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EUROPEAN SOCIAL CHARTER

2nd Addendum to the
13th National Report on the implementation of the European
Social Charter

submitted by

THE GOVERNMENT OF MALTA

Articles 1§2, 10§4 and 15§3

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APPENDIX
Addendum to replies by Malta

Article 1.2

Please indicate what measures have been taken to assess the prevalence of the problem of exploitation of vulnerability, forced labour, modern slavery?

Malta's legal framework recognises the phenomenon of exploitation of persons, adults and children in any form as trafficking of persons reflecting the EU Directive and the Council of Europe Convention on human trafficking. Article 248 A of the Criminal Code (Cap 9) of the laws of Malta, provides that:

(1) Whosoever, by any means mentioned in sub-article (2), traffics a person of age for exploiting that person in:

- (a) the production of goods or provision of services; or
- (b) slavery or practices similar to slavery; or
- (c) servitude or forced labour; or
- (d) activities associated with begging; or
- (e) any other unlawful activities not specifically provided for elsewhere under this sub-title,

For the purposes of this sub-article exploitation includes requiring a person to produce goods and provide services under conditions and in circumstances which infringe labour standards governing working conditions, salaries and health and safety.

(2) The means referred to in sub-article (1) are the following:

- (a) violence or threats, including abduction;
- (b) deceit or fraud;
- (c) misuse of authority, influence or pressure;
- (d) the giving or receiving of payments or benefits to achieve the consent of the person having control over another person;
- (e) abuse of power or of a position of vulnerability:

If in this paragraph "position of vulnerability" means a situation in which the person concerned has no real or acceptable alternative but to submit to the abuse involved.

(3) The consent of a victim of trafficking to the exploitation, whether intended or actual, shall be irrelevant where any of the means set forth in sub-article (2) has been used.

In addition Article 248F (2) provides that any person who engages in or makes use of the services or labour as referred to in articles 248A to 248D, both inclusive, in the knowledge that the person providing the service has been trafficked within the meaning of article 248E(1), shall be guilty of an offence and liable, on conviction, to imprisonment for a term of eighteen months to five years.

Does legislation exist to deal with the phenomenon of exploitation of vulnerability, forced labour, modern slavery and does it make provision for the identification and protection of victims, enable prosecution of exploiters, or otherwise provide reporting requirements for businesses to detail actions taken to investigate their supply chains for forced labour, due diligence in public procurement to guarantee funds are not inadvertently supporting modern slavery?

A person/s found guilty of a crime committed in terms of article 248A (1), (a-e) is liable to a punishment of imprisonment from six to twelve years. In case of trafficking of a minor the penalty handed down shall increase by one degree.

In addition to the above-mentioned legal provisions, the Victims of Crime Act (Cap 539) of the Laws of Malta makes provision for the rights, support and protection of victims, and for matters connected therewith or incidental thereto, including victims of human trafficking. In particular Article 12 (1) (a) provides for a timely and individual assessment of victims which is conducted to persons who suffered a crime including a crime of human trafficking. Assistance, support and protection to potential/victims of human trafficking is provided as necessary, and according to an individual assessment. The same law also states that such assistance and support shall not be conditional on the victim's willingness to cooperate in the investigation or criminal proceedings.

The requirement for businesses to detail actions taken to investigate their supply chains for forced labour and conducting due diligence in public procurement to guarantee funds that are not inadvertently supporting modern slavery, do not fall within the remit of the Ministry's Policy Development and Programme Implementation Directorate.

Are there regular inspections of sectors such agriculture, construction, hospitality, manufacturing and domestic work, which are particularly affected by labour exploitation?

The above is not within the Ministry's Policy Development and Programme Implementation remit however, the information below reflects implementing measures by the Ministry for Home Affairs, National Security and Law Enforcement as a leader in proposing and implementing measures concerning human trafficking action in all its forms. Some initiatives conducted by the Department of Industrial and Employment Relations (DIER) as the responsible entity for employment relations are highlighted.

In Malta, a National Anti-Trafficking Monitoring Committee is in place with a view to coordinating policy and related issues, as well as to oversee the implementation of human trafficking related commitments taken by Government in accordance with the national strategy in place. The Permanent Secretary, MHSE, chairs the Monitoring Committee, hence MHSE takes a leading role in the relevant endeavours. Efforts were in addition undertaken to consolidate a multi-agency approach between specific entities to ensure the protection of victims following the prosecution of perpetrators. This structure has enabled the Maltese stakeholders, including particularly the Police and Agenzija Apoogg, Malta's social welfare agency, to work together so as not only to investigate and prosecute offenders, but also to protect victims. This structure has also facilitated the delivery of training to multiple stakeholders at the same time.

On a day-to-day operational basis, the Malta Police Force in terms of their investigative function as well as conducting prosecution vis-à-vis cases of sex trafficking or forced labour undertakes Human Trafficking-related initiatives. Criminal investigations are supported by means of collaboration and information sharing involving the immigration authorities (Identity Malta and the Police Immigration

Office), Appogg (the national social welfare agency), the Department of Industrial and Employment Relations, the national employment authority (Jobsplus) and civil society organisations. The enforcement arms of JobsPlus and DIER may identify labour exploitation cases.

As indicated above, the Department of Industrial and Employment Relations (DIER), is the responsible entity to ensure fair and transparent working conditions for all. Therefore, any form of labour exploitation can be reported to DIER. DIER opens an investigation and should it find wrongdoing, action is taken against the employer.

Moreover, Government sought to enhance its legislative framework considering the curbing of illegal employment especially of third country nationals who may also be in a trafficking situation.

- o Two new labour laws came into effect on the 1st January 2019. Subsidiary Legislation 452.115 – Annual Leave National Standard Order sets clear procedures on the cancellation of leave, special leave, the accrual of leave during maternity leave and the payment of the leave balance in case of termination of employment. It also increases the obligations of employers in instances of forced leave.

- o Subsidiary Legislation 452.116 – Itemised Payslip Regulations requires employers to issue payslips to employees on a monthly basis. Payslips issued to employers should include the number of hours worked, number of hours worked at overtime rates and leave balances, amongst others. Failure to abide by these conditions will subject employers to a fine of not less than €500) euro and not more than €1.

The new laws will facilitate the collection of data by national enforcement bodies, mainly the Malta Police Force and the DIER, during the investigation of potential cases of labour trafficking.

- In addition, a Procedure for the Inspection of Illegally Staying and Illegally Employed Third Country Nationals and the Monitoring of Third Country Nationals enrolled in Educational Establishments Regulations, 2019 published on 4 June 2019 by virtue of Legal Notice 112 of 2019. By virtue of this Legal Notice, a new Reporting Unit was set up within Identity Malta Agency with a view to inspecting the illegally staying and illegally employed third-country nationals. This is possible in accordance with the Minimum Standards on Sanctions and Measures Against Employers of Illegally Staying Third Country Nationals Regulations (S.L 217.14 of the Laws of Malta) and the monitoring of Third Country Nationals enrolled in educational establishments.

The consultation document launched in August 2019 by the then Parliamentary Secretary Julia Farrugia Portelli also focused on relatively new types of exploitation. It identifies three major risk environments in this regard: (i) temporary work agencies, (ii) gentlemen's clubs, and (iii) massage parlours:

- i. Temporary work agencies: the Government of Malta is considering regulation to reduce the chances of labour exploitation among low-skilled workers who are engaged on temporary assignments to perform low-skilled work. The Temporary Agency Workers Regulations (Subsidiary Legislation 452.106) focus on the rights of temporary workers. The Government is considering the introduction of new obligations for temporary work agencies, including the requirement to obtain a licence, with the aim of reducing the chances of labour exploitation.

- ii. Gentlemen's clubs: the consultation period also discussed the risk of exploitation and abused faced by performers working at gentlemen's clubs. The Government maintained that these establishments should not be used as brothels and suggested that these establishments should be regulated by a specific law which safeguards the interests of performers and sets obligations on both the clients and the owners. The latter have participated in the consultation process and supported the

Government's stance for regulation. The Government is mulling other proposals put forward by the civil society or available in academic research on the subject, including (i) strict control on the advertisement of these outlets, (ii) clear rules on what services may be offered by strip clubs, (iii) the nature of the employment agreement between the owners and the performers, and (iv) the possibility of introducing a tax on the operation of these businesses to support anti-trafficking measures.

iii. Massage parlours: the changes being envisaged by the Government are aimed to ensure that only genuine and qualified massage therapists are allowed to operate. Such line of thought has been expressed in the consultation period by the representatives of the industry. A licencing system would ensure that only professional massage therapists are authorised to run these type businesses, and that the premises of these businesses will not be used for the purpose of prostitution.

Article 10.4 RESC*

Please indicate the nature and extent of special retraining and reintegration measures taken to combat long-term unemployment as well as figures demonstrating the impact of such measures (please include detailed statistics on long-term unemployment in your country, if not provided under Article 1.1).

Jobsplus, as the national Public Employment Service (PES) provides advisory services and training opportunities, amongst other services. These initiatives are designed to be in line with the required skills of the labour market. Unemployed people in Malta are encouraged to register with Jobsplus, who as the Maltese PES, can provide targeted support via its employment advisors, and job coaches.

People registering with Jobsplus as unemployed are introduced to an employment advisor who after the initial profiling are given a Personal Action Plan (PAP). During such appointment with the employment advisor, the client discusses the training and employment aspirations and prospects. The personal action plan includes such information and what is expected by Jobsplus and the jobseeker. The registrant has the opportunity to meet the employment advisor on a regular basis. During these meetings, the PAP is updated accordingly, and clients are referred to training programmes, employment schemes and other initiatives according to their specific needs.

Moreover, in the past years Jobsplus in collaboration with the private sector was assisting long-term unemployed individuals to re-enter into the labour market. The Work Programme Initiative's (WPI) main objective was the re-integration of the long-term unemployed and inactive into the labour market. As such, the target audience were long-term unemployed individuals aged 25 years and over, who were seeking full or part-time employment. These individuals had to be either be registering with Jobsplus for 12 months over the last two years which did not necessarily had to be consecutive and, inactive individuals not registering during the past 12 consecutive months. This initiative consisted of three phases: profiling, training and job placements. The initial part is the Profiling phase whereby clients are interviewed by the service provider, through which their work paths are established and written in a client report (profile). During the second phase, clients are then given training courses to improve their employability skills to enable them to enter the labour market. After finishing the training phase, the respective clients are placed in employment. If the participant would have not been placed in employment for at least 6 months out of 24 months from the date of the signing of the Work Programme Initiative contract, s/he is referred back to Jobsplus.

The number of LTU in Malta between 2015-2018 was 5984 out of which 77.5% were males and 22.5% were females. From all LTU, 97.9% (5859) had received a Personal Action Plan during the period observed whereas 23.5% (1405) participated in the Work Programme Initiative between 2015-2018. 1356 long-term unemployed were participating in the Work Programme Initiative while also having received a PAP, while 4503 had received a Personal Action Plan without participating in the Work Programme Initiative. 26.7% of all LTU have exited to employment.

An analysis of this cohort as at end of June 2020 indicates that 47% were in employment as opposed to 39.2% who were in an unknown status and 13.8% who were registering for employment.

Article 15.3*

Please describe the measures taken (and progress made) to ensure that persons with disabilities have the right to live independently in the community, such as the existence of available independent living schemes, sheltered housing for persons with disabilities, in-home, residential and other community support services, including personal assistance.

Malta's key undertaking in this regard is the creation of an Independent Living Fund, further to a 2017 Government electoral manifesto pledge. A working team was set up in this regard, and reports have been prepared by experts and practitioners in both the service provision and the financial sectors. The aim is to consult the compiled findings further, with disabled persons and their representative organisations, and with their families, with a view to ensuring a longer-term, sustainable mechanism, through which disabled persons are able to receive relevant funding and support packages to be able to live independently and within the community, further to the provisions of Article 19 UNCRPD.

Furthermore, an exercise is under way to streamline the various service provision boards within the remit of Agenzija Sapport, Malta's State service provision agency for disabled persons. This would allow for a more targeted approach to assessing and identifying the needs of disabled persons when it comes to community services, improving efficiency while ensuring that resources can be better focused on service availability, delivery and quality, as a result of streamlining processes and reducing bureaucracy.

While Malta still operates residential facilities on a smaller scale, primarily for persons with intellectual and psychosocial disabilities, an effort was made to ensure that these are located within the community, and priority is given to supporting service users who want to live in independent units or in their own homes, by ensuring access to appropriate community services and personnel for said users. This is bolstered by funding available from the Housing Authority for disabled persons, to be used towards ensuring accessibility of their personal accommodation, in conjunction with the Empowerment scheme operated by Agenzija Sapport, that provides grants for assistive solutions. The latter scheme is also part of the process reorganisation mentioned earlier.

Finally, internal discussions have started, with a view to developing a holistic de-institutionalisation strategy for Malta. This will ensure, over the next years, a paradigm shift towards living independently and in the community, including for disabled persons, with societal awareness and outreach being a key component that would be factored in. Meanwhile, the concept of transitioning from residential to community living settings is one of the key elements Government is committed to tackling, including through the efforts of Agenzija Sapport.