. The maintenance of discipline in the ranks is exercisable summarily by the Commissioner of Police, and in serious cases by the Public Service Commission. However, since the police are no less subject to the criminal law than any other citizen in Malta, alleged criminal and human rights violations committed by the police officers are triable and reviewed by the Criminal and Constitutional Courts respectively.

A Complaint Handling System, providing a complaint form at all Police Stations and Local Councils has been implemented. Such forms are received at the Commissioner's office, acknowledged within 3 days and referred to Internal Affairs Unit (established at Law Chapter 164), who are bound to investigate and send a further communication of results or developments within 15 days to complainant in all cases reported.

Additional administrative reviews have been implemented through the appointment of a Police Board (under chapter 164) which in effect is a board composed of non-Police members with the authority to review Police actions, both within and outside the Police Force.

In view of the fact that the Malta Police Force is answerable to the Government of the day, the House of Representatives effects further external supervision through Parliamentary Questions and by allocating discussion in connection to the allocation of funds in the Force. Furthermore, the Ombudsman has also jurisdiction to investigate certain complaints not linked with criminal investigations and court proceedings. Likewise, any member of the public may challenge the Commissioner of Police through the courts if, in his/her opinion, the police does not take any action upon any report denoting the commission of a criminal offence which has been brought to their

knowledge. If the complaint is found to be justified, then the Courts may order the Commissioner of Police to initiate appropriate action. The Public may lodge complaints with the Police Board, which is regulated under the Police Act, Chapter 164 of the Laws of Malta.

2.3. What are the Roles and Missions of the military, paramilitary and security forces as well as controls to ensure that they act solely within the constitutional framework?

Primary Defence Role of AFM

- Maintaining territorial integrity (particularly at the Malta International Airport and other sensitive locations);
- Maintaining integrity of Maltese waters (physical and electronic surveillance against smuggling, illegal trafficking of immigrants and law-breaking at sea)
- Providing for the limited surveillance of the Maltese Airspace;
- Providing search and rescue services in Malta and its Search and Rescue Region;
- Providing Explosive Ordnance Disposal (EOD) and Improvised Explosive Device Disposal (IEDD) cover;
- Contributing towards international peace and stability by participating in the European Union's Military Headline Goal.

Secondary Defence Role of AFM

- Providing military assistance to Government departments and the civil community;
- Providing civil emergency protection support (explosives, marine pollution, floods and other disasters)
- Providing Military Aid to the Police and the Security Services (Internal Security, Anti-Narcotic patrols and Vehicle Check Points (VCPs);
- Providing State Ceremonial and other public duties.

Paramilitary forces

Malta does not have paramilitary forces.

Security forces

Malta does not have security forces.

3. Procedures related to different forces personnel

3.1. What kind of procedures for the recruitment or call-up of personnel for service in the military, paramilitary, or security forces does your State have?

Military Forces

Malta does not have military conscription. Recruitment in the Armed Forces of Malta is on an entirely voluntary basis. Calls for application are published in the Malta Government Gazette and in most local newspapers. Selection procedures differ between officers and other ranks. Applicants are required to meet literacy and numeracy requirements and to be both medically and physically fit. Recruitment in the Volunteer Reserve Force is also on a voluntary basis and is in accordance with the Volunteer Reserve Force (Appointments and Conditions of Service) Regulations, 1998. The call-out and recall of reserves is made in accordance with provisions in the Malta Armed Forces Act, 1970 (Section 35A). This requires that:

- (1) The Commander may, for the purpose of national missions or any other task, authorise Commanding Officers or any other officer under their instruction to call out any reservist from the Volunteer Reserve Force in order to participate and assist the

regular force in any said national mission or other task.

(2) Commanding Officers or any other officer under their instruction shall set with the reservist's consent, the date, time, duration and place at which the reservist is to be present and a call out notice shall be deemed to be served on the reservist if it is communicated to him personally by any means.

(3) A call out notice may be revoked or varied by the Commander by a subsequent communication."

Paramilitary forces

Malta does not have paramilitary forces.

Security forces

Malta does not have security forces.

3.2. What kinds of exemptions /alternatives to military service does your State have?

Malta does not have a compulsory military service.

3.3. What are the legal and administrative procedures protecting the rights of all forces personnel?

An internal redress procedure for all ranks exists within the Armed Forces of Malta. Besides, civil remedies other than those, which are specifically exempt by statute, are available to members of the Armed Forces of Malta. Cases may be referred to courts of law, tribunals and the Ombudsman who is a constitutional independent body responsible for investigating complaints and serious allegations.

The Armed Forces of Malta has also a legal office where members of the armed forces may refer to where matters relating to the protection of the rights of all force personnel are involved.

In 2015, a new law was enacted granting the right, among other, to AFM members to join a union of their choice, without the right to strike. The law was passed under Act IV of 2015 - Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 and was published in the Government Gazette of Malta on 20th February 2015.

4. Implementation of other political norms, principles, decisions and international humanitarian law.

4.1. How does your State ensure that International Humanitarian law and Law of War are made widely available e.g. through military programmes and regulations?

Dissemination of the Geneva Convention and general principles of international humanitarian law is carried out by means of training included in the annual training programme for the Armed Forces of Malta. As from January 1998, the Code of Conduct was translated and issued in Maltese.

4.2. What has been done to ensure that armed forces personnel are aware of being individually accountable under national and international law for their actions?

As above

4.3. How does your State ensure that armed forces are not used to limit the peaceful and lawful exercise of human and civil rights by persons as individuals or as representatives

of groups nor to deprive them of national, religious, cultural, linguistic or ethnic identity?

The AFM are regulated by the Armed Forces Act, 1970 (Act No. 27 of 1970)

4.4. What has been done to provide for the individual service member's exercise of his or her civil rights and how does your State ensure that the country's armed forces are politically neutral?

Every AFM Member is guaranteed his civil rights. As mentioned in Section 4.3 each Member is regulated by the Armed Forces Act 27 of 1970. As in other democratic states, the AFM are controlled and answerable to the elected Government of the day.

In 2015, a new law was enacted granting the right, among other, to AFM members to join a union of their choice, without the right to strike. The law was passed under Act IV of 2015 - Various Laws (Trade Union Membership of Disciplined Forces) Act, 2015 and was published in the Government Gazette of Malta on 20th February 2015.

4.5. How does your State ensure that its defence policy and doctrine are consistent with international law?

Defence and security policy matters are determined by the Cabinet and each decision is taken in respect of international law.

Section III: Public Access and Contact Information

1. Public Access

1.1. How is the public informed about the provisions of the Code of Conduct?

N/A

1.2. What additional information related to the Code of Conduct e.g. replies to the Questionnaire on the Code of Conduct, is made publicly available in your State?

N/A

1.3. How does your State ensure public access to information related to your State's armed forces?

Public access to information on the Armed Forces of Malta is in the following manner:

- Parliamentary Questions put by members of the House of Representatives;
- Press Releases through the Department of Information in the Office of the Prime Minister;
- Official Statements in Parliament by the Minister for Home Affairs and National Security;
- An AFM Internet website (<http://www.afm.gov.mt>)
- The AFM employs a staff officer dedicated to informing the general public and media about the role, organization and activities of the same Armed Force.
- An AFM open-day is held at regular intervals. Participation in television programmes featuring the activities of the Armed Forces is given every importance in educating the public about the AFM.
- Calls for tenders for work services and procurement of equipment are invariably published in the Malta Government Gazette, which is the Government's official publication.

2. Contact Information

2.1. Provide information on the National Point of Contact for the implementation of the Code of Conduct

Malta has two Points of Contact for the implementation of the Code, being:

Mr. Dennis Grech
Ministry for Foreign Affairs and Trade Promotion
Palazzo Parisio, Merchants Street
Valletta
Phone: +356 2204 2248
Email: dennis.grech@gov.mt

Permanent Mission of Malta to the OSCE
Opernring 5/1
1010 Vienna
Phone: +431 5865010
Email: joseph.d.debono@gov.mt